2018 IL App (1st) 172361-U

THIRD DIVISION
June 6, 2018

No. 1-17-2361

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

REZA KANANI and LEILA KANANI, Plaintiffs-Appellants, v. RYAN K. HARDING, KIMBERLY A. HARDING, a/k/a KIMBERLY A. CHASE-HARDING, an individual, and KCH, L.L.C., Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 15 M1 125009 The Honorable Daniel Patrick Duffy, Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Cobbs and Justice Lavin concurred in the judgment.

ORDER

HELD: Trial court properly dismissed the counts in plaintiffs' first amended complaint for failure to maintain and breach of implied warranty of habitability where plaintiffs failed to allege all the required elements of those causes of action.

¶ 1 Following the filing of plaintiffs-appellants Reza Kanani and Leila Kanani's (plaintiffs) amended complaint, defendants-appellees Ryan K. Harding, Kimberly A. Harding, a/k/a

Kimberly A. Chase-Harding, and KCH, L.L.C. (defendants or as named) filed a motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). The trial court granted defendants' motion without prejudice, giving plaintiffs a chance to replead. Later, after the parties reached partial settlement, plaintiffs chose not to amend their complaint and, instead, stood on their pleadings, and the remainder of their cause was dismissed with prejudice. They now appeal, contending that the trial court erred in dismissing their claims. They ask that we reverse the trial court's dismissal and remand this cause for further proceedings. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 In July 2015, plaintiffs entered into a lease agreement with defendant KCH, L.L.C. to rent a three-bedroom, two bathroom condominium unit and garage space at 4734-4736 South Drexel in Chicago. Ryan Harding and Kimberly Harding owned the unit, but KCH, L.L.C., a member-managed limited liability company with Kimberly Harding as its sole managing member, was the unit's lessor. Pursuant to the lease agreement, plaintiffs took possession of the unit on July 20, 2015; rent was set at $2,250 per month and plaintiffs paid $15,750 in advance, representing seven months' rent.

¶ 4 On September 20, 2015, after two months, plaintiffs moved out. Defendants returned $11,250 of their advanced rent payment, and retained $4,500 for the two months plaintiffs occupied the unit.

¶ 5 In October 2015, plaintiffs brought suit against defendants, alleging violations of Chicago's Residential Landlord and Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-

010 *et seq*.) and breach of the implied warranty of habitability. In paragraphs 9-33 of their complaint, entitled "General Allegations Common to All Counts," plaintiffs averred that the property contained "several unsafe, unsanitary, and uninhabitable conditions, including but not limited to" mold in the kitchen and a bedroom; broken glass and window screens; a broken oven, air conditioner, refrigerator, master bedroom faucet and whirlpool tub; leaky windows and insulation; and furniture and debris belonging to defendants making the garage useless for parking. Count I of their complaint, which realleged "paragraphs 1-28," asserted violations of sections 5-12-070 and 5-12-110(a) of the RLTO for failure to maintain due to the aforementioned conditions, and sought damages equal to the difference in value between the value of the unit had it conformed to the RLTO and its actual value with the defects, plus some $2,600 in expenses for both moving into and out of the unit. Count II, which realleged "paragraphs 1-37," asserted violations of sections 5-12-070 and 5-12-110(b) of the RLTO for failure to deliver possession, claiming that defendants' personal property occupied the garage space. And, Count III, which realleged "paragraphs 1-44," asserted breach of warranty of habitability for defendants' "failure to correct the defective, unsafe, unsanitary, and uninhabitable conditions."

¶ 6 Defendants filed a section 2-615 motion to dismiss plaintiffs' complaint, and the trial court granted it. In its May 10, 2016 order, the trial court analyzed each count and found that none of them sufficiently stated a claim. As to Count I, the court cited *Faison v. RTFX, Inc.*, 2014 IL App (1st) 121893, finding it to be "indistinguishable" from the instant cause. The court explained that the elements of a failure to maintain claim require plaintiffs to allege that they provided defendants with notice and a reasonable opportunity to correct the alleged deficiencies;

because there were "no allegations concerning notice and opportunity to remedy the defects," this count could not stand. The trial court repeated the same explanation as to Count III, stating it "suffers from the same deficiencies as Count I." And, as to Count II, the trial court noted that "more specificity with regard to the nature of the notice and refus[al] to remove the personal property needs to be alleged." Therefore, the trial court dismissed each of the three counts, but it did so without prejudice and allowed plaintiffs time to file an amended complaint.

¶ 7 Plaintiffs filed a first amended complaint in June 2016, repleading each of their original three counts. They again began with a section entitled "General Allegations Common to All Counts," this time including more detail, particularly about the situation involving the garage. With respect to their Count I, failure to maintain, they "reallege[d]" these general allegations, but then retained the same few paragraphs as Count I of their original complaint along with an erroneous citation to the general allegations. The same was true with respect to Count III, breach of warranty of habitability. With respect to Count II, plaintiffs again retained the same paragraphs as Count II of their original complaint, but included quotations from various emails they sent to defendants regarding the lack of promised parking.

¶ 8 Defendants filed a second motion to dismiss pursuant to section 2-615. On January 30, 2017, the trial court granted it in part and denied it in part. First, with respect to Count I, the court noted the five elements which must be necessarily pled under the RLTO to sustain a claim for failure to maintain: a defect encompassed by the ordinance, the date the defect existed, provision of notice of the defect to the landlord, a reasonable opportunity for the landlord to remedy the defect, and the landlord's failure to correct the defect. Again relying on *Faison* and

focusing on the notice requirement, the court found that, even on repleading, plaintiffs only alleged that they " 'complained' " about various defects, which did not meet the notice requirement. Additionally, the court noted that plaintiffs failed to specifically allege that the landlord was given the opportunity to correct the defects and failed to specifically allege that the defects persisted following this opportunity. Moreover, the court concluded that plaintiffs again simply alleged defective and unsafe conditions and defendants' failure to correct them in only a "wholly general fashion," which was improper, also noting their incorrect references to paragraphs of their original complaint, which were not incorporated therein. Therefore, the court dismissed Count I of the first amended complaint, but did so without prejudice and instructed plaintiffs that they must provide specific facts based on knowledge and information in a subsequent pleading.

¶ 9 Next, with respect to Count II, failure to deliver possession of the garage, the trial court denied defendants' motion to dismiss. While noting that they retained the same basic allegation of their original Count II, the court pointed out that plaintiffs actually added detail in their amended Count II, particularly by way of quotations from email exchanges they had with defendants regarding the garage. These exchanges alleged that plaintiffs informed defendants of their particular concerns, identified that a desk and two table tops stored by defendants were blocking their parking space, demonstrated multiple and documented complaints, and identified defendants' failure to respond to these or remedy the situation. Because these allegations were specifically, and therefore sufficiently, pled, the issue now became one of wilfulness, which the court concluded was a question of fact. Thus, the court refused to dismiss Count II and instead

allowed it to proceed.

¶ 10 With respect to Count III, plaintiffs' attempt to replead breach of warranty of habitability, the court noted that this common law claim required allegations of notice of the deficiency provided to defendants, a reasonable time to correct the deficiency, and defendants' failure to correct it. Citing the same concerns as it had with Count I, the court found that plaintiffs' allegations in their amended complaint "lack any averment that [defendants] were provided a reasonable time to correct the alleged defects, or that the defects persisted following the opportunity to correct." Additionally, the court noted that many of the alleged defects in plaintiffs' "General Allegations" section of the amended complaint, such as lack of parking and a broken whirlpool tub, did not affect habitability.

¶ 11 Accordingly, the court concluded its order by granting defendants' motion to dismiss as to Counts I and III but denying defendants' motion to dismiss as to Count II. The court specified that it was dismissing Counts I and III without prejudice and giving plaintiffs time to replead them.[1]

¶ 12 As the cause proceeded, plaintiffs declined to replead Counts I and III of their first amended complaint and chose instead to stand on their last pleading. With respect to Count II, the parties eventually settled that matter. On September 6, 2017, the trial court entered an order dismissing that portion of the cause with prejudice and rendering the matter final and

[1]Also, the court dismissed defendants Ryan and Kimberly individually from Count III with prejudice, since they were not signatories to the lease.

appealable.[2]

¶ 13 ANALYSIS

¶ 14 On appeal, plaintiffs contend that the trial court erred in dismissing their claim for damages under the RLTO as found in Count I of their first amended complaint alleging failure to maintain, and that it erred in dismissing their claim for breach of the implied warranty of habitability as found in Count III of their first amended complaint. They insist that the trial court misread their amended complaint to not consider their general allegations as incorporated within these counts and, therefore, improperly concluded that these pleadings were insufficient. They also insist that any remaining elements required to be pled, such as affording defendants time to remediate the defects, giving them access to the unit and the persistence of the defects thereafter, could naturally be inferred from the contents of their complaint. We disagree.

¶ 15 As a threshold matter, defendants challenge our jurisdiction over the instant cause. They assert that plaintiffs' notice of appeal mentions only the May 10, 2016 trial court order which dismissed their entire original complaint without prejudice, and the January 30, 2017 trial court order which dismissed Counts I and III of their first amended complaint without prejudice. Defendants claim that because neither of these was final and appealable, this appeal cannot stand. Additionally, defendants note that plaintiffs fail to refer to or include the September 6, 2017 trial court order[3] in their notice of appeal and now inappropriately cite it for the first time in their appellate brief contending that it made the prior dismissals of Counts I and III final and

[2]Accordingly, Count II (failure to deliver possession) is not part of the instant appeal.

[3]Defendants mistakenly refer to this as "the January 6, 2017 order."

appealable.

¶ 16 Certainly, defendants are correct that an appeal may only be taken from a final, appealable order. See *Branch v. European Autohaus, Ltd.*, 97 Ill. App. 3d 949, 951 (1981). And, a notice of appeal must specify the judgment or part thereof or other orders appealed from, as well as the relief sought from the reviewing court; if the notice does not do so, a reviewing court lacks jurisdiction to entertain the appeal. See 210 Ill. 2d R. 303(b)(2). However, the appealability of an order is determined by its substance rather than its form, and where a complaint's dismissal is due to its insufficiency to state a cause of action as a matter of law, it is final an appealable by its very nature. See *Boonstra v. City of Chicago*, 214 Ill. App. 3d 379, 385 (1991); accord *Branch*, 97 Ill. App. 3d at 951. Moreover, although a notice of appeal is jurisdictional, it is also well established that it is to be considered as a whole and construed liberally. See *Lang v. Consumers Insurance Service, Inc.*, 222 Ill. App. 3d 226, 229 (1991). Accordingly, when it fairly and adequately sets out the judgment complained of and the relief sought, thereby advising the successful party of the nature of the appeal, the notice will be deemed sufficient to confer jurisdiction on the reviewing court. See *JP Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶ 24; see also *People v. Patrick*, 2011 IL 111666, ¶ 20, and *People v. Smith*, 228 Ill. 2d 95, 105 (2008) (the purpose of the notice is to inform the prevailing party in the trial court that the other party seeks review of the judgment; thus, the question becomes, does the notice provided do so). Where the deficiency in the notice is one of form rather than substance, and there is no prejudice to the appellee, the failure to comply strictly with the form of notice is not fatal to the appeal. See *JP Morgan*, 2015 IL App

(1st) 140428, ¶ 24, citing *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011).

¶ 17 The notice of appeal in the instant cause states that plaintiffs seek appeal from "the dismissal of Counts I, II and III of Plaintiffs' Complaint in favor of Defendants on May 10, 2016 and Counts I & III of Plaintiffs' First Amended Complaint in favor of Defendants on January 30, 2017." It asks for reversal of these dismissals and attaches the trial court's orders as exhibits. Technically, it does not mention the September 6, 2017 order entered by the trial court, which dismissed Count II (possession of the garage) by agreement of the parties with prejudice and saw the trial court check the box on its trial call order sheet which states that the order is final and appealable.

¶ 18 Yet, under the circumstances presented, we find that our jurisdiction is maintained here, for various reasons. See *Branch*, 97 Ill. App. 3d at 951 (appellate court may determine propriety of its jurisdiction *sua sponte*). Construing the matter liberally and as a whole, it is clear that not only were defendants informed that plaintiffs were seeking review of the judgments entered, but they also knew exactly the nature of plaintiffs' appeal. That is, the court's May 10, 2016 order dismissed all three of plaintiffs' counts for failure to state a cause of action. But, it did so with leave to replead. Thus, this order was not final and appealable and, perhaps, should not have been mentioned in the notice of appeal. See *Branch*, 97 Ill. App. 3d at 952 (order dismissing complaint with right to replead is not final and appealable). Likewise, the court's January 30, 2017 order dismissed Counts I and III again for failure to state a cause of action, but again with leave to replead, making that portion not final or appealable. At the same time, however, that order allowed Count II to proceed, thereby making that portion final and appealable.

¶ 19 Then, as the cause progressed, plaintiffs chose to stand on their pleadings for Counts I and III and not replead them. Additionally, they settled Count II with defendants. Thus, by the time the September 6, 2017 order was entered dismissing Count II due to the settlement, there now was nothing outstanding; the matter was, as the order indicates, final and appealable. Plaintiffs waited to file their notice of appeal until after that order was entered. That plaintiffs did not refer to that order is, in form, perhaps incorrect, but materially, of no consequence in this particular case. Substantively, they were not appealing anything directly from the September 6, 2017 order, which dealt only with the settlement and dismissal with prejudice of Count II. With that count dismissed with prejudice, and with plaintiffs having already informed defendants and the court that they were choosing to stand on their pleadings (and not repleading or amending) with respect to Counts I and III, the matter could be finally declared appealable, which the trial court did. See, *e.g.*, *Branch*, 97 Ill. App. 3d at 952 (dismissal with no request for leave to amend is final, appealable order).

¶ 20 Fundamentally, while plaintiffs' notice of appeal may not be perfect, any deficiency here is merely one of form. With Count II settled, and with plaintiffs having previously informed defendants and the court that they were choosing to stand on their pleadings for Counts I and III, defendants obviously knew that the appeal plaintiffs undertook had to be from the trial court's dismissal of those latter counts, which had been declared insufficient. When they chose not to replead them, they became final. Again, plaintiffs perhaps should have referred to the September 6, 2017 order in their notice, but they technically were not appealing anything therein. Ultimately, any deficiency in the notice of appeal, under these particular circumstances, simply

cannot be claimed to be substantive. There was no prejudice to defendants and, thus, we find that jurisdiction in our Court stands.

¶ 21 Turning to the merits of the instant cause, this is, however, where our agreement with plaintiffs ends, as their claims on appeal are baseless.

¶ 22 Where, as here, a complaint is dismissed pursuant to section 2-615, we examine whether its allegations, construed in the light most favorable to the plaintiff and taking all well-pled facts and reasonable inferences therefrom as true, are sufficient to establish a cause of action upon which relief may be granted. See *In re Estate of Powell*, 2014 IL 115997, ¶ 12; *Bunting v. Progressive Corp.*, 348 Ill. App. 3d 575, 580 (2004). A plaintiff's conclusions of law and factual conclusions that are not supported by allegations of specific facts will not be considered as supportive of her cause of action. See *Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (2007) ; accord *Provenzale v. Forister*, 318 Ill. App. 3d 869, 878 (2001); see also *Powell*, 2014 IL 115997, ¶ 12 ("a court cannot accept as true mere conclusions unsupported by specific facts"). Illinois is a fact-pleading jurisdiction. See *Purmal v. Robert N. Wadington and Associates*, 354 Ill. App. 3d 715, 720 (2004) (Illinois requires a plaintiff to present a legally and factually sufficient complaint, alleging sufficient facts to state all the elements of the cause of action she raises). Therefore, although the plaintiff need not set forth evidence in the complaint, she must allege facts, and not mere conclusions, sufficient to bring a claim within a legally recognized cause of action. See *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006).

¶ 23 In the absence of ultimate facts supporting a cause of action, the general factual allegations in a complaint are mere conclusions and are insufficient to state a cause of action.

See *Powell*, 2014 IL 115997, ¶ 12 (dismissal is proper where no set of facts, as apparent from the pleadings, can be proven that would entitle the plaintiff to recover); *Pecoraro v. Balkonis*, 383 Ill. App. 3d 1028, 1033 (2008); see also *Visvardis*, 375 Ill. App. 3d at 724 (to survive dismissal, complaint must allege facts that set out all essential elements of cause of action). Conclusory allegations of fact or law are not admitted pursuant to section 2-615 and, after deleting these, if there are not sufficient facts alleged to support the claim, the pleading is properly stricken. See *Shaker & Associates, Inc. v. Medical Technologies Group, Ltd.*, 315 Ill. App. 3d 126, 133-34 (2000). We review the trial court's decision on a section 2-615 motion to dismiss *de novo*. See *Powell*, 2014 IL 115997, ¶ 12 (appeal from dismissals pursuant to section 2-615 is reviewed *de novo*).

¶ 24 The trial court here did not err in dismissing Counts I and III.

¶ 25 I. Count I: Failure to Maintain

¶ 26 In Count I of their first amended complaint, plaintiffs claimed defendants violated sections 5-12-070 and 5-12-110 of the RLTO by failing to maintain the property and properly correct defects. Section 5-12-070 requires a landlord to "maintain the premises in compliance with all applicable provisions of the municipal code and *** promptly make any and all repairs necessary to fulfill this obligation." Chicago Municipal Code § 5-12-070 (amended Nov. 6, 1991). Section 5-12-110 provides that "material noncompliance" with section 5-12-070 includes a virtual laundry list of items, such as the failure to maintain a toilet, hot water, appliances, adequate lighting, sound flooring, windows and screens, as well as the more catch-all provision of the "[f]ailure to maintain the dwelling unit and common areas in a fit and habitable condition."

Chicago Municipal Code § 5-12-110 (amended Nov. 6, 1991). To state a cause of action for failure to maintain under sections 5-12-070 and 5-12-110 of the RLTO, a plaintiff must plead a defect named in the RLTO, the date the defect existed, notice given to the landlord of the defect, a reasonable opportunity for the landlord to remedy the defect, and the landlord's failure to correct the defect. See, *e.g.*, *Faison*, 2014 IL App (1st) 121893, ¶ 89.

¶ 27 In their first amended complaint, plaintiffs here provided a section entitled "General Allegations Common to All Counts," with these paragraphs numbered 9-56. Therein, they made several allegations concerning items they found to be defective within the unit, and how and when they informed defendants about them. For example, they alleged that in a July 31, 2015 email, they told defendants that the kitchen sink was rusty and needed to be cleaned, and that the air conditioning was not working correctly. They next alleged that in an August 2, 2015 email, they told defendants that the kitchen sink was still dirty, that the toilet in the powder room was not working, that a faucet knob in the master bedroom was broken leaving inaccessibility to hot water there, that the microwave was broken, that some light bulbs were missing or burnt out and that there was no garbage disposal in the unit. Following this, plaintiffs alleged that in an August 4, 2015 email, they informed defendants of a torn screen and broken window by the porch, and in an August 6, 2015 email, they informed them that the whirlpool tub was not working and the shades in the kitchen were broken. Plaintiffs further alleged that in an August 19, 2015 email, they told defendants that they smelled gas in the unit and someone from the gas company told them to have the landlord check the dryer; they also reported that the oven was not heating up as fast as they liked and that there were broken tiles on master bathroom floor. And, plaintiffs

alleged that they informed defendants in an August 31, 2015 email that the refrigerator was broken; plaintiffs admitted that defendants sent a serviceman the next day, a leak and mold were discovered, and defendants replaced the refrigerator about ten days later.

¶ 28 In their actual Count I for failure to maintain, plaintiffs "restate[d] and re-allege[d] paragraphs 1-53" of these "General Allegations" and proceeded to provide, in full, a recitation of Section 5-12-110 of the RLTO. Then, they stated that throughout the duration of their tenancy, the "property contained a number of latent, hazardous, defective, unsafe, unsanitary, and uninhabitable conditions, including but not limited to those aforementioned in subsections (a)-(j) of paragraph 14 of the General Allegations section," and that as a result of "[d]efendants' failure to properly correct the defective, unsafe, unsanitary, and uninhabitable conditions," plaintiffs suffered damages because they paid more rent than the unit was worth. After stating that they were entitled to damages in the amount equal to the difference in value between the value of the property had it conformed to the RLTO and the value of the property as it was, they asked for additional damages for their moving expenses.

¶ 29 Upon our review, Count I, as alleged by plaintiffs in their amended complaint, is clearly deficient. First, we must note that, within their Count I, plaintiffs made an erroneous citation to "latent, hazardous, defective, unsafe, unsanitary, and uninhabitable conditions, including but not limited to those aforementioned in subsections (a)-(j) of paragraph 14 of the General Allegations section." This is not at all contained in their first amended complaint. Rather, as the record shows, only their original complaint contained a paragraph 14 with subsections (a)-(j). Yet, their original complaint was superseded by their first amended complaint, which never mentioned the

original complaint. Thus, this portion of Count I of their first amended complaint, wherein plaintiffs attempt to specify the "latent, hazardous, defective, unsafe, unsanitary, and uninhabitable conditions" on which they hang their entire claim for the failure to maintain cannot even be considered. See *Stemm v. Rupel*, 30 Ill. App. 3d 864, 867 (1975) (when amended complaint does not mention, refer to or adopt original, original is superseded and can no longer be considered); accord *Cipolla v. Bloom Tp. High School Dist. No. 206*, 69 Ill. App. 3d 434, 438 (1979) (where the plaintiff files an amended complaint, she cannot rely on allegations of original complaint, and her claims can no longer be aided by the allegations in that prior pleading because those have now been superseded).

¶ 30 Further, and more critical here, is that, even considering the "General Allegations" section plaintiffs incorporated into their amended Count I, plaintiffs did not set forth any facts supporting their allegations regarding the "latent, hazardous, defective, unsafe, unsanitary, and uninhabitable conditions." It is true that, as opposed to their original complaint, plaintiffs provided somewhat more specificity in their first amended complaint, at least in this "General Allegations" section (if not in the actual Count I), with respect to when they informed defendants of the defects. Even the trial court acknowledged this. But that is all plaintiffs did, and all this amounts to is merely general, conclusory allegations that these defects existed at some point during their two-month tenancy. That is, while plaintiffs specify where and when the defects existed and when they notified defendants of them, they did not allege that they provided defendants with access to the unit to remedy them, that they gave defendants a reasonable time within which to correct them, or if the defects persisted after such a reasonable time. Thus, even

were we to accept as true all of plaintiffs' allegations of defective conditions and notice to defendants,[4] they failed to set forth any facts to support the other elements necessary for a claim for failure to maintain, namely, having given access to defendants to fix, a reasonable time in which to do so, and the conditions' persistence. Without these, their allegations are general and conclusory and are ultimately insufficient to support a cause of action for failure to maintain.

¶ 31 On appeal, plaintiffs fervently insist that any missing elements of their failure to maintain claim which they may not have specifically plead in Count I of their first amended complaint can, and should, be "inferred" from their pleadings. This is legally incorrect and completely inappropriate. We have already discussed that Illinois is a fact-pleading jurisdiction pursuant to which, in order for a complaint to be deemed legally and factually sufficient and able to survive a motion to dismiss a plaintiff is required to specifically allege therein sufficient facts to support *all* the elements of the cause of action. See *Purmal*, 354 Ill. App. 3d at 720. Simply put, a plaintiff must allege in her complaint facts that set out all the essential elements of the cause of action, not just some of them. See *Visvardis*, 375 Ill. App. 3d at 724. As much as we cannot

[4]In their brief on appeal, defendants additionally argue that the defects cited by plaintiffs are not covered by section 5-12-110 of the RLTO. For example, they point out that the cleaning of a kitchen sink, one of several toilets not working, a broken knob of one faucet, an oven that takes a little longer to heat up, the desire for a garbage disposal where one never existed and a nonfunctioning whirlpool tub are not contemplated by the ordinance, which focuses on conditions such as rodent infestation, a complete lack of hot water, the failure to install fire alarms, etc. We understand defendants' argument, recognize its merits, and even discuss it briefly with respect to Count III below. However, because we have chosen to focus on the content of plaintiffs' allegations in their complaint, and have found that they clearly fall short of sustaining a cause of action for failure to maintain, we need not address their argument at this time. See *Faison*, 2014 IL App (1st) 121893, ¶ 26 (we may affirm grant of motion to dismiss on any ground in record).

accept conclusions as true, valid allegations, we cannot make inferences to fill in the gaps of a plaintiff's pleadings and most certainly not those that go to the very elements of the cause of action. See *Shaker*, 315 Ill. App. 3d at 133-34. Accordingly, and despite plaintiffs' attempts to gloss over these legal axioms, we will not do so here.

¶ 32 Ultimately, the situation is plain. Plaintiffs moved into the unit after inspecting it and prepaid seven months' rent. Approximately two weeks later, they began informing defendants via email of items with which they were not happy, items that, in our view, are far from those contemplated by the RLTO which render a residence uninhabitable. Regardless, however, that is literally all we know of the situation. Plaintiffs never alleged, with factual support of any kind, whether they allowed defendants access to the unit to remediate the deficiencies of which they complained, whether they provided defendants with a reasonable amount of time to do so, and whether the conditions persisted thereafter. They moved out of the unit only two months (to the day) after they took possession, whereupon defendants promptly returned to them all their prepaid rent except that which exactly covered the two months of their residency. With respect to their cause of action for failure to maintain, what plaintiffs asserted in their first amended complaint, though more factually specific than their original complaint, was still too general and, thus, insufficient to withstand a motion to dismiss.[5] Accordingly, as the allegations could not state a cause of action for violation of sections 5-12-070 and 5-12-110 of the RLTO, *i.e.*, failure

[5]Incidentally, in its dismissal order, the trial court afforded plaintiffs the opportunity to replead their Count I and even "cautioned" them to "be both specific and *** well grounded in fact" in their next attempt. Plaintiffs, however, chose to stand on their first amended complaint and not replead Count I, as the trial court had urged them.

to maintain, the trial court properly dismissed Count I of plaintiffs' first amended complaint.

¶ 33 II. Count III: Breach of Implied Warranty of Habitability

¶ 34 The trial court also properly dismissed Count III of plaintiffs' first amended complaint, for similar reasons.

¶ 35 In that count, plaintiffs claimed defendants breached the implied warranty of habitability. The implied warranty of habitability requires that a dwelling be fit for its intended use, namely, that "it should be habitable and fit for living" and remain that way throughout the term of the lease. *Glasoe v. Trinkle*, 107 Ill. 2d 1, 13 (1985) (there must be no latent defects in those facilities vital to the use of the dwelling and to the life, health and safety of the occupant). To constitute a breach of the implied warranty of habitability, a defect "must be of such a substantial nature as to render the premises unsafe or unsanitary, and thus unfit for occupancy." *Glasoe*, 107 Ill. 2d at 13. A landlord is not required to insure that the dwelling is perfect or in an aesthetically pleasing condition. See *Glasoe*, 107 Ill. 2d at 13. Thus, not every defect or inconvenience will be deemed to constitute a breach of the implied warranty of habitability. See *Glasoe*, 107 Ill. 2d at 13-14. Rather, the defect must be such that it truly renders the dwelling uninhabitable in the eyes of a reasonable person. See *Glasoe*, 107 Ill. 2d at 14. In determining whether there has been a breach of the implied warranty, courts are to considered various factors, including the nature of the defect, its effect on habitability for the length of time for which it persisted, the age of the dwelling, the amount of rent, the dwelling's location, whether the tenant waived the defect, and whether the defect resulted from abnormal or unusual use by the tenant. See *Glasoe*, 107 Ill. 2d at 14. Additionally, and critical to the instant cause, "there, of course, must be notice of the

alleged defects given by the tenant to the landlord and the landlord must have had a reasonable time within which to correct the alleged deficiencies." *Glasoe*, 107 Ill. 2d at 14.

¶ 36 In Count III of their first amended complaint, plaintiffs "restate[d] and re-allege[d]" the "General Allegations" section, just as they did in Count I.[6] The remainder of Count III then states only that as a result of defendants' failure to correct the defects, plaintiffs suffered damages, that they are entitled to damages in an amount equal to the difference in market value of the unit in the condition in which it was delivered and its market value had it been without defect, and that they incurred other actual damages.

¶ 37 Just as with their count for failure to maintain, Count III of plaintiffs' first amended complaint presents nothing more than general factual allegations amounting to mere conclusions, which are insufficient to state a cause of action for breach of implied warranty of habitability. Again, to overcome a motion to dismiss, such a cause must, at the very least, have alleged that plaintiffs gave notice of the defects they cite to defendants, and that defendants had a reasonable time within which to correct them. As with Count I, plaintiffs fail to allege anything with respect to these elements of the cause of action, along with any averment that defendants failed to correct the defects or that the defects persisted following an opportunity to correct. And, as with Count I, these are elements of the cause of action that, again, must be pled and cannot simply be inferred from the pleadings.

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[6]Interestingly, they only realleged "paragraphs 1-44" of their first amended complaint, which does not encompass all the allegations in their "General Allegations" section which was paragraphs 9-56. And, ironically, for the record, those paragraphs not included are those asserting mold issues, even though plaintiffs allege actual damages for mold infestation in this count of their first amended complaint.

¶ 38 Moreover, we have already pointed out that not every defect will be considered a breach of the implied warranty of habitability. Much of what plaintiffs allege in their "General Allegations" section, fails to set forth facts demonstrating that the alleged uninhabitable conditions were of such a substantial nature as to render the premises unsafe or unsanitary and, thus, unfit for occupancy. To the contrary, in our view, a great many of them are nothing more than complaints of inconveniences that rendered the unit unpleasing. For example, plaintiffs complain of the lack of a garbage disposal when the unit never had one, a broken whirlpool tub in the master bathroom, as well as a nonfunctioning powder room toilet, a dirty kitchen sink, some missing lightbulbs, and an oven that does not heat up as fast as they would like. No unit is perfect, and these conditions, even when taken together, can hardly be considered unfit for living.

Ultimately, while the first amended complaint alleges that plaintiffs gave defendants notice of the cited defects, mainly via email, we simply do not know whether plaintiffs gave defendants a chance to remediate them or whether the defects persisted and for how long. Without such allegations, and without specific facts supporting such allegations, a claim for breach of implied warranty of habitability cannot stand.

¶ 39 Support for our conclusion that both Counts I and III of plaintiffs' first amended complaint were properly dismissed clearly lies in *Faison*, upon which the trial court relied and which we, too, find to be directly on point here, both factually and legally. In that case, a tenant who, incidentally, was represented by the same attorney representing plaintiffs herein, brought suit against her landlord. Two of the six counts in her amended complaint alleged, quite similar to the instant cause, failure to maintain and breach of warranty of habitability. In the former, she

alleged that the landlord violated sections 5-12-070 and 5-12-110 of the RLTO by failing to correct defective, unsafe, unsanitary and uninhabitable conditions including noninsulated windows, no window screens, no smoke or carbon monoxide detectors, moldy wood, peeling plaster and floor tiles, rodent infestation, faulty wiring, broken appliances and cracked walls. See *Faison*, 2014 IL App (1st) 121893, ¶ 10. She asserted she was entitled to damages equal to the difference in the value of the property had it conformed to the RLTO and the value of the nonconforming property. See *Faison*, 2014 IL App (1st) 121893, ¶ 10. In the latter count, she alleged that the landlord's failure to correct the conditions violated the implied warranty of habitability and, again, that she was entitled to market value damages. See *Faison*, 2014 IL App (1st) 121893, ¶ 11. The landlord moved to dismiss pursuant to section 2-615 of the Code. With respect to these counts, it pointed out that the tenant failed to allege that she had allowed the landlord access to make any repairs, while plaintiff responded that her claims should proceed because she had pled numerous uninhabitable conditions. See *Faison*, 2014 IL App (1st) 121893, ¶¶ 16, 19. The trial court agreed with the landlord and dismissed these counts, but granted the tenant leave to amend them; yet, the tenant chose not to do so. See *Faison*, 2014 IL App (1st) 121893, ¶ 24.

¶ 40 On appeal, the tenant in *Faison*, just as plaintiffs herein, argued that the trial court erred in dismissing these counts of her complaint. We, however, affirmed. After discussing the requirements of a sufficient complaint in our fact-pleading jurisdiction, as well as our abhorrence of conclusory facts and general allegations, our Court concluded that the trial court had properly granted the landlord's motion to dismiss these two counts. See *Faison*, 2014 IL App (1st)

121893, ¶¶ 87-88. This was because the tenant's amended complaint made merely general, conclusory allegations that numerous defective conditions existed during her tenancy. See *Faison*, 2014 IL App (1st) 121893, ¶ 89. She never specified where or when they existed and, most critically, failed to allege that she provided the landlord access to the unit to remedy them. See *Faison*, 2014 IL App (1st) 121893, ¶ 89. Citing the elements of these causes of action requiring a tenant to give the landlord both notice of the alleged defects and a reasonable time within which to correct them, and acknowledging that plaintiff was given the opportunity to amend to sufficiently allege these elements but chose not to do so, we held that these counts of her complaint could not stand. See *Faison*, 2014 IL App (1st) 121893, ¶ 89.

¶ 41 Despite the striking similarities (as well as the involvement of their very attorney), plaintiffs herein insist that *Faison* is distinguishable from the instant cause. After pointing out some irrelevant facts, such as the length of that tenant's tenancy and the fact that she additionally asserted a class action claim against the landlord, plaintiffs insist that her complaint "merely alleged" that unsafe defects existed throughout her tenancy without stating where, when or whether she gave the landlord time to correct them, whereas all those considerations could easily be inferred from their pleadings. Plaintiffs' attempt at contrast here clearly misses the mark and fails miserably. The crux of the pleading error the plaintiff in *Faison* committed is exactly the same as that committed by plaintiffs here they failed to properly and sufficiently allege, with any factual basis, all the elements of the causes of action for failure to maintain and breach of implied warranty of habitability, specifically, whether they gave defendants access to remedy the defects, whether they gave defendants a reasonable time within which to do so, and whether the defects

persisted thereafter. There is no difference between the two situations. Just as the amended complaint in *Faison* (which that plaintiff chose not to amend even though she received leave of the trial court to do) was insufficient for failing to allege and support all the required elements of the claims for failure to maintain and breach of implied warranty, the amended complaint here (which plaintiffs chose not to amend even though they received leave of the trial court to do) was also insufficient for failing to allege and support all the required elements of Count I for failure to maintain and Count III for breach of implied warranty. We find no reason to depart from our holding in *Faison* and, accordingly, just as dismissal was warranted there, it is warranted here.

¶ 42 CONCLUSION

¶ 43 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court.

¶ 44 Affirmed.