2018 IL App (2d) 170489-U
No. 2-17-0489
Order filed May 2, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ERIC FORD, Plaintiff and Counterdefendant-Appellant, v. SEAGROU, LLC, d/b/a Brentwood Apartments, Defendant and Counterplaintiff-Appellee (Syofie Ford, Third-Party Counterdefendant -Appellant).	)	Appeal from the Circuit Court of Du Page County. No. 16-SC-2746 Honorable Patrick J. O'Shea, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: It was against the manifest weight of the evidence for the trial court to find that Seagrou proved that Eric breached his apartment lease through breaching the peace, so the Fords were entitled to a return of their security deposit, plus interest, and a prorated portion of their May 2016 rent. Correspondingly, Seagrou was not entitled to the attorney and service fees associated with the eviction notice, and the issue of attorney fees for Seagrou's litigation had to be reexamined. It was not against the manifest weight of the evidence for the trial court to find (1) in Seagrou's favor on the issue of cleaning and replacement fees, and (2) that the

Fords did not prove damages under the Security Deposit Return Act. Therefore, we affirmed in part, reversed in part, and remanded the cause.

¶ 2 After he was evicted from his apartment, plaintiff, Eric Ford, brought suit against his landlord, Seagrou, LLC, d/b/a Brentwood Apartments (Seagrou), for allegedly failing to return his security deposit and a prorated amount of his rent. Seagrou filed a countersuit against Eric and his co-lessee, his wife Syofie Ford, for breach of the lease, repair and cleaning expenses, and attorney fees and costs. The trial court ruled in favor of Seagrou and awarded it a total of $4,192.50 for its counterclaims (which included the security deposit and the rent it was allowed to retain in full) and $7,740 for attorney fees and costs related to the litigation.

¶ 3 On appeal, the Fords argue that: (1) the trial court's finding that they breached the lease was against the manifest weight of the evidence; (2) even if they breached the lease, the trial court erred as a matter of law in ruling that they forfeited their security deposit; (3) the trial court erred in ruling that Seagrou did not violate the Security Deposit Return Act (Act) (765 ILCS 710/0.01 *et seq.* (West 2016)); (4) the trial court erred by holding them liable for all of the May 2016 rent, because Seagrou made no attempt to mitigate damages and took possession of the apartment for its own use half-way through May 2016; and (5) the trial court's award of damages and associated attorney fees to Seagrou should be reversed or modified. We affirm in part, reverse in part, and remand the cause.

¶ 4 I. BACKGROUND

¶ 5 On July 7, 2016, Eric Ford brought a *pro se* small claims complaint against "Brentwood Apartments." He filed an amended complaint on July 28, 2016, alleging as follows. The landlord had issued him an eviction notice on April 29, 2016, to vacate the premises by May 8, 2016, because he "was having a dispute with the occupants in the apartment below [his]." After receiving the eviction notice, "Kyle," an employee of the landlord, said that Eric could probably

stay until May 25, 2016. Therefore, Eric paid the May rent of $975 on May 1, 2016. However, "Jeff," another employee of the landlord, said that he needed to vacate by May 8, 2016, which he did. Eric left the apartment in "great condition" and provided his address for the return of the security deposit, but the landlord refused to return the security deposit. Eric sought $399 for the return of the security deposit and $663 of his May 2016 rent payment.

¶ 6 In its answer, Seagrou alleged that on April 29, 2016, it served the Fords with a 10-day notice of termination of tenancy based upon violations of the lease. The notice gave them until May 8, 2016, to vacate the premises. The Fords vacated the premises at that time and paid rent through May 31, 2016. Seagrou had to hire a contractor to replace the carpet, paint the apartment, and clean the premises, resulting in damages of $2,013. Seagrou denied that anyone stated that the Fords could stay until May 25, 2016, that Jeff said they would be mailed their security deposit, or that the Fords initially provided a forwarding address. However, Seagrou agreed that Eric provided his address in a letter dated June 13, 2016. Seagrou refused to return the security deposit and demanded additional sums of money due under the lease.

¶ 7 Seagrou alleged as an affirmative defense that Eric's claims were barred because he failed to comply with the lease's terms. It correspondingly asserted a counterclaim for breach of lease. Seagrou alleged that it incurred attorney fees and costs of $575 for preparation and service of the 10-day notice, for which the Fords were liable under the lease. Additionally, the Fords were liable for the apartment's repair and cleaning costs. Seagrou had attempted to mitigate damages for the remaining month of the lease but could not re-rent the premises, so the Fords were liable for rent of $812.50 under the lease. "[A]fter a credit of $402.00 for the security deposit and interest," the Fords owed Seagrou a total of $2,998.50, plus attorney fees and costs for the litigation.

¶ 8 Eric's response to Seagrou's counterclaim alleged as follows.[1] He admitted that he was served with a 10-day notice but denied Seagrou's remaining allegations about the notice. He denied liability for attorney fees and costs and affirmatively asserted that he was entitled to twice the amount of the security deposit under the Act. Eric had returned to the apartment complex on May 9, 2016, to return the keys and saw that the building housing the rental office was on fire. About two weeks later, Eric returned again and learned that the rental office was now located in his old apartment. Additionally, according to a newspaper article, 32 people were displaced by the fire, contradicting Seagrou's claim that it could not re-rent the premises. The invoice that Seagrou had sent the Fords was dated three days before they even moved in, and Seagrou did not provide any paid receipts. Eric alleged affirmative defenses of violations of the Act and failure to mitigate damages.

¶ 9 Eric filed a second amended complaint on April 14, 2017, which added a claim for damages under the Act.

¶ 10 A trial took place on April 20, 2017; at this point the Fords were represented by counsel. Eric provided the following testimony. He and Syofie moved into apartment 12B at 630 East George Street in Bensenville on May 25, 2015. The monthly rent was $975, and he paid a security deposit of $399. They moved out on May 8, 2016,[2] because Seagrou had given them a 10-day notice. Prior to leaving, Eric paid rent on May 1, 2016, by giving a check to an employee named Kyle. Eric asked if they had to move out by May 8. Kyle said that he did not have a problem with them staying but that Eric would have to talk to Jeff Mueller, who ran the rental office. The check, which had Eric's parents' address on it, was subsequently cashed. Eric

[1] Syofie filed a separate answer that was substantially similar.

[2] At other points in his testimony, Eric testified that they moved out on May 7, 2016.

agreed that at the time he handed over the check, he did not advise Seagrou that it had his forwarding address on it. However, he had verbally provided a forwarding address to Seagrou on May 11, 2016.

¶ 11 The day after moving out, on May 9, 2016, Eric went back to the apartment complex to drop off the keys and get his security deposit. He saw that the building that housed the rental office was burning. Eric returned on May 20, 2016, and saw that the rental office had been moved into his old apartment.

¶ 12 The Fords left the apartment in "great condition." They vacuumed the apartment and cleaned the kitchen and the bathroom. They took photographs of the unit when they moved out, which Eric identified in court; the photographs were admitted into evidence.[3] Seagrou sent them an invoice of repairs dated May 22, 2015, which was not within 30 days of when they moved out.

¶ 13 Jeff Mueller testified as follows. He was a managing member of Seagrou, which owned Brentwood Apartments. He oversaw the day-to-day operations of the apartment complex. The Fords' lease was for the term of June 1, 2015, to June 25, 2016. The lease stated that a serious or material noncompliance with the lease would result in a breach of the lease. The paragraph regarding the security deposit stated that the Fords would be liable for any loss or damage arising out of noncompliance with the lease. They were also required to provide a forwarding address and return the apartment in a clean condition, including having the carpet professionally cleaned. The lease listed cleaning fees if the apartment was not cleaned, including $135 for the stove; $145 for the refrigerator; $140 for the cabinets and countertops; $38 for the toilet; and $165 for the shower and tub. There were also charges of $295 to professionally steam clean the carpet

[3] The photographs are not included in the appellate record.

and $695 to paint the unit. There was further a $1,100 reconditioning fee if the lease was broken or terminated early, and another $1,100 fee to re-rent the apartment.

¶ 14 The Fords vacated the apartment on May 7 or 8, 2016. Mueller testified that there had been numerous complaints from the tenants below, and the police department notified Seagrou that Eric had threatened to shoot the woman downstairs. The Fords' counsel objected to this testimony, and the trial court sustained the objection. Mueller then testified, "I received a police report, and we had numerous complaints." Eric had complained once that there was a vibration in his unit, and when Mueller went to the apartment, Eric said that if his radio was tuned to a certain frequency, one could hear the tenants below threatening to fire electromagnetic pulses at him through the floor. Counsel again objected, and the trial court sustained the objection.

¶ 15 Mueller sent a 10-day notice to Eric dated April 29, 2016, that terminated the right to possession but not the lease. The Fords vacated within the 10 days. The lease provided that Seagrou was entitled to costs and fees incurred based on the breach of the lease. The attorney fees for the notice was $250, and the lease allowed for a $50 fee to serve the notice.[4]

¶ 16 Around May 9, 2016, Mueller inspected the apartment. The bathtub had a layer of soap scum; the bathroom floor had a layer of grease; and kitchen stove and cabinets looked like they had a thin layer of grease. It seemed like no one had even attempted to clean the apartment. Eric had placed wood down on the floor to prevent the alleged shock waves coming from the unit below, which caused the carpet to become compressed, necessitating its replacement. Mueller did not have photographs showing the apartment's condition. A company named Thomas

[4] Mueller acknowledged that the $575 in fees alleged in the counterclaim related to the 10-day notice were incorrect.

Wellington did the cleaning and replacement work. Mueller was the president of that company, which did work for Seagrou as well as other clients.

¶ 17 Thomas Wellington submitted an invoice to Seagrou for the repairs, and Mueller paid the invoice for Seagrou. Mueller did not bring documentation to show that he had paid the invoice. The Fords did not initially leave a forwarding address, so Mueller sent a copy of the invoice dated May 22, 2016, to the vacated apartment, hoping that they had forwarded their mail. In the itemized statement, Mueller charged for carpet cleaning rather than replacement because he was trying to give the Fords a "break." Also, instead of charging the re-leasing fee of $1,100 and the reconditioning fee of $1,100, Mueller just charged $975 for June's rent. The Fords replied in a letter dated June 13, 2016, demanding their security deposit back. Mueller sent a copy of the invoice to the forwarding address they listed, but the Fords did not send any payment. Mueller kept the security deposit based on failure to comply with the lease, and for money due.

¶ 18 After the management office was damaged in the fire, Mueller moved the management office to the Fords' former apartment, on May 20 or 25, 2016. The office was still there at the time of trial. Mueller did not try to re-rent the apartment because it was less expensive for the Fords to be charged the May and June rent than to be charged the reconditioning and releasing fees.

¶ 19 Karen Mueller testified that she was Mueller's wife and a secretary with Thomas Wellington. She typed the invoice for the damage to the Fords' apartment, unit 12B. She mistakenly dated the invoice May 22, 2015, instead of May 22, 2016.

¶ 20 Officer Brandon Reynolds of the Bensenville police department testified that he was called to the apartment on March 10 and April 28, 2016, "for noise complaints." He entered the

apartment on May 28, 2016,[5] and saw thick rubber or plastic mats on the majority of the floor in the living room, and thick plywood on the majority of the floor in the bedroom. The apartment did not seem to be any more or less dirty than other apartments he had been in.

¶ 21 Peter D'Angelo testified that he was a "member" of Seagrou and handled the construction there. He was also a partner in Thomas Wellington. D'Angelo inspected the apartment on May 9, 2016. The bathroom did not look like "it had been cleaned at all, much less recently"; it was "filthy." The kitchen also looked like it had not been wiped down. There was burned food in the stove, and the fridge had food residue. The cabinets were greasy and had not been wiped out. The walls had "evidence people lived there, [like] hand prints," that did not photograph very well, but he could see that the walls were not clean. The carpet was completely matted down and dirty. D'Angelo thought that workers tried steam cleaning the carpet first, but that was insufficient.

¶ 22 Stefan Jeorgiev testified that he helped the Fords move out of the apartment on May 7, 2016. The kitchen and bathroom were clean, and the walls were "[n]ext to perfect." He also did not recall seeing any stains on the carpet.

¶ 23 In closing argument, Eric requested the $399 security deposit, twice the amount of the deposit ($798) as damages under the Act, reimbursement of $723.35 of the May 2016 rent, costs of $309.89, and attorney fees of $3,700.

¶ 24 In its closing argument, Seagrou requested $250 for the attorney fees for preparing the 10-day notice; $50 for serving the notice, $695 for replacing the carpet, $695 for painting the unit, $135 to clean the stove, $145 to clean the refrigerator, $140 to clean the cabinets and countertops, $165 to clean the shower/tub, $38 to clean the toilet, $525 for court costs, and

[5] We note that this date is after the apartment was converted into the management office.

$8,475 for attorney fees. It further requested to retain all of the May rent. Seagrou was giving the Fords $402 credit for the security deposit and interest.

¶ 25 The trial court found as follows. Eric, "through his own acts, which could be criminal acts with regard to the tenants below him," breached the lease, which prohibited engaging in criminal activity, and "caused the ten-day notice to be issued," terminating possession. The notice was issued because of "the breach of the peace," and "[p]olice were called on two occasions." Breaching the lease also resulted in Eric forfeiting the security deposit and the rent for May and June. Seagrou had not requested June's rent, so Eric was not responsible for that. Eric was not entitled to damages under the Act because Seagrou had complied with the lease conditions, whereas Eric had not.

¶ 26 The Act required detailed statements and receipts, but Seagrou had provided only one letter regarding its damages. However, the lease itself delineated the costs for cleaning and painting, and for replacing the carpet. The trial court found that the apartment required these services, and it awarded Seagrou the amount requested for them, along with the amounts for the 10-day notice and service, and court costs. Eric was "to get credit for the [$]402, although that was done in the calculations, but he's forfeited that for violation due to the ten-day notice."

¶ 27 The Fords' counsel questioned the finding that they had forfeited their security deposit. The trial court stated:

> "When Mr. Ford threatened, or I take for granted he had problems with the tenant below and the police were called, obviously that can be termination of the lease, at least as to possession, and he forfeited his security deposit on that basis alone."

On June 6, 2017, the trial court awarded Seagrou $7,740 in attorney fees.

¶ 28 The Fords timely appealed.

¶ 29 II. ANALYSIS

¶ 30 A. Proof of Breach of Lease

¶ 31 The Fords first argue that the trial court erred in finding that they breached the lease as alleged in the 10-day notice. We will not disturb factual findings that a trial court has made after a bench trial unless they are against the manifest weight of the evidence. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47; see also *Timan v. Ourada*, 2012 IL App (2d) 100834, ¶ 24 (whether a breach of contract occurred is a question of fact, and we will not disturb the trial court's finding unless it was against the manifest weight of the evidence). We give such deference to the trial court's findings because the trial court is in a superior position to observe witnesses, judge their credibility, and determine what weight to give to their testimony and the other evidence. *Walker*, 2015 IL App (1st) 133788, ¶ 47. A finding is against the manifest weight of the evidence if the opposite conclusion is apparent or the finding appears to be arbitrary, unreasonable, or not based on the evidence. *Id.* Regardless of the contractual language used by the parties, a breach must have been material or substantial to justify a premature termination or forfeiture of a lease agreement. *Wolfram Partnership, Ltd. v. LaSalle National Bank*, 328 Ill. App. 3d 207, 222-23 (2002).

¶ 32 The lease provided that the lessee "shall not engage in criminal activity," or "engage in acts of violence or threats of violence." The lease stated that a single violation of these provisions would be a material violation of the lease and good cause for terminating the tenancy. It further stated: "Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence." The lease also stated that the lessee could not "commit or permit any unlawful or immoral practice, nor any act *** that

disturbs other tenants or occupants of the building." In the 10-day notice, dated April 29, 2016, Seagrou stated that the Fords had violated these provisions due to:

> "violent and threatening comments allegedly made by resident Eric Ford, towards other residents of the apartment community, including allegedly stating that resident Ford would discharge a firearm, resulting in one of several involvements of the Bensenville Police Department, having begun in March and most recently occurred on April 27, 2016."

¶ 33 The Fords argue that Seagrou made only two attempts to introduce testimony about Eric's alleged breach of the lease. Mueller testified that there had been numerous complaints from the tenants below, and the police department notified Seagrou that Eric had threatened to shoot the woman downstairs. The Fords' counsel objected to this testimony, and the trial court sustained the objection. Muller later testified that he had received a police report, and that there were numerous complaints. He testified that Eric had once complained that there was a vibration in his unit, and when Mueller went to the apartment, Eric said that if his radio was tuned to a certain frequency, one could hear the tenants below threatening to fire electromagnetic pulses through the floor at him. Counsel objected at this point, and the trial court sustained the objection.

¶ 34 The Fords argue that Officer Brandon also did not provide any testimony about improper activity by Eric, as he testified that he was called to the apartment "for noise complaints," without identifying who made the calls or whom the complaints were against. The Fords argue that, therefore, the trial court had no basis for finding that the 10-day notice was issued based on the police being called on two occasions. The Fords contend that any finding that they committed any noise violation, criminal activity, or threat was not based on the admissible

evidence. They highlight the trial court's statement it "[took] for granted [Eric] had problems with the tenant below and the police were called."

¶ 35 Seagrou argues that the Fords have forfeited their argument with respect to proof of the breach that was described in the 10-day notice, because they never objected to or challenged the notice in the circuit court. See *ING Bank, FSB v. Tanev*, 2014 IL App (2d) 131225, ¶ 24 (issues not raised in the trial court are forfeited and may not be raised for the first time on appeal). Seagrou maintains that if the issue is not forfeited, we should still reject the Fords' argument because the trial court's finding that Eric materially breached the lease by committing a "breach of the peace" was not against the manifest weight of the evidence. Seagrou argues that the 10-day notice itself provided details about the conduct that amounted to a breach of the lease; Eric stated in his verified second amended complaint that he was evicted because he was having a dispute with the tenants in the apartment below his; Officer Reynolds testified that he was called to the Fords' apartment for noise complaints on March 10, 2016, and April 28, 2016; and Mueller testified, without objection, that Seagrou "received a police report" and "numerous complaints" related to the Fords.

¶ 36 Seagrou's position, that the Fords have forfeited their argument, is without merit. Seagrou brought a countercomplaint arguing that it was entitled to certain sums of money due to the Fords' breach of the lease as set forth in the 10-day notice, so it was Seagrou's burden to establish that a breach occurred. Even the lease stated that "[u]nless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence." In his answer to the counterclaim, Eric admitted that he was served with the 10-day notice but denied Seagrou's remaining allegations about the notice. Eric did allege in his complaint that he received the notice because he "was having a dispute with the occupants in the

apartment below [his],” but this statement did not describe the dispute, did not admit that it was his fault, or admit that the 10-day notice was justified. He further asserted the right to recover damages from Seagrou and denied that he owed Seagrou any damages. At trial, the Fords’ counsel objected to Mueller’s testimony about the basis of the 10-day notice, and the objections were sustained.

¶ 37 Seagrou attempts to rely on the notice itself as evidence that Eric materially breached the lease by breaching the peace. Aside from the fact that the statements in the notice about Eric’s acts are hearsay (see *Kincaid v. Ames Department Stores, Inc.*, 283 Ill. App. 3d 555, 566 (1996) (the hearsay rule prohibits introducing into evidence an out-of-court statement to prove the truth of the matter asserted therein, though the statement may be used for other purposes, such as impeachment or proof of notice), the notice itself uses the term “allegedly” to refer to statements attributed to Eric. Officer Reynold’s testimony does not fill in any gaps, as he testified that he was called to the apartment on two occasions for noise complaints, without specifying whether the Fords made the complaints or were on the receiving end of them, the details of the complaints, or whether the complaints were justified. Finally, the majority of Mueller’s statements about the alleged threatening activity was not admitted into evidence, as the Fords’ objection to the testimony was sustained. His testimony that he “received a police report” and that Seagrou “had numerous complaints” was admitted, but this statement did not clarify whom the police report and complaints were about, the nature of the report and complaints, or when they were received. In short, based on the paucity of any admissible evidence that Eric breached the lease by breaching the peace, the trial court’s finding to the contrary was clearly against the manifest weight of the evidence. Indeed, as the Fords highlight, the trial court itself stated that it

"*[took] for granted* [Eric] had problems with the tenant below and the police were called." (Emphasis added.)

¶ 38 B. May 2016 Rent and Attorney Fees for 10-Day Notice

¶ 39 Based on our conclusion that Seagrou failed to prove that its eviction of the Fords was justified, it was not entitled to retain the entirety of the May 2016 rent. Eric testified that they moved out on May 7 or 8, 2016, and Mueller confirmed this testimony. Accepting May 8, 2016, as the move out date, we agree with the Fords that they are entitled to the return of $723 of their May 2016 rent. We therefore do not address their alternative arguments that they are entitled to this money because Seagrou did not attempt to re-rent the apartment and mitigate damages. Similarly, we reverse the trial court's award of $300 to Seagrou representing the attorney fees and costs related to the 10-day notice.

¶ 40 Seagrou argues that it should be allowed to retain the $723 because it was entitled to a $1,100 re-leasing fee and a $1,100 reconditioning fee under the lease, but, as Mueller testified, it opted to retain the entire May 2016 rent instead. However, Seagrou did not prove that it had a basis to evict the Fords, so it would not be entitled to the re-leasing fee. Moreover, there was no judicial finding that Seagrou was entitled to either fee, so it may not use those fees as a set off for the $723.

¶ 41 C. Security Deposit

¶ 42 We next turn to the issue of the $399 security deposit, which was $402 including interest. Seagrou argues that we should affirm the trial's finding that the Ford's forfeited the security deposit, without crediting the sum towards other damages, because the Fords breached various lease provisions, including the requirements that they clean the apartment and provide a forwarding address. We note that pure forfeiture of the $402 was never relief that Seagrou

sought. To the contrary, in both its pleadings and closing argument, it credited the Fords $402 towards its alleged damages. See *City of Chicago v. Chicago Board of Education*, 277 Ill. App. 3d 250, 261 (1995) (the parties' pleadings "frame the issues in controversy and circumscribe the relief that the court is empowered to order."). In any event, the trial court found that Eric was "to get credit for the [$]402, although that was done in the calculations, but he's forfeited that for violation due to the ten-day notice." As we have reversed the trial court's finding that Seagrou proved the violations underlying the 10-day notice, it follows that the Fords are entitled to a return of or credit for the security deposit. Based on this resolution, we do not address the Fords' alternative arguments regarding the forfeiture of the security deposit.

¶ 43 D. Cleaning and Replacement Fees

¶ 44 We now address the Fords' argument that the trial court's finding, that Seagrou proved its claim to cleaning and replacement fees, was against the manifest weight to the evidence. The Fords argue that these damages must be reversed because Seagrou failed to establish that the condition of the apartment was any better in 2015, when they moved in, than when they vacated in 2016.

¶ 45 The Fords cite *First National Bank of Des Plaines v. Shape Magnetronics, Inc.*, 135 Ill. App. 3d 288, 290 (1985), where the lease stated that the lessee had received the premises " 'in good order and repair' " and would return them in such condition, " 'loss by fire and ordinary wear excepted.' " When the lease terminated, the landlord brought suit against the tenant, alleging breach of the covenant to repair. *Id.* The appellate court stated:

> "In an action for breach of a covenant to repair the lessor must prove: (1) breach of the covenant; and (2) resulting damages. To prove a breach of the covenant, the

landlord must show that the leased premises were in a different and worse condition at the conclusion of the lease than they were at the outset of the lease." *Id.* at 291-92.

The court held that because the landlord failed to introduce evidence of the building's condition at the commencement of the lease, it failed to establish a *prima facie* case for breach of a covenant to repair. *Id.* at 292. The court further held that the statement in the lease providing that the premises were in " 'good order and repair' " did not sufficiently describe the actual condition of the premises at the lease's outset, so it could not be used as the starting point to measure the alleged damages to the building. *Id.*

¶ 46 The Fords argue that the only evidence about the apartment's condition at the beginning of their lease was Muller's testimony that the lease required the tenant to return the kitchen in the same condition as the tenant received it, and Seagrou "didn't give it to them with a layer of grease." The Fords maintain that there was no evidence introduced about the condition of the remainder of the apartment at the beginning of the tenancy, and therefore they are not liable for the cleaning and replacement charges for these items.

¶ 47 Seagrou argues that the Fords have forfeited this argument by failing to raise it below. We disagree. Seagrou had the burden of proving its damages, and the Fords disputed that it did so at trial. They are again disputing this issue on appeal, based upon the current record. Therefore, the Fords have not forfeited their argument. Even if they did, we would decline to apply forfeiture here. See *Lake Country Grading Co. v. Forever Construction Co.*, 2017 IL App (2d) 160359, ¶ 42 (forfeiture is an admonition to the parties and not a limitation on the reviewing court's jurisdiction, and we may consider an argument not timely raised, particularly where it is one of law and fully briefed by the parties on appeal).

¶ 48 Seagrou also argues that it was not required to establish the apartment's condition on the lease's start date because it is not seeking damages on the basis of a breach of a covenant to repair, but rather based on lease provisions requiring that the Fords maintain the carpet, paint the walls, and clean the entire apartment before vacating.

¶ 49 The Fords respond that Seagrou offers no basis for distinguishing a covenant to repair from a covenant to clean, nor legal authority to support such a distinction, thereby forfeiting consideration of its theory. The Fords argue that the point of repairing, cleaning, and repainting is to bring the premises back to the same condition they were when they moved in. We decline to find that Seagrou has forfeited its argument, as *Shape Magnetronics* used the phrase "covenant to repair," and that case did not involve cleaning and painting an apartment, as in this case.

¶ 50 Although *Shape Magnetronics* was not based on a residential apartment lease, it cited *Pyramid Enterprises, Inc. v. Amadeo*, 10 Ill. App. 3d 575, 579 (1973), which involved such a lease. In *Pyramid Enterprises*, the court stated: "When a tenant vacates an apartment, be it at the termination of the lease or an abandonment before the end of the lease, he is required only to leave the premises in the same condition as they were when he first took possession." *Id.* *Pyramid Enterprises* relied on *Streeter v. Streeter*, 43 Ill. 155, 160-61 (1867), which held that in the absence of express covenants to the contrary, the requirement that premises were to be returned to the landlord in as good of a condition as when the lease began allowed for "natural decay and inevitable accident" (*id.* at 161). The Fords' lease here stated there should be "[n]o damage to [the] apartment beyond normal wear and tear." However, as Seagrou points out, the lease also required that the Fords paint the walls and clean the entire apartment. Accordingly, because the lease contained these express requirements, which were not present in *Streeter* and

its progeny, Seagrou was not required to establish the apartment's condition at the beginning of the lease.

¶ 51 The Fords additionally argue that there was insufficient evidence for the trial court to conclude that they did not leave the apartment in a clean condition. The Fords point out that although Officer Reynolds testified that there were boards on the floor, he testified that he entered the apartment on May 28, 2016 (at which point the carpet had already been replaced and the apartment had been converted to the leasing office). The Fords argue that even if one speculates that Officer Reynolds meant to testify to an earlier date, he testified that the apartment was no dirtier than other places he had been. They argue that Officer Reynolds did not have an interest in the case's outcome, similar to Georgiev, who also testified that the apartment was not dirty. The Fords maintain that Mueller and D'Angelo, the only witnesses who testified to the contrary, were interested witnesses. They argue that, at a minimum, there was not a sufficient basis for awarding $695 to repaint the entire apartment, as D'Angelo's testimony that the walls had "evidence people lived there, [like] hand prints," just indicated ordinary wear and tear.

¶ 52 We find no justification to reverse the trial court's award of the cleaning and replacement fees, as the trial court was in the best position to judge the witnesses' credibility and determine the weight to be given to their testimony. See *Walker*, 2015 IL App (1st) 133788, ¶ 47. We further note that the trial court had before it the Fords' pictures of the apartment when they vacated, which we lack on appeal. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (the appellant has the burden to provide a sufficiently complete record of trial proceedings to support his or her claims of error, and the reviewing court will resolve any doubts that arise from the incompleteness of the record against the appellant). Finally, although there was no evidence that

the walls were damaged, the lease expressly required that the Fords paint the unit at the end of the lease, which they failed to do.

¶ 53 E. The Act

¶ 54 We now turn to the Fords' argument that the trial court erred by holding that Seagrou did not violate the Act. The Act prohibits lessors of residential property containing five or more units from withholding any part of a security deposit as reimbursement for property damage unless the lessor has, within 30 days of the lessee vacating the premises, given the lessee (by personal delivery, postmarked mail to his or her last-known address, or electronic mail) an itemized statement. 765 ILCS 710/1 (West 2016). The statement must delineate the damage caused to the leased premises and the estimated or actual cost for repairing or replacing each item, and it must include original or copies of receipts. *Id.* If the lessor provides an estimated cost in the statement, the lessor has 30 days to provide copied or original receipts. *Id.* "If a written lease specifies the cost for cleaning, repair, or replacement of any component of the lease premises ***, the lessor may withhold the dollar amount specified in the lease." *Id.* If the lessor fails to provide the statement and receipts as required, it must return the security deposit in full within 45 days of when the lessee vacated the premises. *Id.* "If the lessee fails to provide the lessor with a mailing address or electronic mail address, the lessor shall not be held liable for any damages or penalties as a result of the lessee's failure to provide an address." *Id.* If the trial court finds that the lessor refused to supply the required itemized statement, or supplied a statement in bad faith, and has failed or refused to return the amount of the security deposit due in the time required, "the lessor shall be liable for an amount equal to twice the amount of the security deposit due, together with court costs and reasonable attorney fees." *Id.*

¶ 55 Seagrou argues that the Act does not apply if the landlord withholds the security deposit for reasons other than as compensation for property damage, as it did in this case. In *Applegate v. Inland Real Estate Corporation*, 109 Ill. App. 3d 986, 991 n.1 (1982), this court held that the Act was "limited to situations where the lease term has expired and the lessor could only claim property damages as a reason to withhold part or all of the security deposit." A landlord has the burden to come forward with some evidence that there is a good faith dispute for reasons other than a claim of property damage in order to avoid a presumption that the deposit was withheld because of a claim of damages. *Hayward v. Tinervin*, 123 Ill. App. 3d 302, 305 (1984).

¶ 56 The Fords argue that Seagrou's letter shows that it withheld the security deposit for property damage, and that although the letter also listed June rent, Seagrou "was not entitled to withhold from the security deposit for any amount of rent." The Fords further argue that the trial court found that Seagrou was not entitled to June rent because it did not request that relief in its pleadings. The Fords maintain that Seagrou had no basis to claim that rent because Seagrou began occupying the apartment in May 2016 and did not attempt to mitigate damages. The Fords recognize that Seagrou's letter also claimed $575 for fees related to the 10-day notice, but they argue that the trial court found that Seagrou could only claim $300 for such fees, meaning that the balance of the security deposit was necessarily retained for property damage.

¶ 57 Here, the lease term had not expired when the Fords moved out. Seagrou's letter to the Fords therefore included the June 2016 rent as well as fees related to preparing and serving the 10-day notice, which collectively totaled well-over the $399 security deposit. The Fords have not explained or cited authority for the proposition that Seagrou could not withhold the security deposit for unpaid rent; rather, the lease prevents the Fords from using the security deposit for payment of rent. Although Seagrou did not seek the June 2016 rent in its counterclaim, and we

determined that it did not introduce sufficient evidence of a basis to evict the Fords, these factors do not defeat the fact that its claim to the security deposit was not limited to property damage. The Fords argue that Seagrou did not have a good-faith basis to demand the June rent, but Mueller testified that Seagrou charged $975 for the June rent instead of the contractual re-leasing fee of $1,100 and reconditioning fee of $1,100. We previously noted that Seagrou did not request or obtain a judicial finding that it should receive these contractual fees, but it does not follow that Seagrou did not have a good-faith basis to request the June rent in its letter instead of the higher fees. The Fords maintain that the re-leasing fees and reconditioning fees are unenforceable liquidated damage penalties, but just like the alleged entitlement to such fees, the Fords' argument requires a judicial determination that has not been made. In the end, we conclude that Seagrou sufficiently showed that it had a good faith basis to retain the security deposit to account for reasons other than property damages. Therefore, the Act does not apply here. The trial court did not employ the same reasoning in concluding that the Fords were not entitled to damages under the Act, but we are not bound by the trial court's reasoning and may affirm its ruling on any basis supported by the record. *Pommier v. Jungheinrich Lift Truck Corp.*, 2018 IL App (3d) 170116, ¶ 21.

¶ 58 F. Attorney Fees

¶ 59 Last, the Fords argue that if we reverse or reduce portions of the judgment in favor of Seagrou, we should remand the case for the trial court to re-evaluate the issue of attorney fees. They cite *Shadid v. Sims*, 2015 IL App (1st) 141973, ¶ 12, where the court stated, "The general rule is that, if a plaintiff does not prevail on all of his claims, hours spent on unsuccessful claims may be excluded in calculating an award of attorney fees." As we have reversed a portion of the damages that the trial court awarded to Seagrou, we agree with the Fords that the cause should be

remanded to the trial court to re-examine the question of attorney fees. The Fords have not challenged the trial court's award to Seagrou of $525 for court costs, so we affirm this award.

¶ 60 III. CONCLUSION

¶ 61 For the reasons stated, we reverse the trial court's determination that Seagrou was entitled to keep the security deposit and all of the May 2016 rent. Instead, the Fords are entitled to a return of the $399 security deposit, plus interest, and a return of $723 from their May 2016 rent. We further reverse the trial court's award to Seagrou of $300 for attorney fees and costs related to the 10-day notice. We affirm: (1) the trial court's award of damages to Seagrou for cleaning and replacement costs, (2) its ruling that the Fords were not entitled to damages under the Act, (3) and its award to Seagrou of $525 for court costs. Finally, we reverse the trial court's award to Seagrou of $8,475 for attorney fees related to the litigation, and we remand the cause for the trial court to hold a new hearing on these fees.

¶ 62 Affirmed in part and reversed in part.

¶ 63 Cause remanded.