

STATE OF MAINE
LINCOLN, SS.

SUPERIOR COURT
Civil Action
Docket No. AP-2019-03

DAMARISCOTTA RENTALS,)
LLC)
Plaintiff/ Appellant,)
)
)
v.)
)
)
ELLEN BARTOW-GILLIES &)
ELISE HARTILL,)
Defendants/ Appellees.)

ORDER ON APPEAL

The Plaintiff appeals from a decision of the District Court (Raimondi, J.) entering judgment for the Defendants on competing Statements of Claim made after an evidentiary hearing on September 18, 2019.

When the Superior Court considers appeals from District Court, the court must apply the same standards of review that are applied on appeals to the Law Court: findings of fact are reviewed for clear error; discretionary issues are reviewed for abuse of discretion; and questions of law are reviewed *de novo*.

The Appellant first argues that the District Court erred as a matter of law by applying the provisions of 14 M.R.S. § 6021(6) to this case. To preserve an issue for appeal, the party seeking review must first present the issue to the trial court in a timely fashion. *Brown v. Town of Starks*, 2015 ME 47, ¶ 6, 114 A.3d 1003. Otherwise, the issue is deemed waived. *Id.*; see *Foster v. Oral Surgery Assocs., P.A.*, 2008 ME 21, ¶ 22, 940 A.2d 1102 ("An issue raised for the first time on appeal is not properly preserved for appellate review."). The legal argument that § 6021(6) does not apply in this case was not raised to the District Court and is therefore waived.

The Appellant next argues that the District Court erred in making a finding of fact that the elements required to be found to find a breach of the warranty of habitability under § 6021(6) had been proven. In reviewing the record, this court finds that there was sufficient evidence presented to support a finding that the Appellant violated the warranty of habitability under § 6021(6)(B). The Appellees testimony, supported by their temperature log, was more than sufficient to support the District Court's finding.

The Appellant next argues that the Appellee's Statement of Claim should have been dismissed because it did not comply with the pleading requirements of 14 M.R.S. § 6021(3). This issue was not raised before the District Court and was therefore waived. However, if the issue had been properly preserved, it is without merit because the plain language of § 6021(3) applies only to "Complaints" and is not applicable to Statements of Claim filed in small claims proceedings.

Having been unsuccessful with its arguments on liability, the Appellant's arguments on damages are therefore without merit. The District Court made no error of law in its award of damages and the damages award were adequately supported by evidence on the record.

For the reasons stated above, and after oral argument, review of the trial court record, and the briefs of the parties, the court finds that the District Court made no clear error of fact or errors of law.

The decision of the District Court is therefore AFFIRMED.

The Appellees have moved for attorney fees, arguing that this appeal was frivolous. Though unsuccessful, the court does not find this appeal frivolous and the motion is therefore DENIED.

Dated: March 2, 2020



JUSTICE, MAINE SUPERIOR COURT
Daniel Billings