COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-1782

ORLANDO ORTIZ MUNOZ

vs.

CHESTNUT PARK.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant, Chestnut Park (landlord), appeals from a Housing Court judgment awarding the plaintiff, Orlando Ortiz Munoz (tenant), damages for the landlord's breach of the implied warranty of habitability. Based on our review of the limited record provided, we affirm.[1]

Background. The tenant filed a small claims complaint against the landlord claiming, among other things, that his apartment was infested with rodents. The tenant prevailed on his claim regarding the rodent infestation and was awarded damages. The landlord appealed the small claims judgment and,

[1] Although, upon request, the landlord provided this court with a copy of the transcript of the April 3, 2019 trial, many of the trial exhibits, including relevant photographs, which were relied on by the judge to support his habitability award, were not included in the record appendix.

after conducting a de novo trial, a Housing Court judge found the landlord had violated the implied warranty of habitability and awarded damages to the tenant for a twenty percent abatement of rent for thirty-six months, amounting to $5,544. The landlord appeals.

We summarize the judge's findings of fact relevant to this appeal. The tenant's apartment became infested with mice in March, 2016. The tenant maintained the apartment in "an immaculately clean manner" and complained to the landlord about the mice on several occasions. Although the landlord had attempted to remediate the problem, it was unsuccessful and the apartment remained infested until the time of trial. The Housing Court judge found this infestation to be a violation of the minimum standards of fitness for human habitation established by art. II of the State sanitary code. See 105 Code Mass. Regs. §§ 410.00 (2019).

Breach of the implied warranty of habitability. The landlord argues that the judge erred in finding that the landlord materially breached the implied warranty of habitability. The existence of a material breach of the warranty of habitability is a question of fact for the judge. See South Boston Elderly Residences, Inc. v. Moynahan, 91 Mass. App. Ct. 455, 464 (2017) ("When a breach of the warranty of habitability first occurs is a question of fact, and Housing

Court judges have significant latitude in resolving such issues"); Kelly v. Jones, 80 Mass. App. Ct. 476, 477 (2011), quoting Jablonski v. Clemons, 60 Mass. App. Ct. 473, 475 (2004) ("The judge has wide discretion in determining whether the conditions in any given rental unit amount to a material breach of the implied warranty of habitability"). "Factors . . . aiding the court's determination of the materiality of an alleged breach . . . include: (a) the seriousness of the claimed defects and their effect on the dwelling's habitability; (b) the length of time the defects persist; (c) whether the landlord . . . received written or oral notice of the defects; (d) [whether] the residence could be made habitable within a reasonable time; and (e) whether the defects resulted from abnormal conduct or use by the tenant." Jablonski v. Casey, 64 Mass. App. Ct. 744, 746 (2005) (Casey), quoting Boston Hous. Auth. v. Hemingway, 363 Mass. 184, 200-201 (1973).

In his findings, the judge specifically found that the landlord breached the implied warranty of habitability by failing to remedy the mice infestation. "Findings of fact will not be set aside unless they are clearly erroneous, bearing in mind the deference that must be given to the trial judge's opportunity to weigh the credibility of the witnesses." Casey, 64 Mass. App. Ct. at 747. A finding of fact is clearly erroneous where there is "no evidence to support it" or "the

reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." South Boston Elderly Residences, Inc., 91 Mass. App. Ct. at 464, citing Casey, supra. After carefully reviewing the record, we conclude that the judge's finding that the mice infestation over a period of years constituted a material breach was not clearly erroneous.[2]

An application of the appropriate factors supports the judge's materiality determination. See Casey, 64 Mass. App. Ct. at 746. The landlord knew about the mice problem because the tenant made several reports and requests for remediation. The evidence, including the tenant's testimony, supported the judge's finding that the problem rose to the level of an infestation that was left unresolved over a period of years. Further, the judge found that the tenant kept the apartment in "immaculate" condition, meaning that the rodent problem did not result from abnormal use by the tenant. To the extent that the

[2] In October, 2018 the housing authority and city housing inspection division cited the building owner for mice infestation in the apartment, issuing a notice of satisfactory compliance one month later. At trial, however, the tenant introduced photographs and testified that the infestation was ongoing. This was supported by the testimony that the landlord had planned to exterminate the apartment the day prior to trial. Accordingly, the judge's finding that the apartment remained infested until the time of trial was not clearly erroneous. See Casey, 64 Mass. App. Ct. at 747, quoting Commonwealth v. Boncore, 412 Mass. 1013, 1014 (1992) ("Credibility is for the fact finder, not an appellate court").

landlord argues there was no breach of the implied warranty of habitability because it made good faith efforts to remediate the problem, we disagree. "The warranty of habitability is not intended to punish landlords for misbehavior but rather to ensure that tenants receive what they are paying for: a habitable place to live." Goreham v. Martins, 485 Mass. 54, 63 (2020). "[C]onsiderations of fault do not belong in an analysis of warranty," Berman & Sons v. Jefferson, 379 Mass. 196, 200 (1979), and a landlord is "[strictly liable] for the rental of a leasehold that is not habitable." Goreham, supra. Therefore, despite the fact that the landlord made some effort to remediate the infestation, we discern no error in the judge's finding that the infestation had not been resolved and the warranty had been breached.

Damages. The landlord argues the Housing Court judge erred in awarding the tenant an abatement of twenty percent of his rent from March, 2016 until the date of trial in April, 2019. We conclude that the judge's findings were not clearly erroneous and fell well within the "range of reasonable alternatives." L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014). See South Boston Elderly Residence, Inc., 91 Mass. App. Ct. at 464-465 (judge's findings not clearly erroneous as to time period for

which tenant entitled to abatement damages).[3] Therefore, we discern no abuse of discretion.

Judgment affirmed.

By the Court (Lemire, Ditkoff & Grant, JJ.[4]),

Joseph F. Stanton

Clerk

Entered: February 19, 2021.

[3] There is no merit to the landlord's claim that the damages must be reduced because the landlord offered to move the tenant to a new apartment. The tenant testified that he asked for a transfer "maybe [fifteen] times" and that the landlord consistently refused unless the tenant paid extra or accepted an apartment where he would be awoken by a dumpster every morning at 4:00 A.M. Indeed, the landlord's witness confirmed that the tenant would not be allowed to change apartments at all without paying, though she termed it a security deposit.

[4] The panelists are listed in order of seniority.