VT SUPERIOR COURT

STATE OF VERMONT

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FILED

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. 342-6-16 Wncv

on appeal from

Small Claims
Docket No. 471-12-15 Wnsc

DREW MCNEIL
Plaintiff–Appellant

v.

MARK CYR and KIM CYR
Defendants–Appellees

DECISION ON APPEAL

Plaintiff–Appellant Drew McNeil has appeals from a small claims judgment in his favor against his former landlords, Defendants–Appellees Mark Cyr and Kim Cyr. The small claims court awarded him a judgment for the amount of his withheld security deposit. The Cyrs did not appeal. On appeal, Mr. McNeil argues that the small claims court should have awarded him double damages for the security deposit as well as additional damages for other claims.

An appeal from a small claims judgment is heard and decided "based on the record made in the small claims court." 12 V.S.A. § 5538. The "appeal is limited to questions of law." V.R.S.C.P. 10(d). If the small claims court has applied the correct law, this court will affirm its "conclusions if they are reasonably supported by the findings." *Maciejko v. Lunenburg Fire Dist. No. 2*, 171 Vt. 542, 543 (2000) (mem.). In turn, the findings of fact must be supported by the evidence, *Brandon v. Richmond*, 144 Vt. 496, 498 (1984), and such findings "must be construed, where possible, to support the judgment," *Kopelman v. Schwag*, 145 Vt. 212, 214 (1984). The court's review of the small claims court's legal conclusions, however, is "non-deferential and plenary." *Maciejko*, 171 Vt. at 543 (quoting *N.A.S. Holdings, Inc. v. Pafundi*, 169 Vt. 437, 439 (1999)).

The court has listened to the recording of the small claims hearing and reviewed the entire record of this case. Two principal disputes were presented at the hearing. First, Mr. McNeil sought various items of damages (unnecessary rent payments, moving expenses, etc.) that he claimed to have incurred when the Cyrs breached an oral agreement to waive a 60-day notice provision in the lease and permit Mr. McNeil to terminate his tenancy sooner. Second, Mr. McNeil claimed double damages for the willful retention of his security deposit without notice complying with 9 V.S.A. § 4461.

The small claims court found that the oral agreement on the notice provision was that it would be waived if Mr. McNeil's caseworker supplied the Cyrs with a new tenant to take Mr. McNeil's place. However, no new tenant was supplied. Accordingly, the court found no breach of the oral agreement on the Cyrs' part and awarded no damages to Mr. McNeil as a result.

As for the security deposit ($450), the small claims court found that the Cyrs retained the entire security deposit on the basis of written, itemized damages to the apartment and cleaning expenses. However, they left that written notice in the mailbox of the apartment Mr. McNeil had just vacated (without mailing it to that address) and faxed a copy to his caseworker.[1] The small claims court found that this did not comply with the statutory requirement for hand-delivery or a mailing to the last known address of the tenant. Accordingly, the court found that the Cyrs had forfeited the right to withhold the security deposit. It also found that their failure was not "wilful" and thus did not order double-damages.

Following the judgment, the Cyrs promptly paid Mr. McNeil the judgment amount.[2]

On appeal, Mr. McNeil argues that he should be entitled to damages relating to his move-out date and moving expenses, and that security deposit damages should be doubled automatically because the Cyrs' behavior was egregious. He does not, however, show that any findings of the small claims court lacked an evidentiary basis or that any of its conclusions are not supported by its findings.

There was ample evidence at the hearing to support the small claims court's findings and conclusion that the Cyrs did not breach any agreement with regard to the 60-day notice provision.

The court's decision against doubling damages with regard to the security deposit also had ample evidentiary support and a sound basis in the law. The court found that the Cyrs failed to hand-deliver the withholding notice to Mr. McNeil or send it to him in the mail. However, they attempted in good faith to ensure that he had timely notice by leaving a copy in the mailbox of his vacated apartment and, more importantly, by faxing a copy to his caseworker, who had been involved in negotiations over the termination of the lease. In so doing, they were attempting to not aggravate an already acrimonious situation. In these circumstances, the court did not err by refusing to double damages.

Security deposit damages are doubled when the failure to comply with the statute is willful. 9 V.S.A. § 4461(e). As the Vermont Supreme Court has noted in this context, willful "generally connotes intentionally or by design." *Tepper v. Garcia*, No. 2015-150, 2015 WL 5793116, at *4 (Vt. Sept. 30, 2015) (unpub.). The small claims court's findings and conclusion that the Cyrs did not fail to comply with the statute intentionally or by design is sound. They knew of the statute, were trying to comply with it and provide effective notice, and thought that they had. There is no basis for double damages in these circumstances.

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[1] Had the Cyrs sent the notice by mail to Mr. McNeil's last known address it could have been forwarded by the post office to his then-current address. Simply leaving the notice at the old address ordinarily would not be an effective way to reach a prior tenant.

[2] The judgment amount is $450. Initially, the Cyrs sent a check in the amount of $450 to Mr. McNeil. He evidently refused to attempt to deposit it (and it now is in the file for this case) because his name was misspelled and, though the numeral 450 indicated that the check amount was $450, the text read "four hundred" only. At argument on appeal, the parties made clear that the Cyrs sent him a replacement check that is satisfactory to Mr. McNeil.

ORDER

The judgment of the small claims court is affirmed.

Dated at Montpelier, Vermont this 30th day of September 2016.

Mary Miles Teachout

Mary Miles Teachout
Superior Judge