No. 1-10-1562

FIFTH DIVISION
April 22, 2011

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ADAM BILSKY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08M1167703
	)	
VANESSA CALABRESE,	)	The Honorable
	)	Sheryl Pethers,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE JAMES FITZGERALD SMITH delivered the judgment of the court.

Justice Joseph Gordon concurred in the judgment.

Justice Epstein concurred in part and dissented in part.

HELD: A pet deposit is not a security deposit subject to the protections and damage provisions of the Chicago Residential Landlord Tenant Ordinance (RLTO); trial court did not abuse its discretion in finding that landlord failed to return the interest she owed tenant under the RLTO; reversed in part, affirmed in part, remanded.

ORDER

Following a bench trial in this landlord-tenant dispute, judgment was entered in favor of plaintiff Adam Bilsky (tenant) and against defendant Vanessa Calabrese (landlord) in plaintiff's

action for breach of contract and various violations of the Residential Landlord and Tenant Ordinance of the City of Chicago (RLTO) (Chicago Municipal Code § 5-12-010 *et seq.* (2009)). Landlord appeals from the trial court's determination that: (1) the "pet deposit" was a security deposit and subject to the security deposit provisions of the RLTO; and (2) landlord failed to pay interest on the security deposit. For the following reasons, we reverse in part and affirm in part.

BACKGROUND

On May 3, 2003, tenant entered into a written lease agreement with landlord to rent a single family home in Chicago, commencing on June 1, 2007, and ending on May 31, 2008. At signing, tenant gave landlord two separate checks: one in the amount if $3150, representing the security deposit, and another in the amount of $500, representing the pet deposit. The lease reflected this:

> "2. **Security Deposit.** On execution of this lease, Lessee deposits with Lessor *THIRTY ONE HUNDRED FIFTY, PLUS FIVE HUNDRED* Dollars ($3150 + 500), receipt of which is acknowledged by Lessor, as security for the faithful performance by Lessee of the terms hereof, to be returned to Lessee, without interest, on the full and faithful performance by him of the provisions hereof. *$500 PET DEPOSIT).*" (Italics indicate handwritten portions of text.)

Monthly rent was $2,100.

Tenant resided in the house for the full term of the lease. Toward the end of the lease period, tenant requested he be allowed to stay a few days past the end of the lease term, and landlord agreed. At trial, tenant testified that he vacated the house on June 3, 2008, but landlord testified that she saw people moving out of the house on June 6 or later. Landlord returned tenant's $3,150 security deposit in June 2008.

In August 2008, tenant brought a three-count complaint against landlord, alleging breach of contract for failing to provide a written itemized statement accounting for money withheld from tenant's security deposit, in violation of the RLTO (count I); violation of section 5-12-080(a) and (d) of the RLTO for failure to keep the security deposit in a segregated bank account not commingled with landlord's assets and failure to provide tenant with a written statement accounting for the security deposit withholding (count II); and violation of section 5-12-140 of the RLTO for failure to pay tenant interest on the security deposit (count III).

Tenant, landlord, and landlord's real estate broker testified at trial. The parties stipulated that "a $3,150 security deposit plus a $500 pet deposit was given by the Plaintiff to the Defendant."

Landlord testified that she agreed to allow tenant to stay in the house until June 3. However, when she drove past the house on June 6, she saw people moving out of the house at that time. She was unable to identify tenant by sight. The next time she returned to the house, on June 10, the house was vacant and clean, but the yard was "destroyed."

Landlord had received a letter from tenant directing her to prorate the days that he overstayed the lease. Accordingly, landlord prorated the days to $70 per day for 6 days, for a

total of $420. However, landlord returned tenant's full security deposit of $3,150 by mail on June 21, 2008, without deducting the $420. She expected him to send her a check for the amount of $420 to cover the extra days of rent.

Landlord withheld the pet deposit due to the condition of the backyard. She sent tenant a letter informing him that she would be keeping the deposit on July 1, 2008. Landlord testified that, prior to tenant moving in, she had sod put down in the backyard at a cost of $600. After tenant vacated the property, landlord noted that the backyard was "totally destroyed" by tenant's dog. Landlord testified that she had the backyard re-sodded for "about $475." However, landlord did not have a receipt for the re-sodding service. Landlord explained that she did not have a receipt because the work was done by an "Hispanic gentleman that works in the neighborhood, and I paid cash." On cross-examination, landlord testified that she sodded the yard for $475 prior to tenant moving in, and then replaced the sod months after tenant moved out at a cost of $600. She did not send tenant a receipt. Landlord testified that she collected the pet deposit because she normally does not allow dogs in the house. The $500 pet deposit was to compensate in case the pet caused damage and, in the event the pet did not cause damage, she would return the entire $500 pet deposit.

Landlord testified that she calculated interest on both the pet deposit and security deposit at 2%, determining that the interest owed was $72.50. She testified that she did not know if she was supposed to calculate interest on the pet deposit as well as the security deposit because, she stated, "[I] thought they were two separate deposits, I got two separate checks. I felt one was a security deposit, one was a pet deposit." Nonetheless, to err on the safe side, she calculated the

interest she owed tenant based on the combined total of the pet and security deposits.

The parties do not dispute that landlord returned defendant's $3,150 security deposit. Nor do the parties dispute that the backyard was left in poor condition when tenant moved out.

Landlord brought a motion for a directed verdict as to count 1, which the court granted. The court also granted a motion for a directed verdict as to the commingling claim in count II.

The court found that landlord violated RLTO section 5-12-080(D) where she failed to return to tenant the accrued interest on the security deposit. The court stated:

> "[THE COURT:] For whatever reason, I guess this is an example of no good deed goes unpunished, she chose not to deduct the rent that she could have, like she also ignored the fact that he didn't even give her 30-days notice before moving out, but she let him do it. So, we all can see that he's quite ungrateful, but he's entitled to this under the law.
>
> I mean, again, less than 30-days notice, you said okay, then you decide not to deduct the rent from the security deposit, you tell him, 'Just pay me that later. I'm going to deduct these damages for which I never give you a receipt or a certification of the cost,' and you never deducted this interest- - or added to it, I'm sorry, you didn't add the $70 to the amount that you refunded to him, okay?
>
> So, you have two problems. If we - - I understand that after the fact, it all works out if you take the interest that you owe him

> and even add it on to the rent and then it's pretty darn close, but that's not how it [the RLTO] works. So, we're going to have a judgment for the Plaintiff."

The court also found that landlord erred where she did not submit a receipt to tenant for the repairs to the backyard. The court considered the pet deposit a security deposit under the RLTO. It stated:

> "[THE COURT:] Right. Well, it's all of a security deposit. Part of it can be used to cover unpaid rent and damage to the apartment, part of that $500 can only be used for damage to the apartment, but it's all to secure against property damage at a minimum, and then part of it's to secure against unpaid rents."

The court entered judgment against landlord for $7300, representing two times the security deposit of $3,150 as well as two times the pet deposit of $500, plus attorney's fees. Landlord appeals.

ANALYSIS

First, landlord contends that the trial court misinterpreted the term "pet deposit" within the lease agreement. Specifically, landlord argues that the trial court erred where it elevated a simple $500 pet deposit to the level of a full security deposit with all of the accompanying RLTO protections and damage provisions pertaining to it. We agree.

To resolve this issue, we must determine what the meaning of "pet deposit" is within the

RLTO. We review this question of law *de novo*. *Kankakee County Board of Review v. Property Tax Appeal Board*, 226 Ill. 2d 36, 51 (2007). Municipal ordinances are interpreted using the general rules of statutory construction. *In re Application of the County Collector*, 132 Ill. 2d 64, 72 (1989). "As in the case of a statute, the primary objective in construing an ordinance is to ascertain and give effect to the intent of the lawmaking body as disclosed by the language contained in the ordinance." *VG Marina Management Corp. v.* Wiener, 378 Ill. App. 3d 887, 890 (2008) (citing *Starr v. Gay*, 354 Ill. App. 3d 610, 612-13 (2004)). "The best indicator of this intent comes from the language of the ordinance itself, but may also include consideration of the reason behind and the necessity for the ordinance." *VG Marina Management Corp.,* 378 Ill. App. 3d at 890-91 (citing *American National Bank v. Powell*, 293 Ill. App. 3d 1033, 1038 (1997) (interpreting the RLTO)).

The term "pet deposit"does not appear in the RLTO. Accordingly, it is appropriate for this court to consider the "reasons behind and the necessity for the ordinance." *VG Marina Management Corp.,* 378 Ill. App. 3d at 890-91. The stated purpose of the RLTO is "to establish the rights and obligations of the landlord and the tenant in the rental of dwelling units, and to encourage the landlord and the tenant to maintain and improve the quality of housing" in the City of Chicago. Chicago Municipal Code § 5-12-010 (2009). The RLTO is designed, in part, to "help protect the rights of tenants with respect to their security deposits." *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1, 10 (2001). A security deposit is "money a tenant deposits with a landlord as security for the tenant's full and faithful performance of the lease terms." *Starr*, 354 Ill. App. 3d at 613.

A "pet deposit" is a deposit with a limited purpose and, as such, is not a "security deposit" under the RLTO. As landlord testified in the case at bar, the pet deposit was collected "to compensate in the case the pet caused damage." To consider the pet deposit a full security deposit would be to elevate a simple deposit with the limited purpose of repairing property damage inflicted by a tenant's pet to a "security for the tenant's full and faithful performance of the lease terms." *Starr*, 354 Ill. App. 3d at 613. That is beyond what is required of a simple pet deposit. Here, tenant submitted his pet deposit to landlord as a separate check. Landlord and tenant recorded this submission in the lease agreement, delineating that the deposits were separate three times. Had landlord and tenant intended that the pet deposit be accorded the same protections as a security deposit, they could have agreed upon an increased security deposit that included the pet deposit. They did not do so here. This was not an increased security deposit due to tenant having a pet, but a separate deposit *in addition to* the security deposit. The trial court erred in determining that the pet deposit was a security deposit under the RLTO.

The dissent proposes that by not redefining a pet deposit as a security deposit, we invite landlords to take advantage of tenants by creating specialty deposits which will be insulated from the double penalty provision of the RLTO. To the contrary, by limiting a security deposit to those moneys designated in the ordinance, today's decision provides for the intended protection of tenants as well as limits the ability of tenants and attorneys to circumvent the specific protections provided in the ordinance in order to exploit the double damages provision.

Moreover, contrary to tenant's assertion, our determination is not in conflict with our supreme court's decision in *Lawrence*, 197 Ill. 2d 1. The *Lawrence* court specifically limited its

analysis:

> "The sole issue presented for our consideration is whether the trial court was correct in concluding that the RLTO requires a landlord's violation of the interest payment provisions to have been willful before the tenant is entitled to recover the damages, attorney fees and costs provided by the ordinance." *Lawrence*, 197 Ill. 2d at 9.

Tenant argues that, because the *Lawrence* court determined that interest was owed on a pet deposit, it must have also meant that a pet deposit should be considered a security deposit for all other purposes. We disagree with this reading of *Lawrence*.

In *Lawrence*, the trial court found that a pet deposit was a deposit for the purposes of the ordinance, rather than a fee or a charge, but did not require the landlord to pay damages pursuant to the RLTO because the landlord's failure to pay interest on the deposit was not willful. *Lawrence*, 197 Ill. 2d at 8. On appeal to our supreme court, the parties did not dispute the trial court's finding regarding the deposit, but instead challenged the trial court's determination that the landlord's error had to be willful in order to be penalized under the RLTO. *Lawrence*, 197 Ill. 2d at 9. Our supreme court, then, analyzed the language of the RLTO and determined that "[a] landlord's duty to comply with the statute is absolute. If a landlord requires a security deposit, the landlord is required to pay the tenant interest on that deposit. If he fails to do so, he is liable to the tenant for the damages specified in the ordinance." *Lawrence*, 197 Ill. 2d at 9-10. Here, tenant presents this case to us in his appellate brief as a prior determination by our supreme

court that a pet deposit is a security deposit under the RLTO. However, the *Lawrence* court analysis was focused entirely on the *scienter* requirement under the RLTO, rather than on whether a pet deposit is a security deposit under the ordinance. As such, *Lawrence* is inapposite to the case at bar.

Next, landlord contends that the trial court erred in finding that she violated the RLTO by failing to credit tenant with interest on his security deposit. We disagree.

The RLTO makes several demands of a landlord, including:

> "§5-12-080 Security Deposits
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> * * *
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> (d) The landlord shall, within 45 days after the date that the tenant vacates the dwelling unit or within seven days after the date that the tenant provides notice of termination of the rental agreement pursuant to Section 5-12-110(g), return to the tenant the security deposit or any balance thereof and the required interest thereon; provided, however, that the landlord may deduct from such security deposit or interest due thereon for the following:
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> (1) Any unpaid rent which has not been validly withheld or deducted pursuant to state or federal law or local ordinance; and
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> (2) A reasonable amount necessary to repair any damage caused to the premises by the tenant or any person under the tenant's control with the tenant's consent, reasonable wear and tear

> excluded. In case of such damage, the landlord shall deliver or mail to the last known address of the tenant within 30 days an itemized statement of the damages allegedly caused to the premises and the estimated or actual cost for repairing or replacing each item on that statement, attaching copies of the paid receipts for the repair or replacement. If estimated cost is given, the landlord shall furnish the tenant with copies of paid receipts or a certification of actual costs of repairs of damage if the work was performed by the landlord's employees within 30 days from the date the statement showing estimated cost was furnished to the tenant.
>
> * * *
>
> (f) If the landlord or landlord's agent fails to comply with any provision of Section 5-12-080(a)-(e), the tenant shall be awarded damages in an amount equal to two times the security deposit plus interest at a rate determined in accordance with Section 5-12-081. This subsection does not preclude the tenant from recovering other damages to which he may be entitled under this chapter." Chicago Municipal Code § 5-12-080 (2009).

"A landlord's duty to comply with [the RLTO] is absolute. If a landlord requires a security deposit, the landlord is required to pay the tenant interest on that deposit. If he fails to do so, he is liable to the tenant for the damages specified in the ordinance. There are no

exceptions." *Lawrence*, 197 Ill. 2d at 9-10. We will not disturb a trial court's finding of fact, such as the one at issue here, absent an abuse of discretion. *Ikari v. Mason Properties*, 314 Ill. App. 3d 222, 227-28 (2000). A trial court's decision is against the manifest weight only where the opposite conclusion is clearly evident. *Ikari*, 314 Ill. App. 3d at 228.

It is clear from the record that the trial court did not abuse its discretion in finding that landlord failed to credit tenant for the interest she owed him under the RLTO. Landlord argues that she did not owe tenant the $500 pet deposit because she actually deducted the $420 per diem rent owed her by tenant for the extra six days from the pet deposit and the $72.50 interest she owed tenant under the RLTO, as well as deducted "damages to the premises" from the security deposit interest credit. This is particularly unpersuasive in light of landlord's trial testimony:

> "[LANDLORD:] I refunded the security deposit in full and
>
> I deducted the pet deposit for the condition of the backyard."

By landlord's own trial testimony, landlord kept tenant's pet deposit because tenant's pet damaged the backyard. To now argue that she actually kept the deposit as an exchange for rent owed and calculated the return of interest within that transaction is unpersuasive. Moreover, the trial court made specific findings, including that landlord never added the interest owed tenant to the amount that she refunded him. Landlord does not direct us to evidence that contradicts the trial court's finding regarding interest.

Landlord urges us to reverse the trial court's ruling because the dispute in the case at bar is not the type of evil for which the RLTO was designed. She argues that the purpose of the RLTO is to protect tenants from unscrupulous landlords, not landlords who, in good faith, do

essentially what is required under the RLTO. While we may agree with landlord that landlord's actions in this case were not the egregious actions that the RLTO was designed to combat, we recognize that the purpose of the RLTO is to protect the rights of tenants with respect to their security deposits. To that end, the city council has chosen to impose an absolute duty on landlords to pay the interest they owe tenants and, in the event the landlord fails to do so, to provide a recovery of double the amount of the security deposit. As our supreme court has said:

> "While one may personally disagree with the wisdom of this choice, it is not this court's function to second-guess the city council's judgment in such matters. As our decisions have made clear, responsibility for the wisdom or justice of legislation rests with the legislature. Under our system of government, courts may not rewrite statutes to make them consistent with their own ideas of orderliness and public policy." *Lawrence*, 197 Ill. 2d at10-11 (citing *People v. Wright*, 194 Ill. 2d 1, 29 (2000)).

CONCLUSION

Because we find that landlord failed to return the interest she owed tenant under the RLTO, we find, as did the trial court, that double damages are appropriate. See Chicago Municipal Code § 5-12-080(f) (2009) ("If the landlord or landlord's agent fails to comply with any provision of Section 5-12-080(a)-(e), the tenant shall be awarded damages in an amount equal to two times the security deposit plus interest at a rate determined in accordance with

Section 5-12-081"). Accordingly, we affirm the trial court's award of two times the security deposit of $3,150 plus interest. Because we have determined that the pet deposit is not a security deposit under the RLTO, this award does not include damages from the pet deposit. We remand to the trial court for a determination of the exact dollar amounts owed, including a determination as to any outstanding rent, as well as attorney fees.

For the foregoing reasons, we reverse in part, affirm in part, and remand.

Reversed in part and affirmed in part; cause remanded.

JUDGE EPSTEIN, concurring in part and dissenting in part:

I concur in part and dissent only from the majority's view of plaintiff's "pet deposit." In *Starr v. Gay*, 354 Ill. App. 3d 610 (2004), wherein it should be noted the classification of the funds at issue was not disputed, this court stated:

> "A security deposit has been defined as money a tenant deposits with a landlord as security for the tenant's full and faithful performance of the lease terms. Under the terms of a lease agreement, a security deposit remains the tenant's property which the landlord holds in 'trust' for the tenant's benefit subject to the tenant fulfilling its obligations under the lease." *Id.* at 613.

The majority applies that definition here, concluding that plaintiff's pet deposit is not a security deposit because it was intended for the "limited purpose of repairing property damage inflicted by a tenant's pet" as opposed to securing the "full and faithful performance of the lease terms." I disagree.

While plaintiff's pet deposit, provided for in the portion of the lease entitled "Security

Deposit," was not meant to secure *all* of his obligations under the lease, it was a security deposit because it secured some obligation under the lease and was to be returned to plaintiff upon the fulfilment of that obligation. The lease requires, for example, that plaintiff "keep and maintain the leased premises in good and sanitary condition during the term of th[e] lease and any renewal thereof." The pet deposit, which protects against the subset of damages to the premises caused by a pet, is part of that obligation. Moreover, while the landlord testified she collected the pet deposit "to compensate in the case the pet caused damage," the language of the lease denotes at least one other lease obligation secured by the pet deposit, noncancellation of the lease: "Security Deposit of $3150.00 plus pet deposit $500.00, shall be non-refundable if lessee cancels this lease after June 25, 2007."

The pet deposit here is a security deposit. Holding otherwise encourages the circumvention of the RLTO through itemized specialty deposits, including, for example, "appliance deposits" or "carpet deposits." This would result in reducing the penalty for violation of the ordinance by the artifice of relabeling portions of a de facto security deposit and insulating that money from reach of the double penalty provision. Opening the door to such mischief is unwarranted. The pet deposit here, regardless of its label, falls within the purview of the RLTO. It is for that reason, that I respectfully dissent in part and concur in part.