2017 IL App (3d) 160401-U

Order filed March 2, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

GALENA PARK TERRACE APARTMENTS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellee,	)	Peoria County, Illinois.
	)	
v.	)	Appeal No. 3-16-0401
	)	Circuit No. 15-LM-1556
JOSEPH MINNEMAN,	)	
	)	The Honorable
Defendant-Appellant.	)	Katherine Gorman,
	)	Judge Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly ruled in favor of lessor in forcible detainer action where lessor served lessee with 10-day-notice and lessee violated lease agreement by failing to keep apartment clean.

¶ 2 Plaintiff Galena Park Terrace Apartments served defendant Joseph Minneman with a 10-day-notice to quit and give up possession of his apartment. Thereafter, plaintiff filed a forcible detainer action against defendant. Following a bench trial, the trial court granted judgment in

favor of plaintiff. Defendant appeals, arguing that plaintiff failed to (1) provide him proper notice, and (2) present sufficient evidence that he violated the lease agreement. We affirm.

¶ 3 FACTS

¶ 4 On May 1, 2014, plaintiff leased an apartment to defendant in Peoria Heights. Defendant signed a lease agreement, which allowed plaintiff to terminate defendant's lease if defendant was in "material noncompliance" with the lease agreement. The agreement defined "material noncompliance" to include "repeated minor violations of this Agreement which disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project or have an adverse financial effect on the project."

¶ 5 The lease agreement included an attachment titled, "House Rules and Regulations," which was part of the lease agreement and signed by defendant. Paragraph 24 of the "House Rules and Regulations" stated in pertinent part:

> "**Housekeeping**: It is the expectation of **Galena Park Terrace** that residents will maintain their living space and apartments in the same safe, clean, and functional condition in which it was originally leased. Residents will need to clean the apartment and appliances on a regular basis and will be notified by Galena Park Terrace of any item found failing and be given a reasonable length of time to bring the item into compliance. Blocking egress access and/or creating fire code violations due to excessive clutter or unsanitary practices are not allowed within any apartment. Continued failure to keep the apartment and appliances in a clean and sanitary condition is considered a violation of the Lease Agreement."

¶ 6 Plaintiff inspected defendant's apartment three times from August 19, 2015, to September 15, 2015. Plaintiff failed each of those inspections because of poor housekeeping. The inspection report from August 19, 2015, stated that the refrigerator, kitchen sink, toilet, and bathroom sink needed to be cleaned, and the bathroom floor needed to be mopped. The report also stated that there was clutter in the hall, living room and dining area. Plaintiff notified defendant by letter that another inspection would take place on August 27, 2015.

¶ 7 The inspection report from August 27, 2015, stated that defendant's refrigerator, kitchen sink, bathroom sink, floor, toilet, and tub or shower needed to be cleaned. The report also stated that there was clutter in the kitchen near the furnace and "lots of clutter" in the hall, living room and dining area, creating a "fire hazard." Plaintiff notified defendant by letter that a third and final inspection would take place on September 15, 2015. Defendant failed that inspection.

¶ 8 In October 2015, plaintiff served defendant with a "Ten-Day Notice," notifying him that his lease was terminated and requiring him to deliver up possession of his apartment by October 31, 2015. The notice stated that it was given "for material noncompliance with the rental agreement, material failure to carry out obligations under the Lease *** and other good causes under the terms of the Lease and the Rules and Regulations as follows:

1. Repeated Failures of Decent Safe and Sanitary inspections on August 19, 2015, August 27, 2015 and September 15, 2015;
2. Activities including poor housekeeping which threaten the life safety and comforts of other residents, specifically, clutter which creates fire hazard."

The notice was signed by plaintiff's counsel.

¶ 9 On October 17, 2015, defendant sent a letter to plaintiff's counsel, referencing the "10 day Notice" that was "personally served" on him on "the evening of 10-13-15." Defendant's

letter requested a meeting with plaintiff. Plaintiff's attorney responded, notifying defendant that a grievance hearing would be held on November 4, 2015. Five days after that hearing, plaintiff's counsel sent defendant a letter stating:

> "[D]ue to the confrontational approach you took at the meeting, and your complete inability to acknowledge any type of issue whatsoever, we have determined that additional opportunities for you to comply with the minimum standards of housekeeping will not be afforded. We will be sticking with the 10 day notice you were previously served, and I will be filing suit within the next few days."

On November 18, 2015, defendant sent plaintiff's counsel a letter, requesting that plaintiff "drop the matter" and allow him to stay in the apartment.

¶ 10 On November 20, 2015, plaintiff filed a complaint for forcible detainer against defendant. Defendant filed a motion to dismiss plaintiff's complaint. The trial court struck the motion. In January 2016, defendant filed a new motion to dismiss, asserting lack of jurisdiction and failure to state a claim. The trial court denied the motion.

¶ 11 The case proceeded to a bench trial. Marilyn Jolly, plaintiff's site manager, testified that she inspects apartments yearly for cleanliness. She was present when defendant's apartment was inspected on August 19, 2015. Defendant failed that inspection. Jolly gave a copy of the inspection report to plaintiff and explained it to him. Because defendant failed his first inspection, a subsequent inspection was scheduled for August 27, 2015. Defendant was given notice of that inspection.

¶ 12 Jolly was present for the August 27, 2015 inspection, which defendant also failed. Jolly gave defendant a copy of the inspection report and talked to him about it. Defendant told her

that "he didn't have to clean his apartment, that the only thing that was required of him was that he pay his rent on time."

¶ 13 A third and final inspection took place on September 15, 2015. Defendant failed that inspection because "[h]e had done nothing *** to correct any of the issues." On the date of the third inspection, Jolly took photographs of defendant's apartment. One showed "[c]lutter, boxes full of papers, items strewn around the living room." Another photograph showed the kitchen sink and counters, which Jolly described as being "full of grease and soiled." Another photograph of the kitchen showed "items that are piled up next to the stove and are ready to fall onto the top of the stove, which is a fire hazard." A photograph of the bathroom showed mold on the tub, walls and shower curtain. The final two photographs showed clutter in the kitchen and a closet. The inspection reports and photographs were admitted into evidence.

¶ 14 Jolly testified that tenants are required to keep their apartments in a decent, safe and sanitary condition. She concluded that the clutter in defendant's apartment "definitely created a fire hazard."

¶ 15 Defendant testified that he leased an apartment from plaintiff in May 2014, and signed a lease agreement, which included the "House Rules and Regulations." He disagreed with the inspection reports and believed he had the right to organize his apartment and his belongings, including "a bunch of files," in a way that made him "comfortable." Defendant testified that the correspondence between himself and plaintiff's counsel from October to November, 2015 showed that he was trying to work with plaintiff to stay in the apartment. The letters were admitted into evidence.

¶ 16 At the conclusion of the trial, the court ruled in favor of plaintiff, finding that the condition of defendant's apartment was "in material noncompliance with the lease." The court

explained to defendant, "[A]t the end of the day all you had to do was clean up, and you chose not to." Thereafter, defendant filed several motions, including a "Motion to enter Judgment for Defendant," a "Motion for Substitution for Cause and Motoin [*sic*] for Arrest of Judgment and Motion to Stay," a "Petition for Substitution for Cause," and an untitled motion, asserting that the trial court lacked jurisdiction. The trial court denied all of defendant's motions.

¶ 17 ANALYSIS

¶ 18 I. Sufficiency of Notice

¶ 19 A forcible detainer action is a special statutory proceeding that is in derogation of the common law. *Figueroa v. Deacon*, 404 Ill. App. 3d 48, 52 (2010). Therefore, the party requesting relief must comply with the requirements of the Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101 *et seq*. (West 2014)). *Id*.

¶ 20 Section 9-210 of the Act provides in pertinent part: "When default is made in any of the terms of a lease, it is not necessary to give more than 10 days' notice to quit,*** and the same may be terminated on giving such notice to quit at any time after such default in any of the terms of such lease." 735 ILCS 5/9-210 (West 2014). The notice must (1) notify the lessee that the lessor is electing to terminate the lease because of a default by the lessee, (2) state the character of the default, (3) notify the lessee to quit and deliver up possession of the premises, and (4) be signed by the lessor or his or her agent. *Id*. "[N]o other notice or demand of possession or termination of such tenancy is necessary." *Id*.

¶ 21 Section 2-11 of the Act provides three methods of serving a notice upon a tenant: (1) personal service by delivering a copy of the notice to the tenant or a person 13 years of age or older residing on or in possession of the premises; (2) sending a copy of the notice to the tenant

by certified or registered mail, with a returned receipt; and (3) posting on the premises if no one is in the actual possession of the premises. 735 ILCS 5/9-211 (West 2014).

¶ 22 Here, plaintiff's attorney and agent signed the 10-day notice and served it on defendant. The notice informed defendant that his lease was terminated and instructed him to quit and deliver up possession of his apartment because of noncompliance with the rental agreement, specifically "repeated failures of *** inspections," and "poor housekeeping which threaten[s] the life[,] safety and comforts of other residents, specifically, clutter which creates [a] fire hazard." This notice contained all of the requirements set forth in section 9-210 of the Act. See 735 ILCS 5/9-210 (West 2014).

¶ 23 Defendant never denied receiving the notice and admitted in his October 17, 2015 letter to plaintiff's counsel that he was "personally served" with the 10-day-notice on October 13, 2015. Thus, service of the notice complied with section 9-211 of the Act. See 735 ILCS 5/9-211 (West 2014).

¶ 24 Because the evidence establishes that the 10-day notice was in the proper form and was properly served on defendant in compliance with the Act, defendant's claim of inadequate notice fails.

¶ 25 II. Sufficiency of Proof

¶ 26 In a forcible detainer action, the burden of proof is on the plaintiff to establish its right to possession of the premises against the defendant. *Preston v. Zahl*, 4 Ill. App. 423, 426 (1879). Possession of the property by the defendant is presumed to be rightful until the plaintiff shows the contrary. *Id*. When the plaintiff presents evidence that the defendant has violated one or more provisions of the lease, judgment in favor of the plaintiff is proper. See *Gaskins v. Ristich*, 339 Ill. App. 493, 495 (1950); *Hulla v. Camberis*, 222 Ill. App. 208, 211 (1921).

¶ 27 The standard of review in an action brought under the Act is whether the verdict is 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). "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary or not based on evidence." *Harper Square Housing Corp. v. Hayes*, 305 Ill. App. 3d 955, 964 (1999). As long as there is evidence to support the trial court's verdict, it should be affirmed on review. *Prairie Management Corp. v. Bell*, 289 Ill. App. 3d 746, 751 (1997).

¶ 28 Here, plaintiff presented evidence in the form of inspection reports, testimony and photographs showing that defendant failed to keep his apartment clean, as required by paragraph 24 of the "House Rules and Regulations." Those rules were part of the lease agreement, and paragraph 24 specifically states: "Continued failure to keep the apartment and appliances in a clean and sanitary condition is considered a violation of the Lease Agreement." Defendant did not dispute the condition of his apartment but testified that he should be allowed to organize his belongings in whatever way made him feel "comfortable." Based on the evidence presented, the trial court's conclusion that defendant breached the lease agreement by continually failing to keep his apartment in a clean and safe condition was not against the manifest weight of the evidence.

¶ 29 CONCLUSION

¶ 30 The judgment of the circuit court of Peoria County is affirmed.

¶ 31 Affirmed.