

**SUPERIOR COURT OF THE VIRGIN ISLANDS
APPELLATE DIVISION OF ST. CROIX**

BOBBY FERRIS,

**PLAINTIFF / PETITIONER
ON REVIEW,**

v.

JAH-NEISHA WITHEY,

**DEFENDANT / RESPONDENT
ON REVIEW.**

SX-2014-sm-038

**PETITION FOR REVIEW OF A
MAGISTRATE DECISION**

ACTION FOR DEBT

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that pursuant to Superior Court Rule 322.3(c) this matter is **REMANDED** to the Magistrate Court for proceedings consistent with the Opinion of even date. It is further

ORDERED that a copy of this Order and the accompanying Memorandum Opinion shall be served on the parties by Superior Court Marshal or certified return-receipt mail.

DONE and so ORDERED this 9th day of May, 2014.

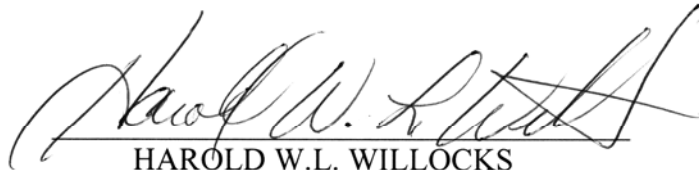
ATTEST:

Estrella H. George
Acting Clerk of the Court

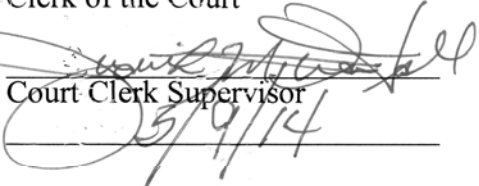
By: _____

Court Clerk Supervisor

Dated: _____



HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court



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MEMORANDUM OPINION

THIS MATTER is before the Court *sua sponte* on review of the file. Petitioner Bobby Ferris filed a timely Petition for Review with the Appellate Division on March 14, 2014, appealing a Judgment entered by the Magistrate Court on March 4, 2014. Ferris initially filed this matter as a debt action in the Small Claims Division alleging that his former tenant, Respondent Jah-Neisha Withey, owed him \$2,100.00 in unpaid rent for an apartment she leased from him. Following a bench trial on February 18, 2014, the Magistrate Court found in favor of Ferris, but only awarded him \$1,150.00 plus \$100 in court costs, not the \$2,100 he requested in his Complaint. The Magistrate Court concluded that the amount Withey owed Ferris for unpaid rent should be reduced, or abated, due to a pest infestation problem in the apartment she rented from Ferris. On appeal, Ferris argues—in a letter addressed to the Superior Court, which was docketed by the Clerk’s Office on April 29, 2014—that “\$600 of the remaining \$1700,” which he contends Withey owed him for unpaid rent, “was taken out by the [M]agistrate [Court] due to the dishonest claims” Withey made at trial. He then requests that he be “made whole in the amount of \$1700 plus court costs.” *Id.* Although not in so many words, Ferris’s April 29, 2014 Letter clearly disputes the Magistrate Court’s findings of fact and conclusions of law and requests—again not in so many words—that this Court reverse the Magistrate Court’s Judgment. However, for the reasons explained below, the Court cannot conduct a meaningful appellate review

because the Magistrate Court failed to sufficiently state its factual findings or identify the legal authority for its decision to abate, or reduce, the amount Withey owed Ferris. Therefore, this matter will be remanded to the Magistrate Court.

Superior Court judges sitting within the Appellate Division function as appellate court judges reviewing internal appeals of matters handled in the Magistrate Division. The Appellate Court must review the factual determinations of the Magistrate Court only for clear error. Super. Ct. R. 322.3(b)(1). The Magistrate Court's "[l]egal findings, statements of law, and the application thereof, are to be afforded plenary review." Super. Ct. R. 322.3(b)(2). The Appellate Court may not disregard these standards of review, *see Henry v. Dennerly*, S. Ct. Civ. No. 2012-0130, 2013 WL 206128, *2 (V.I. Jan. 11, 2013) (unpublished) (setting aside the standards of review "would render the proceedings that occurred in the Magistrate Division a complete nullity, and . . . signal to the magistrates in these cases that the work they dedicated to constructing the record is a complete waste of time."), nor can the Appellate Court take additional evidence while reviewing the Magistrate Court's decision. *See In re Estate of Small*, 57 V.I. 416, 429 (2012) ("the magistrate is the finder of fact for all section 123(a)(4) original jurisdiction cases."). But in order for the Appellate Court to conduct a meaningful review of the Magistrate Court factual findings and legal conclusions, the Appellate Court must have sufficient findings and conclusions to review. Because that it lacking here, meaningful review is not possible. *Accord Wessinger v. Wessinger*, 56 V.I. 481, 489 (2012) (reversing and remanding when court failed to state its findings and conclusions in its order and otherwise failed to provide the reasoning necessary to allow the appellate court to conduct meaningful review).

Here, the only fact the Magistrate Court found in its March 4, 2014 Judgment is that Withey "had a problem with pests" and that Ferris "neglected to address the problem." The March 4, 2014 Judgment did not address, for example, when Ferris's and Withey's landlord-tenant relationship began, when it ended, and whether the parties lease agreement—which was moved into evidence as

Defendant's Exhibit 2—was adhered to or abandoned by the parties. According to the lease agreement, Withey began renting Apartment 3 at 3-I Estate Catherine's Rest from Ferris on September 1, 2011 for \$550 a month. How long she rented is not stated in the March 4, 2014 Judgment. Receipts Withey moved into evidence show that she rented Ferris's apartment at least until March 2013, which is the last month she paid for extermination services. However, photocopies of rent payments receipts in the court's file—which the Exhibit List does not show were not moved into evidence and therefore would not be part of the record, but which the Court refers to solely for purposes of this Order—also show that Withey paid \$11,650.00 in rent from September 2011 through November 2013. If the parties followed their lease agreement, then Withey owed \$550.00 a month in rent for each month she rented from Ferris. If she rented Ferris's apartment from September 2011 through November 2013, then she would have owed Ferris for twenty-six months, totaling \$14,300.00 in rent. The rent receipts reflect that she only paid \$11,650, leaving an unpaid balance of \$2,650.00. However, \$2,650 does not comport with the \$2,100 Ferris sued for in his Complaint nor does it comport with the \$1,700 Ferris argues in his April 29, 2014 Letter that the Magistrate Court should have awarded him. While the Magistrate Court's March 4, 2014 Judgment impliedly found that Withey was behind on rent, since the court "abated the rent as requested," the court did not find what amount of rent Withey owed or identify how much it was abating that amount by. As Ferris sued for \$2,100 in his Complaint, presumably that amount was reduced by \$950.00 as the Magistrate Court only awarded Ferris \$1,150. But the Appellate Court cannot determine whether these findings were erroneous because there are simply insufficient findings here to conduct a meaningful review.

As with the factual findings, the Court cannot conduct a meaningful review of the Magistrate Court's legal conclusions. While the magistrate court's legal conclusions are reviewed under a plenary standard—and plenary means a complete or entire review with sufficient analysis of the record, *see Browne v. Gore*, 54 V.I. 195, 202-03 (Super. Ct. 2011) ("Plenary means full; complete; entire, and

with the power to conduct plenary review goes the responsibility to conduct it. The court must provide sufficient analysis to demonstrate that it has truly performed a full review of the record, including the evidence.” (internal quotation marks omitted) (quoting *Huang v. Attorney General of the United States*, 620 F.3d 372, 388 (3d Cir.2010)), *rev’d on other grounds*, *Browne v. Gore*, 57 V.I. 445 (2012))—“meaningful review is not possible where the trial court fails to sufficiently explain its reasoning.” *Rieara v. People*, 57 V.I. 659, 668 (2012). Here, the March 4, 2014 Judgment did not identify what authority allows a court in the Virgin Islands to abate unpaid rent due to a landlord because of a pest infestation the landlord’s tenant experienced or analyze how that law applied to the facts found at the February 18, 2014 trial.

There is no statute in the Virgin Islands that authorizes abatement of rent. There is, however, common law that addresses abatement of rent. One Virgin Islands court discussed abatement as something controlled by the parties’ lease agreement. *See, e.g., V.I. Hous. Auth. v. Joseph*, 13 V.I. 508, 514 (Terr. Ct. 1977) (noting that “the lease provided that if the defects are hazardous to life, health and safety, and plaintiff failed to make timely repairs or provide other compensatory relief, defendant’s rent would be abated during the entire period of the existence of the defect.”). Another court discussed abatement as a form of constructive eviction. *See Greenaway v. Johnson*, 15 V.I. 195, 210 (Terr. Ct. 1978) (“To be entitled to a suspension or abatement of the rent, the tenant must prove that the partial eviction from some portion of the premises is in character and degree sufficient to prevent the beneficial enjoyment by the tenant of the entire property.”) The Magistrate Court did not find that the parties lease agreement contemplated abatement of rent or that Ferris’s neglect in addressing the pest problem constituted a constructive eviction. Moreover, *Greenaway* also held that “[t]here is no constructive eviction unless the tenant abandons or vacates the premises as a result of the wrongful acts or omissions of the landlord. If the tenant continues to occupy the premises from which he alleges he is constructively evicted, he waives his right to claim constructive eviction.” *Id.* Assuming the

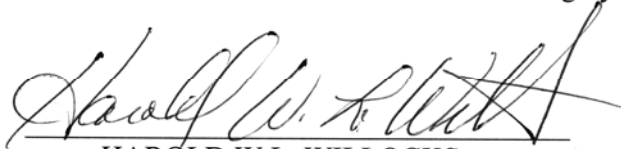
Magistrate Court found a constructive eviction, the court did not address whether Withey waived any right to abatement of her rent by remaining in the pest-infested apartment for over two years.

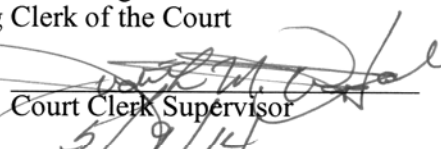
Additionally, and in contrast to both constructive eviction and breach of contract theories, courts in other jurisdictions have held that a tenant's rent may be abated if the actions of the landlord constitute a breach of the implied warranty of habitability. *See, e.g., Allen v. Hous. Auth. of Chester Cty.*, 683 F.2d 75, 78 (3d Cir. 1982) (“If the landlord totally breached the implied warranty of habitability, the tenant's obligation to pay rent would be abated in full.” (quoting *Pugh v. Holmes*, 405 A.2d 897, 907 (Pa. 1979))). But in those jurisdictions, the courts first addressed whether it was appropriate for them to adopt the implied warrant of habitability. *See, e.g., Pugh*, 405 A.2d at 904 (“Appellate courts of other jurisdictions have considered and rejected the argument that a state's rent withholding act or other statutory remedies precluded judicial adoption of the implied warranty of habitability.” (citing *Green v. Super. Ct. of City and Cty. of San Francisco*, 517 P.2d 1168 (Cal. 1974); *Jack Spring, Inc. v. Little*, 280 N.E.2d 208 (Ill. 1972); *Boston Hous. Auth. v. Hemingway*, 293 N.E.2d 831 (Mass. 1973))). Ultimately, they concluded that it was proper an extension of their inherent authority to advance the common law. *See Pugh*, 405 A.2d at 903-04 (rejecting argument that legislation enacted to govern landlord-tenant relations preclude courts from developing the common law to adopt the implied warranty of habitability) (“Courts have a duty to reappraise old doctrines in the light of the facts and values of contemporary life particularly old common law doctrines which the courts themselves have created and developed.”)). Virgin Islands courts, however, previously relied on the Restatements of the Law almost exclusively as the basis for Virgin Islands common law. *See, e.g., Miller v. Christian*, 958 F.2d 1234, 1237-38 (3d Cir. 1991) (discussing landlord obligations, including the implied warranty of habitability, under the Restatement (Second) of Property, as applied pursuant to 1 V.I.C. § 4). For this reason, no court in the Virgin Islands has yet addressed whether the Virgin Islands should follow those jurisdictions and adopt the implied warrant of habitability.

Assuming the Magistrate Court relied on the implied warranty of habitability to abate Withey's rent, then that was in error since there is no binding precedent adopting that common law doctrine and Virgin Islands courts can no longer "mechanistically apply the Restatements." *Gov't of the V.I. v. Connor*, S. Ct. Civ. No. 2013-0095, 2014 WL 702639, *4 (V.I. Feb. 28, 2014).

Because there is no statutory authority in the Virgin Islands for abating a tenant's rent, the Magistrate Court must have relied on the common law to abate Withey's rent. However, in the absence of binding precedent, *see id.* at *4 n.1 (identifying binding Virgin Islands precedent), the Magistrate Court—like every other court in the Virgin Islands—had to "engage in a three-factor analysis: first examining which common law rule Virgin Islands courts have applied in the past; next identifying the rule adopted by a majority of courts of other jurisdictions; and then finally—but most importantly—determining which common law rule is soundest for the Virgin Islands." *Better Bldg. Maint. of the V.I., Inc. v. Lee*, S. Ct. Civ. No. 2012-0092, 2014 WL 1491559, *7 (V.I. Apr. 15, 2014). Because the Magistrate Court did not do this, and because the March 4, 2014 Judgment did not state what authority the court relied on to abate Withey's rent—whether constructive eviction, breach of the lease agreement, breach of the implied warranty of habitability, or another basis—this Court cannot conduct a full and complete review. Accordingly, this matter will be remanded for it to more thoroughly explain its reasons for abating Withey's rent.

ATTEST:
Estrella H. George
Acting Clerk of the Court


HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

By: 
Court Clerk Supervisor

Dated: 5/9/14