

MEMORANDUM DECISION

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APPELLEE *PRO SE*

Shavon J. Tucker
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IN THE COURT OF APPEALS OF INDIANA

Shah Alam,
Appellant-Plaintiff,

v.

Shavon J. Tucker,
Appellee-Defendant.

July 23, 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.

Case Summary

[1] Shah Alam (“Alam”) appeals a small claims court judgment in favor of Shavon Tucker (“Tucker”). The parties agreed that they had executed a valid lease to commence June 1, 2020, Alam’s rental agent had given Tucker keys in early May, and the parties had agreed to some deviation from the lease regarding the payment of a security deposit. Tucker claimed that the property had not been ready to rent when she received the keys, she had incurred expenses related to an electrical outage, habitability issues had never been corrected, and Alam had refused a tendered rent payment. Alam appeared in court without payment records; after consultation with his attorney, he conceded that Tucker’s payment records were accurate and he had refused a partial rent payment. The small claims court rendered judgment for Tucker, stating only that Alam had failed to establish Tucker’s alleged breach by failure to pay an August 2020 rent installment. Alam presents the issue of whether the judgment is clearly erroneous, because Tucker admitted her rent had not been paid in full. We affirm.

Facts and Procedural History

[2] On May 12, 2020, Alam and Tucker executed a lease providing that Tucker would lease from Alam an Indianapolis residence for the time period of June 1, 2020, to May 31, 2021, at a monthly rent of \$1,175.00 (“the Lease”). The Lease recited that the total amount due from Tucker on or before signing the Lease was \$2,350.00 (itemized as \$587.50 “pro-rated rent” and a \$1,762.50

security deposit). (App. Vol. II, pg. 22.) Rent was due upon the first day of each month and, after five days of non-payment, a \$75.00 late charge would be assessed.

[3] On August 31, 2020, Alam filed a Notice of Claim for Possession of Real Estate in the Warren Township Marion County Small Claims Court. Alam averred that the subject property had been leased to Tucker on May 12, 2020, and that she had breached the Lease and owed him \$1,837.50. The parties appeared for hearings on September 24, October 1, and December 10, 2020. At the first hearing, Alam’s attorney advised the trial court that the lease had commenced on June 1, 2020, and Alam was owed \$1,837.50. Alam testified that he had agreed to Tucker’s payment of the security deposit a few weeks late but that he had not received August or September rent and he had not “seen the balance of the deposit.” (Tr. Vol. II, pg. 10.)

[4] Tucker testified that she and Alam had agreed to her payment of the security deposit in installments over several months. She also testified that the property had experienced an electrical outage for three days and some rooms still lacked electricity. According to Tucker, she had paid for some repairs and had paid several hundred dollars for replacement of food ruined during the electrical outage. She also asserted that there was an opening from the crawl space into the residence. As for rent, Tucker testified: “what he’s not saying – in May I paid June’s rent, at the end of May. In June I paid July’s rent at the end of June.” (*Id.* at 11.) She offered that she could “pay August now.” (*Id.* at 13.) She also expressed her willingness to vacate the property.

[5] The trial court advised the parties that the court would be “looking at the condition of the property” when determining whether a party had performed obligations under the lease. (*Id.* 16.) The first hearing ended when the trial court granted Tucker’s motion for a continuance in order to obtain an attorney.

[6] At the October 1, 2020 hearing, Alam testified that Tucker had “last paid in July” and he agreed with his counsel that he was owed \$1,837.50: “That’s the September number, the October is due and I have not received [it]. So, it will be an additional \$1,175.00.” He also confirmed that the amount he was claiming included “a partial security deposit that was not paid.” (*Id.* at 24.) Alam requested possession of the property, and Tucker stated that she would be willing to move out in mid-October. Indicating that she would like to make payment arrangements, Tucker requested, and was granted, an additional hearing on damages. The trial court entered an order of eviction for October 18, 2020.

[7] At the December 10, 2020 hearing, Alam testified that Tucker had vacated the property “way before November second” and he had re-let the property effective December 1, 2020. (*Id.* at 35.) He denied Tucker’s allegations that he had listed the property for rent during Tucker’s residency and that his rental agent had sent prospective renters to view the property during September 2020. Assenting to his attorney’s summary, Alam verbally requested an award of \$7,767.49 (consisting of \$2,194.99 in attorney’s fees, a cleaning fee, August, September, and October rent, late fees, and liquidated damages equal to two months’ rent). The absence of a written itemization or allocation of past

payments prompted the trial court to address Alam: “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. ... With all due respect, the court needs to know exactly what was paid when.” (*Id.* at 41-42.)

[8] Tucker submitted records of her payment history, showing that she had paid a total of \$4,187.00 in May and June. She asserted that, “when I paid on June 30 for July, I was ahead \$712.00 when August came [and] I offered him \$500.00 [which] he refused.” (*Id.* at 39.) Tucker also directed the trial court’s attention to the lease start date of June 1, 2020. The trial court examined Tucker’s evidence, presented via a cell phone application, and reminded Alam’s counsel that Alam had submitted no itemization that contradicted Tucker’s payment history evidence. The trial court observed, “your client does not reflect the first payment of \$1,175.00.” (*Id.* at 47.) The trial court also noted that the lease commenced on June 1, 2020, not the date upon which Alam had apparently begun assessing rent. Upon further questioning, Alam was unable to explain his recordkeeping; the trial court allowed a recess to permit Alam and his counsel to confer. The trial court further advised the parties that, if the court found that Alam had refused a rent payment, “[Alam] might be in violation of the lease agreement, not her.” (*Id.* at 48.)

[9] After the recess, Alam agreed that Tucker had made the following payments in 2020: \$1175.00 on May 7, \$587.00 on May 13, \$550.00 on June 1, \$700.00 on June 11, and \$1,175.00 on June 30, aggregating to \$4,187.00. He acknowledged that there was a discrepancy between the lease and the payment

demands. Alam explained that he had been “looking at the records,” and determined that “the pro-rated rent was written by error instead of a security deposit,” but he maintained that Tucker had not fully paid the security deposit and was delinquent in her rent. (*Id.* at 63.) He recanted his initial denial that he had refused payment of rent by Tucker, testifying that he had explained to her “he had to collect full rent.” (*Id.* at 64.) Alam did not contest Tucker’s contentions that the property had been uninhabitable when she received the keys, that she had expended her own efforts and funds to improve the property, or that it continued to be substandard.

[10] The trial court permitted Alam to submit a post-hearing itemization of his claim. On December 14, 2020, the trial court entered judgment in favor of Tucker and set aside the prior eviction order. Alam now appeals.

Discussion and Decision

[11] Initially, we observe that Tucker did not file an appellee’s brief. Under such a circumstance, we do not undertake to develop an argument on her behalf, and we may reverse upon Alam’s prima facie showing of reversible error. *Carter v. Grace Whitney Props.*, 939 N.E.2d 630, 633 (Ind. Ct. App. 2010) (internal quotations and citations omitted). In this context, prima facie error means “at first sight, on first appearance, or on the face [of] it.” *Id.* at 633–34 (internal quotations and citations omitted).

[12] 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). In reviewing a bench trial, we will not set aside the findings or judgment unless clearly erroneous. Indiana Trial Rule 52(A); *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). The small claims court is the sole judge of the evidence and the credibility of witnesses, and on appeal we neither reweigh the evidence nor assess the credibility of the witnesses. *City of Dunkirk*, 657 N.E.2d at 116. If the court rules against the party with the burden of proof, as here, it 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.” *Eppel v. DiGiacomo*, 946 N.E.2d 646, 649 (Ind. Ct. App. 2011).

[13] In the lease, effective June 1, 2020, Alam and Tucker assumed the obligations of landlord and tenant, respectively. Indiana Code Section 32-31-8-5 provides:

A landlord shall do the following:

(1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.

(2) Comply with all health and housing codes applicable to the rental premises.

(3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.

(4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:

(A) Electrical systems.

(B) Plumbing systems sufficient to accommodate a reasonable supply of hot and cold running water at all times.

(C) Sanitary systems.

(D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.

(E) Elevators, if provided.

(F) Appliances supplied as an inducement to the rental agreement.

[14] Indiana Code Section 32-31-7-5 provides:

A tenant shall do the following:

(1) Comply with all obligations imposed primarily on a tenant by applicable provisions of health and housing codes.

(2) Keep the areas of the rental premises occupied or used by the tenant reasonably clean.

(3) Use the following in a reasonable manner:

(A) Electrical systems.

(B) Plumbing.

(C) Sanitary systems.

(D) Heating, ventilating, and air conditioning systems.

(E) Elevators, if provided.

(F) Facilities and appliances of the rental premises.

(4) Refrain from defacing, damaging, destroying, impairing, or removing any part of the rental premises.

(5) Comply with all reasonable rules and regulations in existence at the time a rental agreement is entered into. A tenant shall also comply with amended rules and regulations as provided in the rental agreement.

(6) Ensure that each smoke detector installed in the tenant's rental unit remains functional and is not disabled. If the smoke detector is battery operated, the tenant shall replace batteries in the smoke detector as necessary.

If the smoke detector is hard wired into the rental unit's electrical system, and the tenant believes that the smoke detector is not functional, the tenant shall provide notice to the landlord under IC 22-11-18-3.5(e)(2).

This section may not be construed to limit a landlord's obligations under this chapter or IC 32-31-8.

[15] Alam argues that the small claims court decision is clearly erroneous because, when Tucker agreed to surrender the premises and requested a damages hearing, she admitted that she had not paid her rent. But Alam wholly ignores evidence that he, as opposed to Tucker, first breached the lease.

The first material breach doctrine is described as follows:

When one party to a contract commits the first material breach of that contract, it cannot seek to enforce the provisions of the contract against the other party if that other party breaches the contract at a later date. ... Whether a party has materially breached an agreement is a question of fact and is dependent upon several factors including:

- (a) The extent to which the injured party will obtain the substantial benefit which he could have reasonably anticipated;
- (b) The extent to which the injured party may be adequately compensated in damages for lack of complete performance;
- (c) The extent to which the party failing to perform has already partly performed or made preparations for performance;
- (d) The greater or less hardship on the party failing to perform in terminating the contract;
- (e) The willful, negligent or innocent behavior of the party failing to perform;
- (f) The greater or less uncertainty that the party failing to perform will perform the remainder of the contract.

Hussain v. Salin Bank & Trust Co., 143 N.E.3d 322, 331 (Ind. Ct. App. 2020) (internal citations omitted).

[16] Tucker agreed with Alam that he did not receive full August 2020 rent from her. But she attributed this to overcharges, failure to give proper payment credit, refusal of a partial payment, and necessary diversion of funds to address habitability issues. The evidence before the trial court did not lead solely to the conclusion that Tucker failed to perform her obligations under the lease. As an initial matter, Alam did not clearly demonstrate how he allocated the payments that were made. Moreover, there was evidence that Alam attempted to collect rent for several weeks not covered by the lease (during which Tucker attempted to make the property habitable), Tucker made an advance partial payment of August 2020 rent, and Alam refused the remainder (protesting that he needed to keep his recordkeeping straight). Tucker also testified that, despite her efforts, some rooms still lacked electrical power, bathroom pipes were exposed, and there was a hole the size of a tennis ball in the foundation above the crawl space. As such, there was evidence from which the trial court could conclude that Tucker did not willfully breach the lease and that Alam first materially breached the lease.

Conclusion

[17] Alam, appealing from a negative judgment, did not show that the evidence pointed solely to a conclusion opposite that reached by the trial court.

[18] Affirmed.

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