

STATE OF MAINE
CUMBERLAND, ss.

STATE OF MAINE
CUMBERLAND, SS
CLERK'S OFFICE

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-04-067

2005 MAY 27 P 3:33

Tonya Quatrano,
Respondent

v.

Patty Hammoud,
Appellant

~~DO NOT WRITE~~

JUL 18 2005

ORDER

This case comes before the Court on Appellant Patty Hammoud's appeal pursuant to M. R. S. C. P. 11, of a decision of the District Court in a small claims matter.

FACTS

Respondent Tonya Quatrano (Quatrano) entered into a one-year lease with Appellant Patty Hammoud¹ (Appellant) to rent property at 166 County Road in Gorham, Maine. Quatrano gave Appellant a \$1200 security deposit and two additional checks for \$1200 each to cover first and last months' rent before moving in. On the first day of her tenancy, Quatrano discovered several problems with the property, including insects, and malodorous and discolored water. The following day, Quatrano told Appellant that she was not going to rent the property because of those problems. Quatrano requested a full refund of her \$1200 security deposit, and she stopped payment on the first and last months' rent checks. Hammoud stopped payment on a \$1200 refund check she had issued to Quatrano.

¹In the order, docket and file in District Court, erroneously recorded as "Hammond."

On November 18, 2004, Quatrano brought a small claims suit in District Court seeking return of her security deposit, and was awarded \$1200. Appellant now appeals, maintaining that she was entitled to retain the security deposit to cover the costs of finding a new tenant for the property and for rent lost in that process. Appellant further argues that the property was habitable on the first day of the lease, that Quatrano entered a binding contract, and that the decision of the District Court in Quatrano's favor was made in error.

DISCUSSION

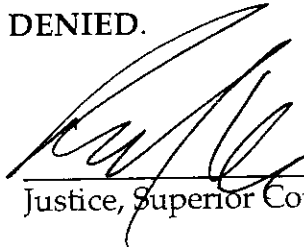
When a defendant in a small claims proceeding appeals from a judgment entered in the District Court and has not requested a jury trial, "the appeal will be on questions of law and the court will be guided by Maine Rules of Civil Procedure." *Kingsbury v. Forbes*, 1998 ME 168, ¶ 5, 714 A.2d 149, 151 (citing M.R. Civ. P. 76F, 76G, and 76H(d)). On an appeal in a small claims matter, the Superior Court will affirm the decision of District Court unless that decision was "arbitrary, capricious or unreasonable based on the evidence presented in the whole record." *Manzo v. Reynolds*, 477 A.2d 732, 733 (Me. 1984). The Superior Court "must properly deny an appeal when the appellant has not preserved 'a record sufficient in content to permit fair consideration of the issues by the appellate court.'" *Id.* at 734 (citation omitted). When a party does not furnish the Superior Court with any transcript of evidence in the District Court or its equivalent, the Superior Court has no basis for reviewing the District Court's judgment for error. *Id.* (citations omitted).

Here the record on appeal includes the parties' lease and some communication from Appellant to Quatrano, including the statutorily required letter explaining why Appellant retained Quatrano's security deposit. However,

nothing in the record or the briefs on appeal suggests the grounds upon which the District Court relied in deciding to award Quatrano a full refund of her security deposit. This Court also has no statement of the evidence or proceedings, approved by the District Court, for use in place of a transcript pursuant to M.R. Civ. P. 76F(c). Because Appellant cannot furnish this Court with a record of the evidence and proceedings below, or its equivalent, this Court has no basis for reviewing the District Court's decision, and Appellant's appeal must be dismissed. *Manzo v. Reynolds*, 477 A.2d 732, 733-34 (Me. 1984).

Because of the lack of any record of the judgment below or its equivalent, Appellant Patty Hammoud's appeal is hereby **DENIED**.

Date May 27, 2005



Justice, Superior Court

Date Filed 12/13/04 CUMBERLAND County Docket No. AP-04-67

County

Action Appeal From District Court (Small Claims)

TONYA QUATRANO

PATRICIA HAMMOUND

vs.

Plaintiff's Attorney

45 BONNEYBRIAR ROAD
SOUTH PORTLAND, ME 04106

Defendant's Attorney

112 MERRILL RD
POWNA, ME 04069

Date of
Entry