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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the 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-4123-16T3**

HERITAGE HOUSE,

Plaintiff-Respondent,

v.

WILLIAM GIBBS,

Defendant-Appellant.

Submitted October 11, 2018 – Decided October 22, 2018

Before Judges Simonelli and Whipple.

On appeal from Superior Court of New Jersey, Law
Division, Special Civil Part, Essex County, Docket No.
LT-006294-17.

William Gibbs, appellant pro se.

Gaccione Pomaco, PC, attorneys for respondent
(Anthony G. Del Guercio, of counsel and on the brief).

PER CURIAM

In this landlord-tenant matter, defendant William Gibbs appeals from the March 8, 2017 judgment for possession, and the April 24, 2017 order for a hardship stay. We affirm.

On October 24, 2016, plaintiff served defendant with a notice to quit, which alleged that defendant caused damage to plaintiff's personal property and assaulted plaintiff's employee. The notice to quit terminated defendant's tenancy on December 1, 2016. Plaintiff subsequently filed a complaint for possession, which plaintiff voluntarily dismissed without prejudice with the intent of re-serving a notice to quit and reinstituting the eviction process.

On December 7, 2016, plaintiff served defendant with a notice to quit, which alleged the same wrongful conduct as the first notice to quit. On February 10, 2017, plaintiff filed a complaint for possession. At trial, defendant admitted to the conduct alleged in the notice to quit and raised no defenses. The court entered the judgment for possession and subsequently issued a warrant of removal, authorizing defendant's eviction on April 3, 2017.

Defendant filed an order to show cause, requesting a hardship stay of eviction. Over plaintiff's objection, the court entered the order for a hardship stay, staying the eviction until June 1, 2017. Defendant sought no further relief,

including a stay pending appeal. Defendant was locked out on June 5, 2017. Prior to the lockout, defendant removed all of his personal property from the property and voluntarily left the premises, rendering the lockout a mere formality. Plaintiff has leased the property to another tenant since July 10, 2017.


On appeal, defendant argues that plaintiff could not proceed with the second complaint for possession because the first complaint was dismissed and there was no indication it was dismissed without prejudice. Defendant did not raise this issue before the trial court. Generally, we decline to consider issues not raised to the trial court where, such as here, they are not jurisdictional in nature and do not substantially implicate the public interest. Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citation omitted); R. 2:6-2. Nevertheless, we address this meritless argument.

The voluntary dismissal of a complaint, unless otherwise stated in the notice or stipulation of dismissal, constitutes a dismissal without prejudice. R. 4:37-1(a); see Woodward-Clyde Consultants v. Chemical and Pollution Sciences, Inc., 105 N.J. 464, 472 (1987). The clerk's notice does not specify that the first complaint was dismissed with prejudice. Thus, the complaint is deemed to have been dismissed without prejudice. "[A] dismissal without prejudice 'generally indicate[s] that 'there has been no adjudication on the merits

of the claim, and that a subsequent complaint alleging the same cause of action will not be barred simply by reason of its prior dismissal.'" " A.J. Cornblatt, PA v. Barow, 153 N.J. 218, 243 (1997) (second alteration in original) (quoting Velasquez v. Franz, 123 N.J. 498, 509 (1991) (citation omitted)). Accordingly, plaintiff could proceed with the second complaint.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION