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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-3746-21**

DOROTHY ENRIQUEZ,

Plaintiff-Respondent,

v.

**JIM DENGES and
JACQUILINE DENGES,**

Defendants-Appellants.

Submitted August 1, 2023 – Decided August 17, 2023

Before Judges Sumners and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law
Division, Camden County, Docket No. SC-000453-22.

South Jersey Legal Services, Inc., attorneys for
appellants (Noorzahan Khan and Kenneth M. Goldman,
on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendants Jim and Jacqueline Denges¹ appeal from the June 22, 2022 judgment in favor of plaintiff Dorothy Enriquez. We vacate the judgment and remand for further proceedings.

Between November 2016 and June 2022, defendants leased a second-floor apartment owned by plaintiff in Audubon. Initially, the parties signed a written lease in 2015; thereafter, defendants had a month-to-month tenancy and paid \$1,000 monthly rent.

In May 2022, plaintiff filed a complaint in the Special Civil Part, seeking collection of unpaid rent and late fees for April and May 2022.

The self-represented parties appeared for a remote bench trial held on June 22, 2022. At trial, plaintiff testified that defendants owed three months' rent which was not disputed. Jim testified they withheld the rent payments because of the habitability of the apartment, and they wanted to challenge their nonpayment of rent. The judge, however, rejected defendants' habitability defense. He explained that "if a tenant honestly believe[ed] that the premises [was] rendered not habitable for one reason or the other, what is done is then the tenant is required to pay that rent into court." The judge further explained a

¹ We refer to defendants by their first names to avoid any confusion caused by their common surname. No disrespect is intended.

tenant does not keep the rent and the tenant would ask for a habitability hearing and there would be a habitability trial. He stated defendants' failure to pay rent was "not consistent with the with the law" and "not a viable defense."

When Jim asked for clarification, the judge reiterated:

But I'm just telling you, if you believe honestly that you have a habitability claim, you pay the money into court is what you do and then you ask for a habitability hearing is what you do. But you just don't pay the rent and then when you force the landlord to go ahead and sue you, then you say the place is not livable.

The judge considered plaintiff's complaint and concluded that the matter was a "pure back-rent case," and entered judgment in favor of plaintiff for \$3,042 for unpaid rent and court costs. Additionally, the judge found plaintiff waived the entitlement to late fees because she had not charged late fees during the tenancy. Following the trial, defendants paid plaintiff the back rent in full.

On appeal, defendants argue the trial judge erred in disallowing defendants from asserting a breach of the implied warranty of habitability defense. We agree.

Our review of a trial court's final determination in a non-jury case is limited. We must hew to our "deferential standard" of review. D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013). "Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established

scope of review[.]'" Ibid. (citation omitted). "[W]e do not disturb the factual findings and legal conclusions of the trial judge 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. (citation omitted). "To the extent that the trial court's decision constitutes a legal determination, we review it de novo." Ibid.

In a residential lease, a landlord is held to an implied warranty of habitability. Marini v. Ireland, 56 N.J. 130, 144 (1970). A landlord's covenant of habitability and a tenant's covenant to pay rent are mutually dependent on one another. Berzito v. Gambino, 63 N.J. 460, 469 (1973). "Accordingly, in an action by a landlord for unpaid rent a tenant may plead, by way of defense and set off, a breach by the landlord of his continuing obligation to maintain an adequate standard of habitability." Ibid.

The trial judge erred in disallowing defendants the opportunity to prove plaintiff breached the covenant of habitability. The record does not support the trial judge's finding. We are persuaded the judge's ruling was based on the mistaken belief that defendants' defense was procedurally barred. Because this was not a summary dispossess action, defendants retained the right to raise their habitability claim. Having reviewed the record and guided by these principles,

the trial judge improperly barred defendants' habitability defense in this action to recover unpaid rent and other costs.

We vacate the \$3,042 judgment and remand this matter for further proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION