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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0550-15T4

DILMUROD AKRAMOV,

Plaintiff-Appellant,

v.

AMY DELUCA,

Defendant-Respondent.

Submitted November 19, 2016 – Decided August 21, 2017

Before Judges Fasciale and Sapp-Peterson.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Docket No. SC-
708-15.

Sabir Law Group, attorneys for appellant
(Mohammed I. Shariff, on the brief).

Amy DeLuca, respondent pro se.

PER CURIAM

This is an appeal from the judgment of the Special Civil
Part, which dismissed plaintiff Dilmurod Akramov's complaint, in
which he sought to recover his security deposit, attorney's fees

and costs, and granted defendant Amy DeLuca's counterclaim seeking damages arising out of plaintiff's occupancy of a condominium unit she owned and leased to him. We affirm.

The evidence presented at trial disclosed that the parties entered into a lease agreement for the condominium in April 2011. Plaintiff resided at the premises for four years. According to plaintiff, the condominium unit was seventeen years old at the time he moved in. Defendant did not install new carpeting at that time. He did not like the color of the walls, and defendant gave him permission to paint.

When he moved out, nothing was broken. He indicated that the "[b]athtub paint was little bit peeling," which he believed was caused by "water damage." He denied breaking the countertop and testified that there were stains on the Formica countertop when he moved in. He testified that he never used all of the outlets and, therefore, could not state whether they were all operable at the time he moved in.

Plaintiff acknowledged the existence of stains on the carpet, but stated that since the carpet was not new, he attributed its condition to normal wear and tear. He also testified that he broke the door knob, but defendant agreed to replace it if he purchased the door knob, which he did.

Plaintiff further testified that before moving out he steam-cleaned the carpets and painted the walls. He then demanded the return of his \$1350 security deposit. Defendant, in turn, demanded that plaintiff pay for damages, which she claimed he caused.

Under cross-examination, plaintiff stated that he did not recall what precautions he took to make sure the quality of the paint job was equivalent to the existing paint job at the time he moved in because he had painted the walls four years earlier. He acknowledged that his daughter may have written on the walls and put some marks on the carpet with a marker, but that he took care of these conditions before he moved out.

In her testimony, defendant detailed the damages to the property caused during plaintiff's tenancy and introduced photographs depicting some of the damages about which she testified. She also presented receipts for repairs performed and estimates for items she testified needed to be replaced. Starting with the kitchen, defendant testified the stove top was full of grime and caked-on grease, which she was unable to remove. There was a sticker placed on the refrigerator, which she was also unable to remove. In addition, there were burn marks on the Formica countertops. In the master bathroom, the bathtub and sink were chipped. Defendant stated she gave plaintiff permission to paint, but that the painting was of poor quality. She described paint

and bleach marks on the carpet throughout the condo and that plaintiff painted over the wall outlets. There was writing on the walls that appeared to have been done by a child.

Finally, defendant acknowledged that she did not deposit plaintiff's security deposit in a separate interest-bearing account or give plaintiff notice of where the security deposit had been deposited. She testified that she deposited the security deposit in her personal account, which is interest-bearing.

In its findings, the trial court largely credited the testimony of defendant, noting that she produced photographs of the condition of the premises, as well as receipts and estimates for the work that had yet to be performed. The photographs admitted into evidence also included photographs of the premises prior to plaintiff's occupancy.

The judge initially found that defendant improperly comingled plaintiff's security deposit with other funds and determined that plaintiff was entitled to damages in the amount of \$1770, which included interest, calculated from the date the tenancy commenced. Turning to defendant's counterclaim, the court credited defendant's testimony regarding damage plaintiff caused to the Formica countertop, one of the stove burners, the carpeting, the walls, the bathroom sink and tub, and awarded defendant \$3332 in damages. After subtracting \$1770 for the amount of the security

deposit, which included seven percent interest, the court entered judgment for defendant on her counterclaim for \$1562. The present appeal followed.

On appeal, plaintiff contends "[t]he trial court's order granting defendant replacement cost for items allegedly damaged during plaintiff's tenancy is not supported by the facts, and [is] contrary to prevailing law." We disagree.

Our standard of review is highly deferential. All that is required is that the facts, as found by the judge, be supported by adequate competent evidence in the record. Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). So long as the trial judge's findings are "supported by adequate, substantial and credible evidence[,]" they will be affirmed. Id. at 484. Our task is, therefore, limited. We will not "engage in an independent assessment of the evidence as if [we] were the court of first instance." N.J. Div. of Youth & Family Servs. v. Z.P.R., 351 N.J. Super. 427, 433 (App. Div. 2002) (alteration in original) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)). Therefore, "we do not disturb the factual findings and legal conclusions . . . unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]" Ibid. (quoting Faqliarone v. Twp. of N.

Bergen, 78 N.J. Super. 154, 155 (App. Div.)). certif. denied, 40 N.J. 221 (1963).

We accord particular deference to findings of credibility. Even when a trial judge does not expand upon credibility determinations, those determinations are entitled to deference if supported by the evidence presented. These findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." Locurto, supra, 157 N.J. at 474 (citations omitted).

With our review guided by these principles, we discern no basis to intervene in this matter. Plaintiff's challenge to the findings by the trial court primarily focuses upon the trial court's factual determination that the countertop and sink are not susceptible to wear and tear, which plaintiff contends was "arbitrary and capricious because [the trial court] fails to base [its] judgment on any legal grounds." To support this contention, plaintiff references a letter sent to defendant in April 2015, which explained the useful life or depreciable life of the Formica countertop, porcelain sink, and carpet.

The letter, written by an attorney from Arkansas contains data from various sources, including the United States Treasury Regulations and the International Association of Certified Home

Inspectors. The letter detailed the economic or depreciated value of a number of the items defendant testified plaintiff damaged.

The court was under no obligation to credit this evidence over defendant's testimony. Here, the judge relied upon the photographs admitted into evidence, which depicted the condition of the bathtub, sink, and Formica countertop; and the receipts defendant produced evidencing actual costs she incurred and projected estimates for further repairs.

In describing the damage to the sink, for example, the court stated that it was unaware that "you could possibly get those chips there. But it truly does look hideous." The court also observed that there were "big noticeable burn marks from a pot[,]" on the Formica countertop. It found the damage to the Formica countertop and sink "significant."

In resolving whether plaintiff had damaged one of the stove burners, the court stated: "Why would you pay to have a burner fixed if it wasn't broken? She has an invoice that that's the amount that was paid[.]" Likewise, the court credited defendant's testimony regarding the need to re-glaze the bathtub, noting "[w]hy would you have that done if it didn't need to be done?"

The brief submitted in support of plaintiff's appeal states, with regard to the Formica countertop and porcelain sink, that "the factual assessment of whether the item was damaged or not is

not at question." Rather, plaintiff challenges the court's consideration of depreciation for the damages to the carpet, but not of depreciation for the Formica countertop and porcelain sink. In that regard, the court did not find as a fact that such items don't depreciate. Instead, the court stated they "are not things that really depreciate with time. They pretty much last forever unless you actively do damage to it."

Thus, the court implicitly implied that in the absence of active damage, these items would not require replacement because of normal wear and tear--as distinguished from a carpet, which the judge observed "fades with the sunlight. People walk on it. There are just even in the normal course of using it you will get stains[.]"

"[W]hile the damages may not be determined by mere speculation or guess, it will be enough if the evidence shows the extent of the damages as a matter of just and reasonable inference, although the result be only approximate." Story Parchment Co. v. Paterson Parchment Paper Co., 282 U.S. 555, 563, 51 S. Ct. 248, 250, 75 L. Ed. 544, 548 (1931). We are satisfied the trial court's credibility determinations are supported by the evidence and entitled to our deference. See Locurto, supra, 157 N.J. at 471. The damages award was not so wide of the mark that it resulted in

a denial of justice. See, e.g., Rova Farms, supra, 65 N.J. at 484.

Finally, plaintiff's claim that the trial court's damages award reflects its improper consideration of defendant's testimony that she wanted to sell her condominium is without merit. While the court commented that the condition of the premises would not be favorable to prospective purchases, we view these comments as gratuitous and in no manner indicative of the measure of damages for the items it found plaintiff damaged.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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