

**MEMORANDUM DECISION
ON REHEARING**

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE
COURT OF APPEALS OF INDIANA

Shah Alam,
Appellant-Plaintiff,

v.

Shavon J. Tucker,
Appellee-Defendant.

October 7, 2021

Court of Appeals Case No.
21A-SC-80

Appeal from the Warren Township
Small Claims Court

The Honorable Garland E. Graves,
Judge

Trial Court Cause No.
49K06-2008-SC-1657

Bailey, Judge.

[1] Alam petitions for rehearing, arguing that Tucker was not entitled to withhold rent under Indiana law or the terms of the lease for alleged habitability issues,¹ and that she failed to pay a security deposit.² He observes that Indiana has no statute authorizing withholding of rent based upon lack of habitability and Tucker neither filed an independent action nor asserted a counterclaim against Alam alleging deficiencies of the leased premises. We grant rehearing, for the limited purpose of clarifying that neither the small claims court nor this Court has concluded that Tucker was entitled to withhold rent on statutory or common law grounds related to lack of habitability. Rather, faced with Alam's fickle testimony, missing records, incorrect records, demands inconsistent with the lease, and evidence of refusal of one or more payments, the small claims court decided that Alam failed to meet his burden of proof.

[2] Our standard of review in small claims cases is particularly deferential in order to preserve the speedy and informal process for small claims. *City of Dunkirk Water & Sewage Dep't v. Hall*, 657 N.E.2d 115, 116 (Ind. 1995). The small claims court is the sole judge of the evidence and the credibility of witnesses, and we neither reweigh the evidence nor assess the credibility of the witnesses. *Id.* When the court rules against a party having the burden of proof, as here, it

¹ He observes that the lease provided for a process whereby a tenant who had expended funds to remediate a deficient condition of the property could submit receipts and obtain approval to reduce a rent payment. However, according to Alam, Tucker did not produce receipts or request his approval for a rent payment reduction.

² Tucker did not claim that she was entitled to recover any portion of a security deposit and Alam did not claim that Tucker damaged the premises such that retention of a portion of the security deposit was warranted.

enters a negative judgment that we may not reverse for insufficient evidence unless “the evidence is without conflict and leads to but one conclusion, but the court reached a different conclusion.” *Eppl v. DiGiacomo*, 946 N.E.2d 646, 649 (Ind. Ct. App. 2011). In his direct appeal, Alam presented a sole argument, that all evidence pointed to Tucker’s breach because she allegedly admitted in her testimony to being delinquent in her rent. We concluded that the evidence did not point solely to a conclusion opposite that reached by the trial court. Although Tucker testified that Alam had not been paid in full, she explained that she had attempted to make a payment that had been refused. In our discussion, we observed that Alam was ignoring evidence of his own breach. Focusing only upon the description of the property’s condition, Alam now re-frames an issue in terms of legal entitlement to withhold rent. He also asks that we make certain calculations to conclude that Tucker must have been in default of the lease for failure to fully pay the security deposit.

[3] We have again reviewed the record and we again conclude that the transcript of the three hearings conducted in this matter does not reveal evidence without conflict leading to a conclusion opposite that reached by the small claims court. Indeed, as Alam attempted to establish his claim, the conflicts and gaps in the evidence were myriad, touching upon when the lease commenced, the internal inconsistency of some provisions, what sums Tucker had paid, how payments were allocated, whether payment was refused, and what modification had been made with respect to a security deposit.

[4] At the outset, Alam’s attorney stated that the lease commenced June 1, 2020. But Alam contradicted his attorney’s representation to the court, testifying that the lease began in May and “it was half a month or prorated days and the rent due for May was \$587.00 which Ms. Tucker paid.” (Tr. Vol. II, pg. 42.) When the court questioned how payment could be recorded as May rent if the lease commenced in June, Alam simply replied, “I recorded the payment,” and counsel interjected that “she made the payment in May.” (*Id.* at 44.) Alam would eventually opine that a mistake had been made in drafting the lease.³

[5] As for the written terms of the lease, they were internally inconsistent; that is, the lease was to commence June 1, 2020, with payment due at the first of each month, but it also included “pro-rated” rent without further description. Alam appeared to believe, at least initially, that Tucker’s obligation to pay rent arose when his agent tendered keys to her. But Tucker testified that the property was not rent-ready in May and she had been given keys early for dual purposes – the convenience of Alam’s agent and the opportunity to clean up the premises.⁴

[6] Alam’s Notice of Claim alleged that Tucker owed him \$1,837.50. Over the course of three hearings, without submitting payment records, Alam would eventually claim that Tucker owed him much more. The small claims court

³ Thereafter, counsel presented argument that Tucker was obligated to pay rent for part of May.

⁴ Tucker described in some detail the poor condition of the premises when she was allowed entry. She did not ask for a reduction in rent on that basis; however, the evidence of alleged deficiencies was relevant to show why Tucker would be given keys in advance of the lease without charge.

remarked upon the omission, choosing not to enter judgment for the defendant immediately, but to prompt Alam to search his records: “I have nothing to show payments been made. Typically, that is required by the Court, you have to provide it to the defendant, you have to provide it to the Court. You’re asking the Court to grant you a judgment of \$7,767.49 without first tendering an itemization of all the payments that’s been made.” (*Id.* at 41.) Eventually, with reference to payments Tucker claimed to have made through a cell phone application, Alam conceded that he had not given her any credit for one payment.

[7] The parties also disputed whether Alam had refused a rent payment from Tucker. He first testified that he had not refused a payment, but later admitted that he did so. As for monies received, Alam’s testimony provided no clear allocation between rent and a security deposit. The lease recited that Tucker was to pay \$1,762.50 as a security deposit on or before signing the lease; both parties testified that they had agreed that the security deposit would not be paid in full at signing, but the precise terms of the deviation were in dispute. Alam testified that he agreed to accept a security deposit a few weeks late, while Tucker’s testimony was that the security deposit would be accepted in \$100.00 installments over time.⁵

⁵ Alam’s initial recollection was that “the renter paid only one payment at the time of move in and I agreed that I will take the deposit in a week or two because she was struggling.” (Tr. Vol. II, pg. 9.)

[8] In sum, Alam’s testimony was that Tucker willfully failed to pay her rent, but his testimony was replete with contradictions. Tucker’s testimony was that she had taken possession of uninhabitable property in May to clean it up and make it habitable, her rent obligation commenced June 1, 2020, she paid her rent ahead of time, and Alam had refused a proffered rent payment (apparently believing it to be a partial installment for overdue rent). Although Tucker briefly described deficiencies in the premises, she did not ask for credit against her rent. Notwithstanding the small claims court’s suggestion that the condition of the property would be a consideration, the court did not find that Tucker had failed to pay rent and was justified in doing so. Rather, the court found that Alam – the party with the burden of proof – failed to establish his claim. The judgment is not clearly erroneous.

May, J., and Robb, J., concur.