DISTRICT OF COLUMBIA COURT OF APPEALS

No. 15-CV-91

MICHELLE D. SMITH, APPELLANT,

v.

ROSA VENTURA AND MAURICIO ENAMORADO, APPELLEES.

Appeal from the Superior Court
of the District of Columbia
(LTB31653-14)

(Hon. Michael L. Rankin, Trial Judge)

(Submitted December 15, 2015 Decided June 27, 2016)

Before WASHINGTON, *Chief Judge*, FISHER, *Associate Judge*, and STEADMAN, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant Michelle D. Smith challenges the dismissal of her complaint against appellees, Rosa Ventura and Mauricio Enamorado, asserting that appellees were in violation of a provision of the lease agreement prohibiting "excessive recurrent repairs"[1] and she was entitled to immediate repossession of the unit for non-payment of rent.

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[1] The provision stated:

> "In the event that repairs to one or more structures or systems in tenants' apartment are recurrent and excessive in the landlord's opinion and said problems are not caused by the tenant, the landlord shall have the right to take said unit off the market for further repair and examination. Landlord shall give tenant notice of the problems and landlord's inability to solve the problems and give the tenant notice to vacate in 30 days. The

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I.

Appellees leased an apartment unit located at 433 Kennedy Street N.W., Washington, D.C. from appellant on December 13, 2013.[2] On September 18, 2014, appellant filed a 30-day notice to correct or vacate against appellees with the D.C. Department of Housing and Community Development due to the recurring repairs needed on the heat and hot water system in appellees' unit. On January 20, 2015, an evidentiary hearing was held before the Honorable Michael L. Rankin, addressing appellant's subsequent civil complaint, filed on December 6, 2014, for non-payment of rent and failure to vacate after the issuance of the September notice. At the conclusion of the hearing, Judge Rankin found that the "excessive recurrent repairs" clause was an unenforceable lease provision and appellees' repeated requests for repair of the hot water heater were not adequate grounds on which to issue a notice to vacate. Next, addressing appellant's second claim regarding appellees' non-payment of rent, the trial court found that non-payment was justified during the month of December given the lack of heat and hot water in the unit. Accordingly, the trial court dismissed appellant's complaint and returned the $750.00 previously entered into the Court Registry to appellees.[3] On appeal, appellant argues that: (1) the trial court's dismissal of her complaint constituted a violation of the Thirteenth Amendment of the U.S. Constitution and (2) the trial court erred in finding the "excessive recurrent repairs" clause unenforceable. Additionally, appellant asserts that she is entitled to repossession of the unit due either to: (a) the lack of habitability of the unit, rendering the lease void, (b) the expiration of the lease on December 31, 2014, or (c) appellees' non-payment of

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> landlord shall have no duty to invite tenant to return to said apartment after the landlord completes said examination and repair of the unit."

[2] Two additional individuals leased the apartment with appellees until May 24, 2014.

[3] During a prior proceeding before the Honorable Judith Bartnoff, a protective order was entered, requiring appellees to pay $750.00 into the Court Registry.

rent. On review for error, we see none and affirm the trial court's dismissal of appellant's claims in their entirety.[4]

II.

Appellant's arguments fail as a matter of law. We briefly address each in turn.

A.

Appellant's primary assertion is that the trial court's judgment "subjected her to slavery" in violation of the Thirteenth Amendment. We fail to see how compliance with local housing statutes is akin to slavery or how appellant's rights under the Thirteenth Amendment are implicated in this appeal. Appellant provides no legal authority for her contention, and we know of none; therefore, we are unable to conclude that the trial court violated appellant's constitutional rights by requiring her to provide habitable living conditions to the tenants occupying her rental property.

B.

Appellant also argues that the trial court erred in finding the "excessive repair clause" unenforceable. We disagree. In *Javins v. First National Realty Corp.*, the D.C. Circuit established that all leases for residential housing in the District include an implied warranty of habitability. *Javins*, *supra*, 428 F.2d 1071, 1081 (D.C. Cir. 1970). Subsequently, this court held that the obligations imposed on landlords to fulfill the implied warranty of habitability may not be waived or modified by exculpatory clauses in rental leases. *See George Washington Univ. v. Weintraub*, 458 A.2d 43, 47 (D.C. 1983).

In this matter, the trial court found that the "excessive repairs clause" of appellees' lease amounted to an impermissible abnegation of appellant's responsibility to provide habitable housing to the property's tenants. As a result, the trial court concluded that the clause was unenforceable because it "violate[d] health and safety laws that the city has put in place to protect public safety, public health, [and] public welfare." Because appellant's obligation to provide habitable housing cannot be waived or transferred by contract to appellees, the trial court did

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[4] Appellant also claims: (1) bias on the part of the trial court and (2) that appellees damaged the rental unit to render it uninhabitable. However, both of these assertions are unsupported in the record and are thus unavailing.

not err in concluding that the clause was unenforceable. *See* 14 DCMR § 301 (2016); *see also* 14 DCMR § 304 (2016).

C.

Appellant claims that she is automatically entitled to repossession of the rental unit, as a result of either the (1) uninhabitable state of the unit; (2) the expiration of the lease; or (3) non-payment of rent. These claims also fail as a matter of law.

We conclude that the trial court did not err in denying appellant's request for repossession of the rental unit, where neither the uninhabitable conditions of the unit[5] nor the voiding of the lease[6] entitles appellant to repossession.[7]

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[5] Relying on 14 DCMR § 302.2 (2016), appellant asserts that appellees' lease became void when "the habitation [became] unsafe or unsanitary" due to the lack of heat and hot water, therefore entitling her to repossession. Notwithstanding appellant's concession that the unit was uninhabitable, under D.C. Code § 42-3505.01, the condition of the unit would not enable appellant to evict appellees because a void lease is not a permissible ground for immediate repossession. *See* D.C. Code § 42-3505.01(2012 Repl.) ("No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served with a written notice to vacate which meets the requirements of this section.").

[6] For the same reasons stated above, expiration of a tenant's term lease does not automatically entitle the landlord to repossession. Appellant cites D.C. Code § 42-3201 in support of her claim that she is entitled to immediate repossession. However, this court has held that § 42-3201 has been superseded by D.C. Code § 42-3503.01, which provides that non-payment of rent is the only permissible ground for eviction without issuing a notice to correct or vacate. *See Burns v. Harvey*, 524 A.2d 35, 37 n.3 (D.C. 1987) ("We have held, however, that § 45–1401 'must yield to more recently enacted rent control regulations . . . severely restricting a landlord's entitlement to possession.'") (quoting *Jack Spicer Real Estate, Inc. v. Gassaway*, 353 A.2d 288, 291–92 (D.C. 1976)) (§ 45–1401 is currently § 42-3201). Because the grounds for appellant's notice to vacate were based on the violation of an invalid lease provision, appellant is not entitled to repossession.

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Additionally, appellant contends that appellees' nonpayment of rent entitles her to immediate repossession of the rental unit. However, it is well established that "[a] tenant's obligation to pay rent is dependent upon the landlord's performance of his obligations, including his warranty to maintain the premises in habitable condition." *Javins*, 428 F.2d at 1082; s*ee Brown v. Southall Realty Co.*, 237 A.2d 834, 837 (D.C. 1968); *see also* 14 DCMR § 301.1. "To be entitled to remain in possession and yet be relieved of full liability for rent, a tenant must prove that the landlord has transgressed a regulation which substantially and directly affects the habitability of the premises." *Curry v. Dunbar House, Inc.*, 362 A.2d 686, 690 (D.C. 1976).

Here, the record, which consisted of testimony from Ms. Ventura and Matthew Price, a housing code inspector with the Department of Consumer and Regulatory Affairs, supported the trial court's finding that appellees were without heat and hot water in their rental unit for the month of December. Based on that evidence, the trial court determined that the condition of the rental unit violated D.C. Housing Code provisions and negated appellees' obligation to pay any portion of the property's rental value for that month.[8] *See Chibs v. Fisher*, 960 A.2d 588, 589 (D.C. 2008) ("Credible evidence of housing code violations alone can support a finding that the housing had no reasonable rental value."). Because trial court's findings are sufficiently supported by evidence in the record indicating that the unit was uninhabitable, we see no error in the trial court's dismissal of appellant's claim of repossession for non-payment of rent.

III.

For the aforementioned reasons, the judgment of the Superior Court is therefore affirmed.

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[7] D.C. Code § 42- 3505.01 provides the appropriate means by which a housing provider may recover possession of rental property. In this case, appellant failed to avail herself of these provisions, and thus was not entitled to repossession of the unit at the time of adjudication.

[8] Appellant's notice to vacate for non-payment of rent was limited solely to rent due for the month of December 2014.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO
Clerk of the Court

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