

STATE OF VERMONT

**SUPERIOR COURT
Windsor Unit**

**CIVIL DIVISION
Docket No. 70-2-16 Wrcv**

**PATRICIA DOYLE
Defendant–Appellant**

**on appeal from
Docket No. 364-7-15 Wrsc**

v.

**CASSANDRA CHADWICK
Plaintiff–Appellee**

**SMALL CLAIMS APPEAL
Decision**

Patricia Doyle, Defendant in the Small Claims case below, appeals from the Findings and Conclusions and Order of the Small Claims Court dated January 25, 2016 granting judgment for Plaintiff on both the complaint and counterclaim. Both parties represented themselves in Small Claims Court and on appeal. Oral argument on the appeal was held on June 9, 2016.

In an appeal from a Small Claims Court judgment, it is not the function of the Superior Court to substitute its own judgment for that of the Small Claims Court Judge. See *Whipple v. Lambert*, 145 Vt. 339, 340–41 (1985). Rather, the role of the Superior Court is to determine whether or not the evidence presented at the hearing supports the facts that the Judge decided were the credible facts, and whether or not the Judge correctly applied the proper law and procedure.

In the case before the Small Claims Court, Ms. Chadwick sought the return of \$2,000.00 she had paid to Ms. Doyle in connection with a 6-month lease and option to purchase agreement the parties signed, but the arrangement fell through before the start date of the lease. Ms. Chadwick sought the money she had paid, and Ms. Doyle counterclaimed for breach of contract.

On appeal, Ms. Doyle claims that the Judge erred in making findings of fact that she claims are contrary to the evidence. She also claims that he erred in refusing to continue the hearing, and in not permitting her to give her testimony. The issues before this Court on appeal are thus whether the Small Claims Judge deprived Ms. Doyle of a fair trial by failing to provide procedural protections required by due process of law, and whether or not the evidence presented at the hearing supported the Court’s finding of fact.

The undersigned heard arguments from both parties at the oral argument, and has subsequently listened to the audio recording of the trial before the Small Claims Court.

It is undisputed that on May 15, 2015, the parties (and Ms. Chadwick's husband) signed an agreement whereby Ms. Doyle leased to Ms. Chadwick and her husband a residence in South Royalton for six months, from June 1, 2015 to December 1, 2015, and the agreement included provisions allowing the Chadwicks to purchase the property and apply the rent to the purchase price. Rent was \$1,000.00 per month, and Ms. Chadwick paid \$2,000.00 to "hold" the property. Ms. Doyle took the property off the market, and agreed that before June 1 the Chadwicks could enter the property to clean and paint and prepare to move in. They did so.

In the course of their activities on the property, the Chadwicks discovered that water would not drain in the tub, some of the electrical fixtures did not work, the septic system map could not be located, and a covered watery area described as either a well or the septic system was smelly. They notified Ms. Doyle on May 28, 2015 that the property was not suitable and they would not be moving in and they requested return of the \$2,000.00 paid. In the course of subsequent discussions and correspondence, Ms. Doyle declined to return the money on the grounds that they had breached the lease and owed her the full amount of unpaid rent as well as what she had paid for a plumber's bill to fix the drain and other expenses she had incurred or expected to incur on their account.

The Small Claims Judge found that the premises were not habitable as of June 1, 2015 and therefore Ms. Chadwick was justified in terminating the lease prior to the commencement date and was entitled to the return of the amount paid except for \$500 attributable to the fact that the Chadwicks actually occupied the premises for half of one month. The Judge further found that of the \$2,000 paid, \$1,000 was a security deposit and Ms. Doyle failed to provide a written itemization of deductions as required by 9 V.S.A. § 4461 and was therefore not entitled to keep those funds. He further concluded that even if Ms. Chadwick had not been entitled to terminate the lease on grounds of non-habitability, Ms. Doyle would not have been entitled to her claim for lost rent because she did not attempt to rent or sell to mitigate damages for lost rent after notice that the Chadwicks were not going to proceed with the lease.

Appeal Issues Based on Claims of Procedural Errors

Claim of Denial of Continuance

At the beginning of the hearing, Ms. Doyle requested a continuance to give her the opportunity to have an attorney with her. Ms. Chadwick stated that she wished for the hearing to go forward. The Judge did not rule but continued with preliminary questions. Ms. Doyle then renewed her request for a continuance of the hearing in order to have a lawyer present. At that point, the Judge made a ruling denying the request and articulated two reasons: (1) the case had been filed in June and "we're here" [in January] with the clear implication that there had been sufficient time to obtain a lawyer for the hearing, and (2) Small Claims Court is specially designed for parties without lawyers, suggesting that she would not be prejudiced.

The decision of whether to grant a continuance is within the sound discretion of the trial judge. *In re Woodstock Community Trust and Housing Vermont PRD*, 2012 VT 87, ¶ 36, 192 Vt. 474 ("We have held that a ruling on a motion to continue involves trial court discretion and will be overturned only if the discretion is exercised upon grounds clearly untenable, or to an extent clearly unreasonable.") (citing *Kokoletsos v. Frank Babcock & Son, Inc.*, 149 Vt. 33, 35 (1987)).

Here, there was no abuse of discretion. The Judge was within his authority to decide that the case had been pending for sufficient time for Ms. Doyle to obtain a lawyer, and to conclude that Ms. Doyle would not be prejudiced by proceeding without a lawyer. “Small claims proceedings should be as simple and untechnical as possible to encourage litigants to appear pro se,” and neither side in this case was represented by a lawyer. *Cold Spring Farm Development, Inc. v. Ball*, 163 Vt. 466, 469 (1995) (citing *Ferris-Prabhu v. Dave & Son, Inc.*, 142 Vt. 479, 480, 457 A.2d 631, 632 (1983)).

The Court concludes that the Judge did not err in denying the requested continuance.

Claim of Denial of Opportunity to Testify

Ms. Doyle’s Statement of Basis of Appeal stated: “I was not asked to testify or give my narrative only had to answer swayed questions by judge regarding Chadwick’s narrative.” The audio recording of the hearing shows that it is true that the Judge conducted the trial primarily by asking questions of both parties. This is consistent with the intentional procedure in Small Claims Court as set forth in Rule 6 of the Vermont Rules for Small Claims Procedure: “All witnesses. . .will be examined by the judge with the objective of laying out the evidence pertaining to the contentions reasonably available to the parties.” The Rule further provides that “[t]he parties or their attorneys may supplement the judge’s examination subject to the judge’s authority to protect witnesses against unfair imposition and to avoid needless repetition.”

At the Small Claims hearing, after the Judge had asked Ms. Doyle many questions related both to Ms. Chadwick’s testimony and related to Ms. Doyle’s own counterclaim, the Judge then asked Ms. Doyle if there was anything else that she would like to add. She said there was, and she proceeded to provide additional testimony, to which the Judge listened without interruption.

Based on the review of the hearing, the Court concludes that Ms. Doyle had a full and fair opportunity to present her evidence. While the Judge conducted the questioning, he also gave her an opportunity for her own supplementary testimony and she took advantage of the opportunity and presented her own evidence. The Judge did not err in providing a fair opportunity to present testimony.

Appeal Issues Based on Claims of Erroneous Findings

Ms. Doyle claims that the Judge erred in finding that the premises were not habitable as of June 1, 2015 and in finding that there were electrical and water drainage problems with the property that were not known to the Chadwicks themselves prior to the start of the lease agreement or caused by them prior to the start of the lease term.

The recording of the hearing shows that there was highly conflicting testimony from both parties on the issues identified by Ms. Doyle. At the hearing Ms. Doyle highlighted the differences in the testimony when she claimed that Ms. Chadwick’s testimony was false. The Judge made it clear in his written decision that his findings and conclusions were based on his determination of which evidence he found credible.

It is not the role of this court on appeal to make its own determination of credibility.

“Where the evidence is conflicting the trial court has the sole responsibility for determining its weight and the credibility of the witnesses.” *Whipple v. Lambert*, 145 Vt. 339–40 (1985) (per curiam). This court must uphold the trial court as long as there was sufficient evidence introduced at the hearing upon which the Judge could have based his findings of fact, and the record of the hearing shows that there was.

Conclusion

Having reviewed each of the bases on which Ms. Doyle claims error, this court concludes that the Small Claims Judge did not commit errors of either law or procedure, and that the decision must be upheld.

ORDER

For the foregoing reasons, the judgment of the Small Claims Court is affirmed.

Dated at Woodstock, Vermont this 24th day of June, 2016.

Mary Miles Teachout
Superior Judge