Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-336

FEBRUARY TERM, 2004

	}APPEALED FROM:
	}
985 Associates, Ltd.	}Chittenden Superior Court
	}
v.	}
	}DOCKET NO. 1227-02 CnC
Jim Chiarello and Carly Companion	}
	}Trial Judge: Matthew I. Katz
	}
	}

In the above-entitled cause, the Clerk will enter:

Plaintiff landlord appeals after prevailing in his suit against defendant tenants, arguing that the superior court abused its discretion by reducing the attorney= s fees he requested. We affirm.

In January 2002, the parties entered into a lease agreement that, among other things, required tenants to pay A all costs of collection of unpaid rents or other amounts due under this Lease, including attorney= s fees and court costs.@ In July 2002, during the lease period, tenants negligently caused an oven fire, making the rented apartment uninhabitable. Landlord used tenants= security deposit to help defray the expense of repairing the damage to the apartment. Tenants filed a complaint with the Burlington Housing Authority, seeking return of the security deposit. The complaint was eventually dismissed. Meanwhile, landlord filed an action in superior court, seeking full payment of the cost of the repairs, as well as attorney= s fees under 9 V.S.A. ' 4456(c), (e) (tenant shall not deliberately or negligently damage premises or its fixtures; if tenant acts in violation of section, landlord is entitled to recover damages, costs, and reasonable attorney= s fees). Landlord prevailed on the merits of the dispute, and the trial court awarded him $2698 in damages.

As requested by the trial court, landlord filed a proposed order that included a bill documenting the attorney= s fees he was seeking B a total of $5502. Tenants filed an objection to the bill, arguing, among other things, that landlord= s suit could have, and should have, been brought in small claims court, where attorney= s fees would have been greatly reduced or even eliminated. The superior court awarded landlord $1000 in fees, noting on a motion-reaction form that the case could have been heard in small claims court, with reduced attorney= s fees. Landlord filed a motion for reconsideration, and an unrecorded hearing was held in chambers. Following the hearing, the court increased the attorney= s fee award to $2000, stating that landlord should be compensated for the additional legal expenses resulting from tenants= unwarranted demands made in the proceeding before the Burlington Housing Authority. The court further noted that attorney= s fees should not be awarded at a level that could deter legitimate disputes involving A working class@ consumers. Landlord appeals, arguing that the superior court abused its discretion (1) by failing to calculate the so-called A lodestar figure@ first and then deviate from that figure based on other factors relevant to determining reasonable attorney= s fees; and (2) by basing its reduced award on an illegitimate consideration.

We agree with landlord that, normally, the most useful starting point in calculating reasonable attorney= s fees is the so-called A lodestar figure@ B the number of hours reasonably expended on the case multiplied by a reasonable hourly rate. L= Esperance v. Benware, 2003 VT 43, & 22, 830 A.2d 675, 683. The lodestar figure is presumed to represent a

reasonable fee, Human Rights Comm= n v. Labrie, Inc., 164 Vt. 237, 250 (1995), but may be adjusted upward or downward based on various factors, L= Esperance, 2003 VT 43, at & 22 (citing Hensley v. Eckerhart, 461 U.S. 424, 434 (1983)). In reviewing an attorney= s fee award, we give the trial court, which is best able to examine all of the relevant facts and circumstances of the case, wide discretion to determine what is a reasonable amount of attorney= s fees; thus, we will uphold the trial court= s judgment unless there is strong evidence that its award is either excessive or inadequate. See L= Esperance, 2003 VT 43, at & 21 (A When determining an award of attorney= s fees, the trial court must make a determination based on the specific facts of each case and, accordingly, we grant the trial court wide discretion in making that determination.@); The Burlington Free Press v. Univ. of Vt., 172 Vt. 303, 310 (2001) (single most important factor in reviewing award of attorney= s fees is discretion of trial judge, who has had continuing relationship with parties throughout suit); Parker, Lamb & Ankuda, P.C. v. Krupinsky, 146 Vt. 304, 307 (1985) (trial courts have wide discretion in determining reasonable value of legal services; this Court will not disturb award of attorney= s fees unless strong evidence demonstrates excessiveness or inadequacy of award).

Here, there is no strong evidence that the trial court= s award is inadequate. The trial court determined that landlord= s fee request was excessive, given the amount of money at stake, which would have permitted landlord to bring his lawsuit in small claims court. See Krupinsky, 146 Vt. at 306 (A amount at stake@ noted as one of factors for trial court to consider in determining reasonable attorney= s fee award); see also Cold Springs Farm Dev., Inc. v. Ball, 163 Vt. 466, 469 (1995) (purpose of small claims court is to provide simple, informal and inexpensive procedure to determine civil actions where amount in controversy is no more than $3500); Ferris-Prabhu v. Dave & Son, Inc., 142 Vt. 479, 480 (1983) (small claims proceedings should be as simple and untechnical as possible to encourage litigants to appear pro se). While there is no requirement that claims below a certain dollar amount be brought in small claims courts, neither is the superior court precluded from considering where the claim was brought in determining what fees are reasonable. On appeal, landlord does not demonstrate, or even argue, that the court abused its discretion by reasoning that he could have brought this action in small claims court. Rather, landlord contends that the court abused its discretion by not calculating the lodestar amount and making adjustments from there, and by noting that attorney= s fees should not be so large as to deter legitimate lawsuits by less affluent consumers.

Neither argument demonstrates that the court= s award constitutes an abuse of discretion. First, it is understandable why the court did not calculate a lodestar figure, given the court= s conclusion that landlord should have brought his lawsuit in small claims court. The court could hardly determine a lodestar figure for a small claims action that was never commenced. Second, the comment challenged by landlord was not the basis for the court= s reduced award. The court reduced the requested amount of attorney= s fees because landlord should have brought his lawsuit in small claims court. There is no indication that the court abandoned this reasoning in responding to landlord= s motion for reconsideration. Indeed, the comment to which landlord objects was apparently added as an afterthought to bolster the court= s earlier reasoning. The court gave landlord an additional $1000 because it had previously failed to take into consideration the administrative proceeding brought by tenants. In the court= s view, landlord A ought to be compensated for additional legal expenses of tenants= unwarranted demand.@ It is questionable whether the court should have awarded landlord any additional attorney= s fees for expenses ostensibly incurred in a completely separate proceeding, but because tenants have not cross-appealed or otherwise challenged the additional $1000, we will let the award stand.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Paul L. Reiber, Associate Justice