

NOTICE

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2016 IL App (4th) 150773-U

NO. 4-15-0773

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 23, 2016

Carla Bender

4th District Appellate Court, IL

HUNTCO PARTNERS, L.P.,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
BRUCE H. HUNTER,)	No. 15LM1256
Defendant-Appellant.)	
)	Honorable
)	Brian T. Otwell,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment entered in favor of the landlord for possession of rental property after determining that the landlord did not retain the tenant's money order so as to constitute acceptance of the tenant's payment of late rent.

¶ 2 Plaintiff, Huntco Partners, L.P., filed a forcible entry and detainer action against defendant, Bruce H. Hunter, after he failed to timely pay his monthly rental amount. After a bench trial, the trial court ruled in favor of plaintiff, rejecting defendant's argument that plaintiff had retained and accepted the money order he untimely tendered for rent, thereby waiving plaintiff's right to terminate the lease for nonpayment. We affirm.

¶ 3 **I. BACKGROUND**

¶ 4 In May 2014, defendant entered into a written residential 10-year lease agreement for the property located at 5671 Hunter Road in Rochester. Defendant was instructed to make

the \$500 per month rental payments to plaintiff's agent, the law firm of Sorling Northrup in Springfield, on or before the fifth day of every month. The lease agreement contained a provision whereby plaintiff could regain immediate possession of the premises if defendant failed to make the rental payment by the due date. The lease agreement also contained a provision indicating that plaintiff could waive its rights only by executing a written waiver, not by any other action.

¶ 5 Defendant failed to make his rental payment on or before August 5, 2015. Plaintiff served defendant with a five-day notice on August 15, 2015, giving defendant until August 21, 2015, to pay the amount due. Defendant paid the rent by personal money order at Sorling Northrup on August 24, 2015, admittedly three days beyond the due date. The receptionist at the law firm signed a document acknowledging receipt of the money order.

¶ 6 On August 28, 2015, plaintiff filed a forcible entry and detainer action against defendant, alleging the above facts and claiming defendant was unlawfully withholding possession of the premises from plaintiff. The trial court conducted a final hearing on plaintiff's complaint on September 15, 2015. The facts presented at trial were undisputed. Plaintiff argued because defendant's August rental payment was late, it was entitled to terminate the lease and retake possession of the property. Defendant argued plaintiff, through its agent, accepted the late rental payment, thereby waiving its right to possession for a breach of a lease term. The trial court found in favor of plaintiff and entered judgment, awarding plaintiff possession, damages, costs, and attorney fees.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Generally, the standard of review in a forcible entry and detainer action is whether the verdict was against the manifest weight of the evidence. *S & D Service, Inc. v. 915-925 W. Schubert Condominium Ass'n*, 132 Ill. App. 3d 1019, 1021 (1985). "The role of a reviewing court is not to re-interpret the evidence, but only to determine whether the evidence on the record supports the lower court's judgment." *Wendy & William Spatz Charitable Foundation v. 2263 North Lincoln Corp.*, 2013 IL App (1st) 122076, ¶ 27.

¶ 10 The lease signed by the parties provided that plaintiff could terminate the lease agreement for nonpayment of rent. This fact is undisputed. It is also undisputed that defendant paid his August rent payment beyond the time allowed. The only disputed issue is whether defendant's late tender of a money order to plaintiff's agent constituted plaintiff's acceptance of the rental payment, and thus, a waiver of plaintiff's rights and remedies under the lease agreement upon a breach of the lease terms.

¶ 11 A landlord's knowing acceptance of late rent constitutes the landlord's waiver of the tenant's breach, and thereafter, the lease continues in full force and effect. See *Midland Management Co. v. Helgason*, 158 Ill. 2d 98, 102 (1994) (a case deciding whether subsidy housing payments paid to the landlord constituted "rent" within the meaning of the lease terms); see also *La Salle National Bank v. Khan*, 191 Ill. App. 3d 41, 44-45 (1989). When referring to a rent payment in the form of a personal check, the courts have determined that the term "acceptance" means the check was endorsed or deposited into the landlord's bank account. See *La Salle National Bank*, 191 Ill. App. 3d at 45 (because the tenant's check was not endorsed or deposited by the landlord, the court found no basis to conclude the landlord had "accepted" the tenant's late rent check); see also *Wang v. Marcus Brush Co.*, 354 Ill. App. 3d 968, 971 (2005)

(because the landlord did not cash, endorse, deposit, or otherwise use the tenant's check, the landlord had not waived its right to terminate the tenancy for late payment).

¶ 12 The distinguishing feature between this case and both *La Salle National Bank* and *Wang* is that here, defendant paid with a personal money order, rather than a personal check. The issue then is whether the form of payment makes a difference in determining whether plaintiff "accepted" the untimely tendered money order.

¶ 13 Illinois courts have determined that a personal money order is "significantly distinguishable from a cashier's check." *Chicago Cicero Currency Exchange, Inc. v. Continental Illinois National Bank & Trust Co. of Chicago*, 189 Ill. App. 3d 259, 261 (1989). Rather,

"a personal money order functions as a personal check and not as a banker's or cashier's or traveler's check. [Citation.] Since the only signature on a personal money order is that of the purchaser, since the instrument takes the form of an order to pay, and since it is drawn on a bank and payable on demand, it is within the classification of a check. [Citation.] As such, a money order does not become the obligation of a bank unless or until it is signed by a bank official or it is accepted by a bank from a named payee. [Citation.]" *Duggan v. State Bank of Antioch*, 184 Ill. App. 3d 699, 702 (1989).

"[A] money order is considered a third-party draft. Personal money orders drawn on a bank are treated as personal checks, and fulfill that purpose for those who cannot afford or who [have] little need to maintain checking accounts." 9 C.J.S. *Banks and Banking* § 491 (2009).

¶ 14 Based on the above, we conclude plaintiff did not accept defendant's late rent in the form of a personal money order, and therefore, did not waive its right to enforce defendant's breach of the lease terms. Plaintiff was in possession of the money order for four days before

filing the forcible entry and detainer action. We find plaintiff did not hold the money order for an unreasonable time and was justified in exercising its right to terminate the lease for nonpayment. As such, we affirm the trial court's entry of judgment for plaintiff.

¶ 15

III. CONCLUSION

¶ 16

For the reasons stated, we affirm the trial court's judgment.

¶ 17

Affirmed.