2016 IL App (1st) 153121-U

FIRST DIVISION
November 14, 2016

No. 1-15-3121



IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| VERONICA STUMP,<br><br>Plaintiff/Counter-Defendant-Appellee,<br><br>v.<br><br>JAMES K. ABRAHAM,<br><br>Defendant/Counter-Plaintiff-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of Cook County,<br><br>No. 14 M 1148804<br><br>Honorable Joyce Marie Murphy Gorman, Judge Presiding. |

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Connors and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court properly found in favor of plaintiff on her claims that defendant violated various provisions of the Chicago Residential Landlord Tenant Ordinance and the circuit court properly ruled against defendant on his counterclaim.

¶ 2 Defendant James Abraham appeals from the July 2015 judgment of the circuit court finding, after a trial, that Mr. Abraham violated four provisions of the Chicago Residential Landlord Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-010 *et seq.*), awarding plaintiff Veronica Stump $9,600, and ruling against Mr. Abraham on his counterclaim. The circuit court's October 2015 order awarded Ms. Stump attorney fees and costs of $5,527.50 and

$341.82, under the RLTO. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On July 22, 2014, Ms. Stump entered into a lease to rent the real property at 1749 North Wells Street, Unit No. 807, Chicago, Illinois, from Mr. Abraham. The lease began on September 1, 2014, and was set to end on August 31, 2015. The terms of the lease included a $2,500 monthly rental payment with an initial $2,500 security deposit to be held at "Bank of America-Chicago." The lease also required Mr. Abraham to have the unit professionally cleaned and painted during the first week of September 2014.

¶ 5 On November 14, 2014, Ms. Stump filed her complaint against Mr. Abraham alleging that Mr. Abraham violated the RLTO when he (1) failed to provide the address of the financial institution that held Ms. Stump's security deposit as required by section 5-12-080(a)(3), (2) failed to deliver possession of the unit to Ms. Stump upon the commencement of the lease as required by section 5-12-110(b), and (3) failed to provide a summary of the RLTO to Ms. Stump as required by section 5-12-170. Ms. Stump attached a copy of the lease to her complaint.

¶ 6 On February 13, 2015, Mr. Abraham filed a counterclaim against Ms. Stump alleging that she failed to properly terminate the lease or sublet the unit and owed Mr. Abraham $13,600 in unpaid rent and fees. Mr. Abraham also attached a copy of the lease to his counterclaim but no summary of the RLTO was attached to that lease.

¶ 7 The case proceeded to trial on July 17, 2015. At trial, Ms. Stump testified that Mr. Abraham told her over the phone, on August 28, 2014, that the unit would not be ready on September 1, 2014, when the lease began. She testified that she received a key for the unit on August 28 and moved personal items into the unit before the lease commenced. Ms. Stump further testified that, on September 1, she emailed Mr. Abraham with a list of fifteen issues that

she wanted addressed: Ms. Stump stated that the blinds were missing from every room and that the oven, light fixtures, kitchen doors, and bathroom doors were broken. Ms. Stump also testified that the smoke detector was not connected to the ceiling and that the dead bolt upstairs leading to a common area was broken. In addition, Ms. Stump stated that, as of September 1, the prior tenant still had personal belongings in the unit. Of these issues, Ms. Stump noted two items in particular that she alleged prevented her from inhabiting the unit: an undetermined black substance on the wall that appeared to be mold and a missing dead bolt lock. According to the transcript of proceedings, Ms. Stump provided photographs of the unit to the circuit court at trial which were admitted into evidence and relied on by the circuit court when it issued its order. However, these photographs are not included in the record on appeal. Ms. Stump testified that she moved into a new apartment on September 2, 2014, and that, on September 6, 2014, her attorney mailed Mr. Abraham a letter terminating the lease and asking for the return of her security deposit.

¶ 8 Ms. Stump testified that Mr. Abraham was not present when she signed the lease, but that Mr. Abraham's real estate agent, Brian Duffy, prepared and offered the lease to her. She further testified that, although she initialed the lease indicating that she received the summary of the RLTO, she did not in fact receive it. Mr. Abraham also testified that he was not present when Ms. Stump signed the lease and said that he "[could] not exactly" say what paperwork was provided to Ms. Stump at the lease signing. Mr. Duffy, who was present when Ms. Stump signed the lease, did not testify at trial. Notably, Mr. Abraham never produced a summary of the RLTO at trial or in his pleadings. Ms. Stump also testified that she did not receive a lead paint disclosure or heating cost disclosure, despite the indication in the lease that both were received by Ms. Stump, as confirmed by her initials. Mr. Abraham did not rebut Ms. Stump's testimony

regarding these omissions.

¶ 9 On July 28, 2015, the circuit court entered an order finding in favor of Ms. Stump on all of her claims against Mr. Abraham and ruling that she was entitled to damages in the amount of $9,600. In its order, the court made several specific findings, including that Mr. Abraham lacked credibility and that, despite the fact that Ms. Stump had initialed the lease indicating that she had received a copy of a summary of the RLTO, Ms. Stump did not actually receive it. The court further found that Mr. Abraham had failed to deliver possession of the unit to Ms. Stump as required by the RLTO because he did not remedy the black substance, which "look[ed] like mold," even after receiving notice of the substance from Ms. Stump; because the previous tenant's belongings remained in the unit after Ms. Stump's lease term began; and "because of the other defects in the unit testified to by [Ms. Stump] and shown in the photos admitted into evidence." In addition, the court found that the lease was terminated effective September 6, 2014, and that Mr. Abraham violated section 5-12-080(d) of the RLTO because he had failed to return Ms. Stump's security deposit. Finally, the court held that Mr. Abraham's counterclaim for unpaid rent "fail[ed] because the lease terminated on September 6, 2014," and Ms. Stump had paid September's rent. On October 1, 2015, the circuit court awarded Ms. Stump attorney fees and costs as provided for under the RLTO and entered a final and appealable order.

¶ 10 JURISDICTION

¶ 11 Mr. Abraham timely filed his notice of appeal in this matter on October 28, 2015. This court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb 1, 1994); R. 303 (eff. Jan. 1, 2015).

¶ 12 ANALYSIS

¶ 13 On appeal, Mr. Abraham argues that the circuit court "abused its discretion" in finding that Mr. Abraham violated each of four RLTO provisions and ruling in favor of Ms. Stump on all of her claims. Mr. Abraham also argues that the circuit court erred in ruling against Mr. Abraham on his counterclaim against Ms. Stump. While we do not think any part of our review is under an "abuse of discretion" standard as Mr. Abraham claims, we have reviewed each of the rulings that Mr. Abraham objects to in this appeal and we do not find any of them to be in error.

¶ 14 I. Rulings on Plaintiff's Claims

¶ 15 A. Section 5-12-080(a)(3) of the RLTO

¶ 16 Mr. Abraham argues that the circuit court abused its discretion when it found that he failed to provide the address of the financial institution where Ms. Stump's security deposit was held as required by section 5-12-080(a)(3) of the RLTO. Section 5-12-080(a)(3) provides that "[t]he name and address of the financial institution where the security deposit will be deposited shall be clearly and conspicuously disclosed in the written rental agreement signed by the tenant." Chicago Municipal Code § 5-12-080(a)(3) (amended July 28, 2010). The circuit court found that listing only "Bank of America-Chicago" was not sufficient to satisfy the RLTO requirement that the rental agreement specify the name and address of the financial institution where the security deposit was deposited. We agree. The issue is interpretation and construction of the RLTO, a municipal ordinance, and our review is *de novo*. *Lawrence v. Regent Realty Group*, 197 Ill. 2d 1, 9 (2001).

¶ 17 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." Chicago Municipal Code § 5-12-010 (amended

Mar. 31, 2004). " '[T]he clear intent of the [RLTO] is to protect tenants,' and its 'purpose is rooted in the public policy that recognizes that tenants are in a disadvantageous position with respect to landlords.' " *Shadid v. Sims*, 2015 IL App (1st) 141973, ¶ 7 (quoting *Lawrence v. Regent Realty Group, Inc.*, 207 Ill. App. 3d 155, 160 (1999), *aff'd*, 197 Ill. 2d 1 (2001)).

¶ 18 Mr. Abraham argues that "Bank of America-Chicago" complies with section 5-12-080(a)(3) of the RLTO because it supplies enough information for Ms. Stump to verify that her security deposit was properly deposited into a financial institution in compliance with the ordinance. Mr. Abraham contends that the provision was not meant to punish landlords and that we should read the RLTO in light of its intended purpose, which is to protect tenants. However, we are not free to ignore statutory requirements even if, in some instances, an argument could be made that they are not necessary to accomplish the legislative intent. We are required to "construe the statute as written and may not, under the guise of construction, supply omissions, remedy defects, annex new provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of the language employed in the statute." (Internal quotation marks omitted.) *In re Application of the County Collector*, 356 Ill. App. 3d 668, 670 (2005). The word "Chicago" simply is not an address and that is what the ordinance requires.

¶ 19 In *In re County Collector*, the court looked at the "address" requirement in section 22-10 of the Property Tax Code (35 ILCS 200/22-10 (West 2002)). That statute requires that the "Notice of expiration of period of redemption" sent prior to the sale of property for delinquent taxes contain an "address" for the County Clerk. *Id.* The court held that the statement on the notice that the hearing for issuance of the tax deed would be held in "Room 1704, Richard J. Daley Center in Chicago, Illinois" was not sufficient. *In re County Collector*, 356 Ill. App. 3d at

673-74. The court concluded that "no reasonable argument can be made that the conventional meaning of 'address' does not encompass a number and street name." *Id.* at 674. Similarly, no reasonable argument can be made that the name of a large city, like Chicago, is the equivalent of an address.

¶ 20 In support of his argument, Mr. Abraham cites *Munson v. Bay State Dredging & Contracting Co.*, 50 N.E.2d 633, 636 (Mass. 1943), a case from the Supreme Judicial Court of Massachusetts. The *Munson* court held that an "address" can be "a place where mail or other communications can reach [an individual], at a place other than his residence." *Id.* In this case, an address limited to "Chicago" does not provide sufficient information either for visiting or for mailing to Bank of America. Neither the holding of *Munson*—which is, of course, not binding on this court (see *Kostal v. Pinkus Dermatopathology Laboratory, P.C.*, 357 Ill. App. 3d 381, 395 (2005) (authority from foreign jurisdictions is not binding on Illinois courts))—nor the holding of *In re County Collector* suggests that "Chicago" constitutes an address. The circuit court properly found that Mr. Abraham violated section 5-12-080(a)(3) of the RLTO because "Chicago" is not an address.

¶ 21 B. Section 5-12-110(b) of the RLTO

¶ 22 Mr. Abraham also argues that the circuit court abused its discretion when it found that he violated section 5-12-110(b) of the RLTO. However, this was a factual finding by the circuit court, which is not reviewed under an abuse of discretion standard. Rather, "the standard of review in a bench trial is whether the order or judgment is against the manifest weight of the evidence." *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12. This standard is used because "the trial judge, as a trier of fact, is in a superior position to observe witnesses, judge their credibility, and determine the weight their testimony should receive." *Battaglia v. 735*

*N. Clark Corp.*, 2015 IL App (1st) 142437, ¶ 23 (citing *Bazydlo v. Volant*, 164 Ill. 2d 207, 214 (1995)). "A judgment is against the manifest weight of the evidence only when the findings appear to be unreasonable, arbitrary, or not based on evidence, or when an opposite conclusion is apparent." *Vaughn v. City of Carbondale*, 2016 IL 119181, ¶ 23.

¶ 23 Section 5-12-110(b) of the RLTO provides:

> "If the landlord fails to deliver possession of the dwelling unit to the tenant in compliance with the residential rental agreement or Section 5-12-070, rent for the dwelling unit shall abate until possession is delivered, and the tenant may:
>
> (1) Upon written notice to the landlord, terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security[.]" Chicago Municipal Code § 5-12-110(b) (adopted Nov. 6, 1991).

Pursuant to section 5-12-070, "[t]he landlord shall maintain the premises in compliance with all applicable provisions of the municipal code and shall promptly make any and all repairs necessary to fulfill this obligation." Chicago Municipal Code § 5-12-070 (adopted Nov. 6, 1991).

¶ 24 Mr. Abraham claims that the circuit court erroneously found that "the black substance on the wall look[ed] like mold." Mr. Abraham notes that Ms. Stump provided no expert testimony regarding the black substance and that the circuit court sustained his objection to Ms. Stump's testimony in which she, herself, concluded that the black substance was mold.

¶ 25 However, as Ms. Stump correctly notes, a tenant is competent to testify regarding the diminished value of the unit arising from a breach of the implied warranty of habitability. *Glasoe v. Trinkle*, 107 Ill. 2d 1, 17 (1985). The circuit court found that Mr. Abraham failed to deliver

possession of the unit based not only on the black substance, which the court stated "look[ed] like mold," but also "because of other defects in the unit testified to by the Plaintiff and shown in the photos admitted into evidence." Ms. Stump testified that various appliances and the deadbolt were broken and that the smoke detector was not connected to the ceiling. Ms. Stump also testified that the previous tenant's belongings were still in the unit. Mr. Abraham failed to rebut any of Ms. Stump's testimony about the state of the unit. When testimony is neither contradicted by direct adverse testimony nor inherently improbable and the witness was not impeached, the fact finder cannot disregard the testimony. *Vanderhoof v. Berk*, 2015 IL App (1st) 132927, ¶ 89.

¶ 26 In addition, the circuit court based its findings, in part, on its review of photographs. Those photographs are not included in the record on appeal and this court is unable to review them. The appellant has the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). The court will resolve any doubts arising from the incompleteness of the record against the appellant. *Id.* Thus, we must assume that the photographs also supported the circuit court's factual findings.

¶ 27 The circuit court's finding that Mr. Abraham failed to deliver possession of the unit in compliance with the RLTO was neither unreasonable nor arbitrary. It was based on Ms. Stump's testimony, the photographs, and Mr. Abraham's failure to rebut Ms. Stump's testimony. The circuit court's finding that Mr. Abraham violated section 5-12-110(b) of the RLTO was not against the manifest weight of the evidence.

¶ 28 C. Section 5-12-170 of the RLTO

¶ 29 Mr. Abraham next argues that the circuit court erred when it found that Mr. Abraham

violated section 5-12-170 of the RLTO by failing to attach a summary of the RLTO to the lease Ms. Stump initially received. This again is a factual finding that must be upheld unless it is against the manifest weight of the evidence.

¶ 30 Section 5-12-170 of the RLTO provides:

> "A copy of such [RLTO] summary shall be attached to each written rental agreement when any such agreement is initially offered to any tenant or prospective tenant by or on behalf of a landlord and whether such agreement is for a new rental or a renewal thereof where there is an oral agreement, the landlord shall give to the tenant a copy of the summary.
>
> * * *
>
> If the landlord acts in violation of this section, the tenant may terminate the rental agreement by written notice." Chicago Municipal Code § 5-12-170 (adopted Nov. 6, 1991).

¶ 31 Ms. Stump testified at trial that, although she initialed a paragraph in the lease which contained an "x" indicating she had received the RLTO summary, she did not receive the summary. The circuit court found that, despite Ms. Stump's initialed acknowledgment, she provided enough evidence to overcome the inference that she received the summary. Based on Ms. Stump's testimony and Mr. Abraham's failure to rebut her statements, the circuit court's reasoning was not unreasonable or arbitrary. The circuit court's finding that Mr. Abraham violated section 5-12-170 of the RLTO was not against the manifest weight of the evidence.

¶ 32 D. Section 5-12-080(d) of the RLTO

¶ 33 Mr. Abraham additionally argues that the circuit court's finding that he violated section 5-12-080(d) of the RLTO by failing to return Ms. Stump's security deposit was an abuse of

discretion. Again, this is a factual finding which must be upheld unless it is against the manifest weight of the evidence.

¶ 34 Section 5-12-080(d) states:

> "The landlord shall, within 45 days after the date that the tenant vacates the dwelling unit or within 7 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 for *** any unpaid rent which has not been validly withheld or deducted pursuant to state or federal law or local ordinance[.]" Chicago Municipal Code § 5-12-080(d) (adopted Nov. 6, 1991).

¶ 35 Mr. Abraham argues that he was not required to return Ms. Stump's security deposit because the lease provided that he had the full first week of September 2014 to have the unit professionally cleaned and Ms. Stump took possession of the unit before September 1 when she moved her belongings into it. However, none of this undermines the circuit court's finding that Ms. Stump properly terminated her lease on September 6.

¶ 36 Both section 5-12-110(b) of the RLTO, requiring that the landlord deliver possession of the rental unit in compliance with the lease agreement, and section 5-12-170, requiring that a copy of the RLTO be attached to the lease agreement when it is initially offered to a tenant, provide that a tenant may terminate a rental agreement if the landlord acts in violation of that section. And, as we determined above, the circuit court's findings that Mr. Abraham violated both of these sections were not against the manifest weight of the evidence. Accordingly, the circuit court's finding that Ms. Stump properly terminated her lease on September 6, based on

Mr. Abraham's failure to provide her with a summary of the RLTO and his failure to deliver possession of the property, was similarly not against the manifest weight of the evidence.

¶ 37 Because the trial court's finding that Ms. Stump properly terminated the lease was not in error, its finding that Mr. Abraham violated section 5-12-080(d) of the RLTO for failure to return Ms. Stump's security deposit was likewise not against the manifest weight of the evidence.

¶ 38 II. Mr. Abraham's Counterclaim

¶ 39 Mr. Abraham argues that the circuit court erred when it denied his counterclaim. More specifically, Mr. Abraham contends that if the circuit court erred in finding that Ms. Stump effectively terminated her lease on September 6, 2015, then Ms. Stump owes Mr. Abraham rent from October 2015 until January 2016 when Mr. Abraham found a new tenant. Mr. Abraham also argues that Ms. Stump owes him the difference between the amount of rent she agreed to pay and the amount Mr. Abraham's new tenant paid through the end of Ms. Stump's lease term, plus the commission fee Mr. Abraham paid to find a new tenant.

¶ 40 In support of his argument, Mr. Abraham cites section 9-213.1 of the Forcible Entry and Detainer Act (735 ILCS 5/9-213.1 (West 2014)), which states that "[a] landlord or his or her agent shall take reasonable measures to mitigate the damages recoverable against a defaulting lessee." Mr. Abraham claims that he properly mitigated his damages pursuant to the statute. However, as the circuit court's finding that Ms. Stump properly terminated the lease on September 6, 2015, was not against the manifest weight of the evidence, it properly ruled against Mr. Abraham on his counterclaim against Ms. Stump.

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 43 Affirmed.