SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1494-21

JONGHO JUNG,

Plaintiff-Appellant,

v.

FREDS BAGELS LLC and
ALFREDO ANDERE,

Defendants-Respondents.

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Submitted December 19, 2022 – Decided January 17, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. LT-000542-21.

Jongho Jung, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

In this landlord-tenant matter, plaintiff, Jongho Jung, appeals from the December 8, 2021 Special Civil Part judge's dismissal of his complaint for

possession against defendants, Fred's Bagels LLC and Alfredo Andere. We affirm, substantially for the reasons set forth in Judge Charles E. Powers' well-reasoned oral opinion.

We discern the following facts from the record. Plaintiff owns a two-story building in Elmwood Park. In or around September 2019, defendants entered into a written lease agreement with plaintiff to rent the ground floor and basement of the subject property for the operation of a bagel shop. The lease term began in September of 2019 and was to end on August 31, 2026. For 2019, the monthly rent was set at $5,050. Per the lease agreement, the monthly rent was set to increase to $5,200 in 2020 and $5,350 in 2021.

On March 9, 2021, plaintiff filed the instant complaint, seeking judgment for possession of the subject property based on defendants' alleged non-payment of rent. On December 8, 2021, a trial was held in the matter at which both parties testified.

At trial, plaintiff testified that defendants owed him $27,350 in rental arrears, as of September 2021. However, the judge found plaintiff's testimony to be "uncertain, equivocal, and[,] at times[,] dubious." The judge's finding was substantiated by the fact that plaintiff changed figures with respect to the alleged amount owed by defendants "a number of times." Further, when asked if he had

any evidence to present other than his oral testimony, plaintiff only offered to present a picture of the property's basement, which the judge found unrelated to the non-payment case.

Next, Andere testified on behalf of himself and as the sole member of Fred's Bagels LLC. Defendant testified as to a series of canceled checks, which were submitted into evidence, reflecting rent payments made from February 2020 through December 2020. Defendant further provided invoices and receipts reflecting various repairs to the subject property that he paid for, which corresponded with deductions taken on certain rent payments over the term of the lease. Defendant's documents memorialized out-of-pocket payments for various expenses, such as repairs to the building's plumbing, repairs to the sidewalk immediately in front of the building, and the addition of a proper back door to the bagel shop.

The judge found that defendant's evidence, which was subject to the court's inquiry, contradicted plaintiff's testimony. In addition, the judge found that all of the repairs referenced by defendant were structural "repairs that normally would be borne by the landlord, absent an agreement to the contrary," and therefore found defendant justified in "laying out the money and then deducting it."

At the close of evidence, the court ultimately found that plaintiff failed to satisfy his burden of proof and denied his application for judgment of possession, finding that defendant established the defense of payment of rent. This appeal followed.

On appeal, plaintiff raises the following argument:

> THE TRIAL COURT ERRED [BY GRANTING] JUDGMENT TO DEFENDANTS. ALL [EVIDENCE] IS DEFENDANT'S DUTY ACCORDING [TO] THE LEASE AGREEMENT.

We find insufficient merit in plaintiff's contention to warrant extended discussion in a written opinion. Rule 2:11-3(e)(1)(E). We write only to add the following brief comments.

We review the denial of judgment for possession based on an abuse-of-discretion standard. Cmty. Realty Mgmt. v. Harris, 155 N.J. 212, 236 (1998). Our review of a trial judge's fact-finding is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). A judge's findings of fact are "binding on appeal when supported by adequate, substantial, credible evidence." Id. at 412 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). Therefore, we will not disturb the factual findings and legal conclusions of the trial judge unless 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[.]" Rova Farms., 65 N.J. at 484 (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1964)). Deference is particularly warranted where, as here, "the evidence is largely testimonial and involves questions of credibility." In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997). However, we review a trial court's legal conclusions de novo. Barlyn v. Dow, 436 N.J. Super. 161, 170 (App. Div. 2014) (citations omitted).

Here, after listening to the testimony of each party, the judge correctly determined that the repairs referenced by defendant were repairs that would normally be the responsibility of the landlord. Where a landlord fails to make such repairs, a tenant may make the repairs and deduct the cost from the rent, as defendant did here. See Marini v. Ireland, 56 N.J. 130, 146 (1970). We see no principled reason to question the trial judge's determination on this matter.

However, plaintiff argues, for the first time on appeal, that defendant is responsible for the relevant repair costs pursuant to the terms of the lease agreement executed by the parties. Although we may consider allegations of errors or omission not brought to the trial judge's attention if it meets the plain error standard under Rule 2:10-2, it is well established that we "will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised

on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)). With these guiding principles in mind, we determine that plaintiff's argument was not properly preserved for appellate review and, therefore, will not consider it.

Affirmed.