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2017 IL App (3d) 160706-U

Order filed September 22, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THOMAS SETLIK and RHONDA SETLIK,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Iroquois County, Illinois,
Plaintiffs-Appellees,	)	
	)	Appeal No. 3-16-0706
v.	)	Circuit No. 16-SC-182
	)	
JOHN GRAY and JENNIFER GRAY,	)	Honorable James B. Kinzer,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly ordered defendants to return $300 of plaintiffs' security deposit to plaintiffs, and properly ordered defendants to pay plaintiffs $140 in costs.

¶ 2 Following a bench trial, the trial court ordered defendants to return $300 of plaintiffs' security deposit and ordered defendants to pay plaintiffs $140 in costs. This appeal concerns the propriety of the trial court's ruling.

¶ 3 FACTS

¶ 4 On July 25, 2016, Thomas and Rhonda Setlik (plaintiffs) filed a small claims complaint requesting that John and Jennifer Gray (defendants) return plaintiffs' $600 security deposit plus costs. The record reveals that plaintiffs rented an apartment from defendants at 180 N. 4th St. #6, Clifton, Illinois 60927.

¶ 5 On August 10, 2016, the trial court conducted a bench trial. At trial, plaintiffs claimed that the apartment roof had a leak which caused mold to grow on a wall in their apartment. Plaintiffs claimed they repeatedly and unsuccessfully requested that defendants repair the leak and the mold issues for more than a year. Plaintiffs testified that in May 2016 they informed defendants that plaintiffs would be vacating the premises in June 2016. Plaintiffs moved out of the apartment in mid-June 2016. Plaintiffs did not believe written notice of their intent to vacate was required because they did not have a written lease with defendants.

¶ 6 Defendants claimed they were contacted by phone on January 5, 2015, regarding the moisture problem in the apartment. Defendant John Gray went to the apartment and informed plaintiffs that if they turned the exhaust fan on when someone was showering the problem would be corrected. Further, defendants claimed they had an oral month-to-month lease with plaintiffs, and because plaintiffs had not given written notice of their plans to vacate the premises until June 9, 2016, plaintiffs were responsible for paying rent through July 31, 2016, because defendants were unable to secure new tenants until August 1, 2016.

¶ 7 After hearing the parties' contentions, the trial court ruled that plaintiffs would only be responsible for rent through the end of June 2016 in the amount of $300. Further, the trial court ordered defendants to return $300 of plaintiffs' security deposit and to pay plaintiffs' costs of $140.

¶ 8 On September 8, 2016, defendants filed a motion to reconsider. Defendants' motion to reconsider cited *Hoefler v. Erickson*, 331 Ill. App. 577 (1947) for the proposition that plaintiffs failed to establish they provided defendants with 30 days' written notice before vacating the apartment. Therefore, defendants argued the trial court should have ordered plaintiffs to pay a full month's rent for June and July 2016. On October 11, 2016, the trial judge denied defendants' motion to reconsider and stated that he considered the case a matter of constructive eviction. Defendants filed a timely notice of appeal on November 10, 2016.

¶ 9 ANALYSIS

¶ 10 On appeal, defendants argue the trial court erred by ordering defendants to return part of the security deposit and pay plaintiffs' costs. Defendants argue it was improper for the trial judge to consider this case a matter of constructive eviction because the evidence did not establish that plaintiffs ever gave defendants an opportunity to repair the roof leak. Further, defendants assert that the evidence did not support the court's determination that defendants received sufficient notice of plaintiffs' intent to terminate the month-to-month rental agreement. Plaintiffs have not submitted a brief to this court. However, because the record is simple and the stated errors are clear and readily decidable, a court of review may properly decide the merits of the appeal without the aid of appellees' brief. *Lynn v. Brown*, 2017 IL App (3d) 160070, ¶ 7.

¶ 11 During a bench trial, the trial judge is in the best position to make factual findings and credibility determinations. *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 39. As such, where the parties' testimony during a bench trial is conflicting, the trial court's findings shall not be disturbed unless they are against the manifest weight of the evidence. *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995). A trial court's judgment

is against the manifest weight of the evidence only "if the opposite conclusion is apparent or if the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Id*.

¶ 12 The trial court's approach to the trial on the merits was entirely consistent with the relaxed standards approved by Rule 286(b). Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992). Based on these relaxed standards, we are convinced the trial court properly considered all the evidence presented by both sides. During the bench trial, plaintiffs claimed they unsuccessfully requested that the defendants repair the dwelling to resolve the mold issue for more than a year. Plaintiffs also informed the trial court that they gave defendants notice of their intent to vacate the premises in May 2016. The trial judge, as the finder of fact, is free to accept or reject plaintiffs' or defendants' version of events as evidence. In this case, it is clear that the trial court believed that plaintiffs gave defendants proper notice of the leak, and gave proper notice to defendants in May 2016, 30 days before they vacated the premises.

¶ 13 Based on this limited record and the limited evidence presented at the bench trial, we cannot say that the court's ruling was arbitrary or unreasonable in any way. In fact, the court's ruling strikes this court as entirely reasonable and fair based on the circumstances. Therefore, we affirm the trial court's judgment ordering defendants to return $300 of plaintiffs' security deposit and to pay plaintiffs' costs of $140.

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of Iroquois County is affirmed.

¶ 16 Affirmed.