

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0703-12T2

JAMES OCHIENG,

Plaintiff-Respondent,

v.

WALTER BLOSS,

Defendant-Appellant.

Argued April 16, 2013 – Decided May 21, 2013

Before Judges Waugh and Leone.

On appeal from the Superior Court of New Jersey, Law Division, Special Civil Part, Essex County, Docket No. LT-22581-12.

Khabirah H. Myers argued the cause for appellant (Essex-Newark Legal Services, attorneys; Ms. Myers and Jose L. Ortiz, on the briefs).

James Ochieng, respondent, argued the cause pro se.

PER CURIAM

Defendant Walter Bloss appeals orders of the Special Civil Part granting a judgment of possession to his landlord, plaintiff James Ochieng, as well as denying his application for reconsideration. We reverse.

I.

Bloss is a disabled veteran with significant medical problems. He is legally blind. He also has diabetes and heart problems. He was eighty-nine years old at the time this litigation started. Bloss has lived in the apartment at issue, which is located on Main Street in West Orange, for more than forty years. The apartment is rent controlled. Ochieng acquired the building in 2006.

Although Bloss was the sole tenant named on the prior lease, his grandson, Steven Van Deysen, has occasionally lived with him since the 1980s. Because of Bloss's disabilities, Van Deysen has lived with Bloss on a regular basis for approximately the last six years. According to Bloss, his doctor advised him to have someone live with him to help monitor his diabetes.

Because of what Ochieng described as a series of problems related to Van Deysen's conduct at or near the apartment building, Ochieng served Bloss with a notice to quit and an offer for a lease renewal with changed terms. The proposed lease included a requirement that any live-in caregiver be acceptable to the landlord. The notice was served in February 2011. Bloss refused to sign the new lease, explaining to Ochieng that he needed Van Deysen to care for him. Ochieng responded that he did not object to a suitable caregiver, but

that Van Deysen was unacceptable because of his perceived misconduct.

On May 17, 2012, Ochieng served Bloss with another notice to quit and lease renewal offer, which contained essentially the same lease terms. Bloss again refused to sign the lease. Ochieng commenced the present action for eviction on July 20. He alleged that Bloss refused to sign the lease, continued to have Van Deysen reside with him, and owed \$2.20 in back rent.

The case was heard on August 27, at which time both parties represented themselves. The judge heard testimony from the parties and Van Deysen. During the trial, the judge declined to consider issues other than the refusal to sign the lease because there had been no notices to quit related to them. He also expressed his view that the new lease was reasonable, but did not tell Bloss he would be evicted if he refused to sign the lease. Instead, the judge reserved decision.

The judge issued a letter opinion dated August 28, concluding that Ochieng's proposed lease provision requiring his approval of any live-in caregiver was reasonable, as was his unwillingness to approve Van Deysen as the caregiver. Consequently, he entered a judgment for possession.

On September 19, Bloss, now represented by a legal-services attorney, applied for an order to show cause seeking

reconsideration and rehearing or, in the alternative, a stay of the pending eviction. The judge adjourned the hearing for one day to allow Ochieng time to prepare his response. The judge denied the requested relief, including the stay, on September 20. We granted Bloss's emergent application for a stay pending this appeal. The order granting the stay permitted Van Deysen to continue living in the apartment as Bloss's caregiver.

II.

On appeal, Bloss argues that the judge lacked jurisdiction because Ochieng had failed to comply with the applicable provisions of the New Jersey Anti-Eviction Act, N.J.S.A. 2A:18-61.1 to -61.12 (Act). He also argues that the judge acted unreasonably in denying him an opportunity to sign the lease after the judge determined that its provisions were reasonable.

When reviewing a decision resulting from a bench trial, "[t]he general rule is that [factual] findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citing Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974)). We do not disturb the factual findings 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." Id. at 412 (quoting Rova Farms, supra, 65 N.J. at 484) (internal quotation mark omitted); see also Beck v. Beck, 86 N.J. 480, 496 (1981).

It is also well-established that our review of a judge's conclusions of law is plenary. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.").

The Act protects residential tenants from eviction absent a showing of good cause. Morristown Mem'l Hosp. v. Wokem Mortg. & Realty Co., 192 N.J. Super. 182, 186 (App. Div. 1983). The Act specifically enumerates permissible grounds for eviction and the associated notice requirements. N.J.S.A. 2A:18-61.1 and -61.2. Absent proof of one of the enumerated grounds for eviction, the court lacks jurisdiction to enter a judgment of possession. Hous. Auth. of Morristown v. Little, 135 N.J. 274, 281 (1994).

In addition, the public policy underlying the Act requires strict compliance with its notice and procedural requirements before a landlord may evict a tenant. 224 Jefferson St. Condo. Ass'n v. Paige, 346 N.J. Super. 379, 383 (App. Div.), certif. denied, 172 N.J. 179 (2002). "In any instance in which a notice to quit is required as a prerequisite to the entry of a judgment

of possession, the notice must be facially accurate in every substantial respect." Bayside Condos., Inc. v. Mahoney, 254 N.J. Super. 323, 326 (App. Div. 1992). A notice must be specific and detailed in order to provide the defendant with adequate opportunity to prepare a defense. Ivy Hill Park Apts. v. GNB Parking Corp., 236 N.J. Super. 565, 570 (Law Div.), aff'd, 237 N.J. Super. 1 (App. Div. 1989). Failure to provide a notice to quit that is factually and formally sufficient deprives the court of jurisdiction to enter a judgment of possession. Bayside Condos., supra, 254 N.J. Super. at 326.

Ochieng sought to evict Bloss based upon his refusal to sign the new lease with reasonable terms, pursuant to N.J.S.A. 2A:18-61.1(i). Such an eviction action must be preceded by a notice to quit for failure to sign the new lease, and the notice must be given at least thirty days prior to the filing of the summary action for possession. N.J.S.A. 2A:18-61.2(e).

Here, Ochieng served a notice entitled "Renewal of Lease: Notice to Quit or Pay Rent Increase" on May 17, 2012. The notice also set forth the proposed lease terms concerning the live-in caregiver. The cause of action for eviction did not accrue, however, until Bloss refused to sign the lease. At that point, Ochieng was required to give the mandatory thirty-day notice citing Bloss's refusal to sign the new lease. Lowenstein

v. Murray, 229 N.J. Super. 616, 619 (Law Div. 1988) ("The cause of action for eviction does not accrue until after the refusal to accept those changes. After the cause of action has accrued, [N.J.S.A. 2A:18-61.2(e)] requires a one-month notice prior to institution of the action."). Instead, he commenced the present action without serving another notice to quit.

We note that Ochieng had served a similar notice concerning a new lease in February 2011. After Bloss refused to sign the proposed lease, Ochieng could have served a notice to quit premised on Bloss's refusal to sign that proposed lease. Had he done so, Ochieng could then have commenced an eviction action after the required notice period expired. The May 2012 notice was not a notice to quit premised on Bloss's refusal to sign the lease proposed in February 2011. It was an offer of another, albeit similar, new lease, which served only to start the process over again. In addition, we note that Ochieng's complaint is premised on Bloss's failure to sign the lease offered in May 2012, and does not even mention the February 2011 notice.

Because Ochieng failed to comply with the notice requirements punctiliously, the Special Civil Part was without jurisdiction to enter the judgment of possession. 224 Jefferson St. Condo. Ass'n, supra, 346 N.J. Super. at 383-84.

Consequently, we vacate the judgment of possession. We also vacate the stay pending appeal, which is now moot. If Bloss continues his refusal to sign the lease, Ochieng may serve the required notice to quit based on Bloss's refusal to sign the 2012 proposed lease and bring another summary action after the required waiting period.¹

Reversed.

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


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¹ Although we need not reach the issue in light of our determination that the Special Civil Part lacked jurisdiction because of the defective notice, we note our general agreement with the proposition that, once a judge determines that new lease terms are reasonable, the tenant should ordinarily be given the opportunity to sign the lease before being evicted. Vill. Bridge Apts. v. Mammucari, 239 N.J. Super. 235, 240-41 (App. Div. 1990). To do otherwise would, in most cases, unduly penalize the tenant for seeking judicial review of the reasonableness of the landlord's new terms. See Hanover Mobile Home Owners Ass'n v. Hanover Vill. Assocs., 316 N.J. Super. 256, 270-71 (App. Div. 1998).