

NH-1006

Docket No: NHH-CV24-5006446-S

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SUPERIOR COURT

SUPERIOR COURT

Merlietha Geathers

v.

Galinda Zalman

2024 MAY 30 A 9:49

HOUSING SESSION

AT NEW HAVEN

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AT NEW HAVEN

May 30, 2024

MEMORANDUM OF DECISION AFTER TRIAL

Plaintiff-Tenant, Merlietha Geathers, brings this action against Defendant-Landlord, Galinda Zalman, claiming damages and emotional distress after items were repeatedly stolen from Plaintiff's room.

Plaintiff alleges in her complaint and reply to Defendant's special defense that one of her neighbors, Gerald Haag, broke into her room multiple times, and stole or damaged various items. She further alleges that Plaintiff called the police numerous times, was required to replace the locks on her door several times, and complained to Defendant about the break-ins. Despite her complaints, Defendant failed to do anything about Haag's actions. Moreover, Plaintiff alleges, Defendant harassed Plaintiff's guests who checked in on her when she was sick and failed to address a rat infestation. Based on these allegations, Plaintiff claims that Defendant failed to fulfill her responsibilities as a landlord and subjected Plaintiff to intentional infliction of emotional distress. Plaintiff is, therefore, seeking \$200,000 for emotional distress, property damage and punitive damages.

The parties appeared before the Court for trial on May 23, 2024. Defendant was represented by counsel. Plaintiff was self-represented. At trial, both parties testified, as well as Haag on behalf of Defendant. Neither party introduced exhibits.

After fully considering and weighing all of the testimony and evidence received at trial; evaluating the credibility of the witnesses; assessing the weight, if any, to be given specific evidence and measured the probative force of conflicting evidence; reviewed and considered all the relevant pleadings, evidence, and law, as well as balancing the equitable positions of the parties, the Court finds that Plaintiff has not established that Defendant was responsible for any damages that she incurred. As such, the Court finds in favor of Defendant.

FINDINGS OF FACT

Based on the testimony, the Court makes the following factual findings:

Plaintiff is a tenant in a rooming house where, until earlier this year, Haag was Plaintiff's next-door neighbor. Plaintiff's rent is paid through a program administered by Liberty Community Services, Inc. Shortly after Plaintiff moved into the building, several of her items began to go missing, including the death

certificate of Plaintiff's mother, the title to a car that she had purchased, a computer, an iPhone and clothing. At one point, Plaintiff had a dog in her room that also went missing. Plaintiff believed that Haag was responsible for her missing items and, therefore, complained to Defendant. Defendant investigated whether Haag had stolen Plaintiff's items and concluded that he had not. When the thefts did not stop, Plaintiff began calling the police. The police investigations did not lead to any arrests. Eventually, Plaintiff purchased home security cameras for her room. The cameras failed to record Haag entering Plaintiff's room.

While only the tenants are permitted to have keys to the building, tenants could, and did, have visitors. When visitors would stay for an extended period, the tenant was required to pay \$100. Plaintiff did have visitors, particularly when she was recovering from a heart attack, but did not pay the \$100 fee to Defendant, as she disputed whether the fee was appropriate. At least one of Plaintiff's visitors, her son, knocked on Haag's door late at night and warned Haag to leave Plaintiff alone. Following this interaction, Haag vacated his room and is currently living in a shelter.

DISCUSSION

“In a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony. . . . It is within the province of the trial court, as the fact finder, to weigh the evidence presented and determine the credibility and effect to be given the evidence. . . . It is the quintessential function of the fact finder to reject or accept certain evidence As the trier of fact, the trial court may properly accept or reject, in whole or in part, certain testimony offered by a party.” (Citation omitted; internal quotation marks omitted.) *Indoor Billboard Nw., Inc. v. M2 Sys. Corp.*, 202 Conn. App. 139, 190–91 (2021). “Credibility must be assessed . . . not by reading the cold printed record, but by observing firsthand the witness’ conduct, demeanor and attitude. . . [I]t is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom.” *State v. Lawrence*, 282 Conn. 141, 155 (2007).

“In determining whether or not the parties have met their respective burdens of proof, the court must apply the ordinary civil standard of proof, which is the fair preponderance of the evidence standard. . . . The burden of persuasion in an ordinary civil action is sustained if evidence induces in the mind of the trier a reasonable belief that it is more probable than otherwise that the fact in issue is true. . . . The standard of proof, a fair preponderance of the evidence, is properly defined as the better evidence, the evidence having the greater weight, the more convincing force in your mind.” (Citations omitted; internal quotation marks omitted.) *Finocchio Bros, Inc. v. 587 CTA LLC*, Superior Court, judicial district Stamford-Norwalk, Docket No. FST-CV-21-6051992-S (March 20, 2023).

Duty To Keep Common Areas Safe

Although Plaintiff did not clearly identify the legal theory under which she is seeking damages against Defendant, the Court interprets her complaint as alleging that Defendant failed to use reasonable care to prevent Plaintiff from being subjected to the criminal acts of another tenant. *See Markley v. Dept. of Public Utility Control*, 301 Conn. 56, 74 (2011) (“[w]e are mindful that we should be solicitous to pro se petitioners and construe their pleadings liberally in light of the limited legal knowledge they possess.”).

A landlord has a duty “to use reasonable care to keep the common areas of its premises reasonably safe from the intentional or criminal acts of others, including other tenants.” *Wilcox v. Renaissance Management Co.*, Superior Court, judicial district of New Haven, Docket No. CV-00-0443595 (April 19, 2002). *See also Ruiz v. Victory Props., LLC*, 315 Conn. 320, 329 (2014). Where the illegal actions take place outside an “area under exclusive control of the landlord, and [are] not caused by a known defect, there is no duty on the landlord to protect tenants.” *Parker v. Elm City Communities Housing Authority of New Haven*, Superior Court, judicial district of New Haven, Docket No. CV-21-6119481-S (June 12, 2023). Moreover, “[i]n negligence cases . . . in which a tortfeasor’s conduct is not the direct cause of the harm, the question of legal causation is practically indistinguishable from an analysis of the extent of the tortfeasor’s duty to the plaintiff.” (Internal quotation marks omitted.) *Id.*, citing *Ruiz v. Victory Properties, LLC*, *supra*, 315 Conn. 345. “The ultimate test of the duty is to be found in the reasonable foreseeability of harm resulting from a failure to exercise reasonable care to keep the premises reasonably safe.” (Citations omitted.) *Giacalone v. Housing Authority*, 306 Conn. 399, 407 (2012), citing *Noebel v. Housing Authority*, 146 Conn. 197, 200 (1959).

Plaintiff claims that Defendant breached her duty by failing to prevent Haag from breaking into Plaintiff’s room and stealing her items. However, all of the actions complained of occurred in an area over which Defendant did not have exclusive control, namely, Plaintiff’s room. Moreover, Plaintiff credibly testified that she purchased several locks to prevent others from entering her room and admitted that she refused to provide a key for the locks to Defendant. Defendant does not have a duty to prevent criminal activity for an area over which she has neither control nor access. To impose such a duty would “create strict liability for any injury that occurs on the landlord’s premises, regardless of whether they are in exclusive control over the area.” *Parker v. Elm City Communities Housing Authority of New Haven*, *supra*, Superior Court, Docket No. CV-21-6119481-S. Although the Court believes that Plaintiff thinks Haag is responsible for the theft of her property and that Defendant should have done more to stop him, Plaintiff’s beliefs are not sufficient to demonstrate that Defendant knew who was taking Plaintiff’s property or had an obligation to prevent the thefts.

Intentional Infliction of Emotional Distress

Plaintiff also contends that Defendant subjected her to intentional infliction of emotional distress by harassing Plaintiff about her visitors, failing to remediate the rodent infestation and not preventing Haag from breaking into Plaintiff's room. To prevail on a claim of intentional infliction of emotional distress, a plaintiff must show: "(1) that the actor intended to inflict emotional distress, or that he knew or should have known that emotional distress was a likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." (Internal quotation marks omitted.) *Ortiz v. Torres-Rodriguez*, 205 Conn. App. 129, 141 (2021), quoting *Petyan v. Ellis*, 200 Conn. 243, 253 (1986).

"Liability has been found only [when] the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, Outrageous! . . . Conduct on the part of the defendant that is merely insulting or displays bad manners or results in hurt feelings is insufficient to form the basis for an action based upon intentional infliction of emotional distress. . . . The conduct at issue must be beyond all possible bounds of decency . . . atrocious, and utterly intolerable in a civilized community." (Citations omitted; internal quotation marks omitted.) *Ortiz v. Torres-Rodriguez*, supra, 205 Conn. App. 141 (2021).

Plaintiff presented no evidence that Defendant intended to inflict emotional distress on Plaintiff or that Defendant's actions in seeking additional payments for visitors would cause emotional distress to Plaintiff. None of the actions of which Plaintiff complained can be characterized as so outrageous in character as to go beyond all possible bounds of decency. Plaintiff, therefore, cannot prevail on her claim of intentional infliction of emotional distress.

CONCLUSION

As Plaintiff has not proven, by a fair preponderance of the evidence, either of her claims, the Court enters judgment in favor of Defendant.

BY THE COURT,



Alayna M. Stone, Judge