

2018 IL App (2d) 180093-U
No. 2-18-0093
Order filed December 19, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

IPT CHICAGO IC, LLC,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellee,)	
)	
v.)	No. 16-L-583
)	
STAR CREATIONS, INC.,)	Honorable
)	Daniel L. Jasica,
Defendant-Appellant.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court had authority to grant judgment in favor of IPT for a portion of Star Creations' unpaid rent. The court also acted within its discretion in awarding IPT attorney fees and costs. Therefore, we affirmed.

¶ 2 This direct appeal arises from judgment in favor of plaintiff, IPT Chicago IC, LLC (IPT), on its complaint for possession and unpaid rent against defendant, Star Creations, Inc. (Star or Star Creations). IPT, as the successor landlord under the parties' lease, sued its tenant Star Creations for possession of the industrial building located at 610 Schelter Road in Lincolnshire, Illinois (the premises), and it additionally sought approximately \$109,000 in unpaid rent. Star later vacated the premises, and the possession count was mooted. Following a bench trial, the

circuit court awarded IPT damages on its rent claim in the amount of \$44,248.91, after crediting Star for its \$100,000 security deposit. The court also awarded IPT attorney fees and costs under the terms of the lease. Star Creations appealed, and we affirm.

¶ 3

I. BACKGROUND

¶ 4 Star Creations entered into a lease agreement for the premises with Schelter Margate, LLC, on April 14, 2009. Under the lease, Star could use the premises for warehousing, light manufacturing, and retail and related office use. The lease term ran for seven years and six months from the commencement date, which set the lease's expiration date on February 28, 2017.

¶ 5 IPT purchased the premises from Schelter Margate in December 2015, becoming Star's successor landlord. On July 5, 2016, IPT delivered notice to Star of its failure to pay rent. Therein, IPT notified Star that it had failed to pay rent for the months of January 2016 through July 2016 and that it owed \$159,091.05, including late charges. If Star failed to pay the amount owed within five days, Star would be in default under section 10.02(b) of the lease. The letter was signed by Jennifer Cole. On July 13, 2016, IPT contacted Signature Bank to draw the full amount of Star's security deposit because Star was in default under the lease. The letter to Signature Bank was signed by Lindsay Kindlon, an IPT asset manager, and thereafter IPT held Star's \$100,000 security deposit.

¶ 6 IPT filed its "Complaint in Forcible Entry and Detainer" on July 27, 2016. Therein, it alleged that it was entitled to possession of the premises and that Star Creations owed IPT \$109,091.05 in rent.

¶ 7 On January 31, 2017, the parties agreed to vacate the trial date that had been set for February 8, 2017, in order to defer proceedings pending Star's vacation of the premises and the

parties' attempt to reach a settlement agreement. In addition, the court mooted IPT's possession count, leaving only the matter of rent due.

¶ 8 Star Creations vacated the premises on February 28, 2017, which was the date the lease term expired. On March 22, 2017, the court granted Star permission to reenter and inspect the premises through March 29, and it set trial for June 14.

¶ 9 On June 1, 2017, IPT moved to reset the trial date. In its motion, IPT confirmed that Star Creations had surrendered the premises and that only IPT's "money count" remained. IPT continued that the repair work it was performing on the premises would not be completed by mid-June, and therefore it requested that trial be moved to a time when the repairs would be finished and the final bills and costs could be tabulated. IPT further stated that, "due to some complexities" with how the real estate tax, insurance, and operating expense components of Star's rent were calculated, in addition to the repair work, it would need to call seven witnesses at trial. IPT intended to call three witnesses to prove up Star's rent balance due and four witnesses to prove up the costs of the repairs to the premises. The court struck the June 14 trial start and set trial for a later date.

¶ 10 Star Creations filed its verified answer, affirmative defense, and counterclaim to IPT's complaint on August 1, 2017.¹ Star affirmatively pled estoppel, alleging that Star had paid IPT in full. Star also counterclaimed for setoff, alleging that IPT possessed Star's \$100,000 security deposit and that it was entitled to set off any judgment against it by up to that amount.

¶ 11 IPT filed its reply to Star's affirmative defense of estoppel and its answer to the counterclaim for setoff on August 7, 2017. It admitted that it held Star's \$100,000 security

¹ While the answer was file stamped August 21, 2017, the notice of filing and service was for August 1, 2017, and IPT replied to the August 1 answer on August 7.

deposit, but it denied that Star was entitled to set off any judgment against it by that amount. IPT argued Star failed to meet its obligations under the lease, in particular failing to leave the premises clean and in good order and failing to repair certain equipment. IPT alleged that it was required to pay \$87,838 for repairs and replacement on the premises, and therefore only \$12,162 of the security deposit remained to offset any judgment against Star.

¶ 12 Star Creations filed a motion *in limine* on October 6, 2017. Star sought to bar “any evidence relating to any issues and/or facts outside the scope of past-due rent secured prior to the filing of” IPT’s complaint. The trial court heard and denied the motion *in limine* the same day.

¶ 13 Trial commenced thereafter on October 6, and it continued over several days, concluding on November 2, 2017. We summarize the relevant testimony as follows. IPT first called Lindsay Kindlon. Kindlon was an asset manager for IPT, and she was responsible for managing the premises after IPT acquired it in December 2015. Star Creations was the tenant at the time IPT acquired the premises, and Kindlon visited the premises to familiarize herself with the building. During her first visit, she noticed “copious amounts of dust” lining most surfaces and that there was glue on the floor. After Star vacated the premises on February 28, 2017, she made an inspection the next day accompanied by Cole and Alex Jimenez. Kindlon identified pictures from the inspection that showed adhesive and cardboard stuck to the floor. She identified pictures of the men’s locker room and warehouse on the premises, noting that urinals were heavily stained, sinks were leaking and missing handles, and floors were stained. She also identified pictures of various surfaces that were covered in dust and pictures showing the docks in disrepair.

¶ 14 Jennifer Cole was an account manager at Colliers International (Colliers), a commercial real estate firm. Cole testified that IPT appointed Colliers as the property manager for the

premises on June 1, 2016, and she was responsible for budgeting for the premises, sending rent statements, and maintaining the property. She testified that as of June 17, 2017, Star Creations' rent balance due was \$94,206.73. Cole also testified that IPT sought to deduct \$85,796 from Star's security deposit. The total deduction was comprised of \$2,597 for Colliers' engineering invoice, a \$3,681 construction management fee, and \$79,518 for the five trade vendors Colliers hired to perform repairs and replacements on the premises.

¶ 15 IPT called the five vendors it hired, and they testified as follows. John Semenek was a construction superintendent with Premier Design and Build Group (Premier). IPT hired Premier to perform repairs and replacements on the premises, including replacing fiberglass panels and slop sinks. Premier's invoice was \$11,980, and IPT paid it in August 2017.

¶ 16 Marc Zeiger was a mitigation manager at Perfection Cleaning and Restoration (Perfection). He handled the "demo cleanup and everything prior to repairs" for a home or building. In March 2017, Colliers requested that Perfection submit a bid for work at the premises, and its bid was accepted. The actual cleaning work took about two weeks, and Colliers paid Perfection's invoice of \$39,235.

¶ 17 Brian McLean was an estimator for Artlow Systems (Artlow), which was a concrete coatings and restoration company. Colliers hired Artlow to perform repairs at the premises, and McLean inspected the premises in April 2017. Artlow swept, hand scraped, and chemically stripped the warehouse floor, and Colliers paid the invoice of \$4,766.

¶ 18 Richard Joslyn worked for JM Plumbing, and Colliers requested that JM Plumbing inspect the premises in March 2017. Joslyn personally inspected the premises' plumbing. He submitted two proposals for repairs and replacements, one in March 2017 and one in June 2017, recommending replacement of two water heaters, the garbage disposal in the office kitchen, and

the faucets in the restrooms. He also recommended cleaning trenches of debris. Colliers accepted both proposals. JM Plumbing submitted two invoices to Colliers, and the invoices were ultimately paid in the amounts of \$7,317 and \$1,975.

¶ 19 Finally, Anthony Kramer worked for American Door and Dock, which fixed overhead garage doors and loading dock equipment. Colliers requested that he inspect the premises, and he recommended servicing and replacing some sections of both the exterior overhead doors and interior dock doors. He also recommended servicing dock levelers and replacing three dock seals. Colliers paid American Door and Dock \$14,245 for its services.

¶ 20 Star Creations called several witnesses, including Star Creation's owner and president, Marc Weingardt, and its commercial real estate broker, William Mass. Weingardt testified that Star manufactured, imported, and distributed wall décor, including to retail chains such as Bed Bath & Beyond and Home Goods. He personally inspected the premises before Star tendered possession to IPT around February 28, 2017. He and his employees swept all the floors and cleaned the rafters. Weingardt also paid two vendors to repair and clean the premises: a floor contractor to clean some of the floors and an overhead door contractor. He believed the premises were in good condition when Star vacated on February 28, and he described the premises as "broom clean and then some."

¶ 21 William Mass testified that Kindlon contacted him about Star moving out around November 2016. He attended a walkthrough with Kindlon in November, and she sent him an email dated November 4, 2016, that listed items to address before returning the premises to IPT. He understood broom clean to mean that the floors were swept and the premises were in a generally clean condition. He attended a second walkthrough of the premises in January 2017 with Kindlon and Weingardt present, and he discussed the scope of the work to be done on the

premises after the lease's termination. He thought some of the items to address were reasonable and some were unreasonable, and Kindlon sent another email after the walkthrough with a list of the items to address.

¶ 22 Mass requested access to the premises on March 1, 2017, for a final walkthrough. He believed there were things left to do, such as replace dock panels that were on back order and clean up remaining adhesive on the floor. IPT allowed him access. Following the March 1 walkthrough, Kindlon was concerned about the remaining adhesive on the floor, had questions about dock seals, and noted remaining dust in the building. Mass said that Weingardt's vendors would come back to remove it. Mass believed that, Kindlon's concerns notwithstanding, the premises were broom clean on March 1, 2017.

¶ 23 In its closing, Star Creations argued that IPT was required to provide 30 days written notice for any default under the lease, but if failed to do so.

¶ 24 The trial court announced its findings on November 13, 2017. The court first addressed interpretations of the lease. It found the most reasonable interpretation of sections 6.04 and 6.06 of the lease to be that Star did not have to keep the premises in like-new condition or restore the premises to like-new condition, but Star did have to keep the systems and equipment in working order and repair. The court further found that the lease's 30-day notice requirement did not apply because IPT did not declare a default under the lease for failure to maintain or keep the premises in good condition. Rather, the lease was terminated for non-payment of rent.

¶ 25 The court then turned to the facts concerning rent payment. IPT claimed \$94,206.73 in unpaid rent, and Star contested only \$4,305.90 of that amount, which represented a late fee from January 2016. The court found that IPT was not entitled to the late fee, and therefore the unpaid

rent that Star owed was \$89,900.83. The court further found that IPT was not entitled to prejudgment interest.

¶ 26 Next, the court addressed the specific repairs and remedial work that IPT claimed were necessary to restore the premises. It noted all the expense items were “hotly contested.” After weighing the evidence and assessing the credibility of the witnesses, the court permitted some of the repair and replacement costs. The court agreed with IPT that the premises were returned with an excess accumulation of “dust of some sort” and therefore it allowed IPT to charge \$38,449 of Perfection’s invoice. The court did not believe, however, that IPT was entitled to recover payment to Artlow for floor cleaning. Star paid almost \$2,000 for another vendor to clean the floors, including removing adhesive, and although Artlow did an “amazing job,” the lease did not require the floors to be left in as pristine a condition as Artlow left them.

¶ 27 The court continued that IPT was entitled to recover costs to JM Plumbing for fixtures and faucets, as well as for drain cleaning, but it was not entitled to recover for the water heater. IPT was therefore entitled to recoup \$7,328 for payment to JM Plumbing. Next, IPT could recoup \$6,000 to American Door and Docks for compression seals (\$4,800) and replacement of a door (\$1,200), but it found the rest of its work largely duplicative with a vendor Star Creations had hired.

¶ 28 Finally, the court did not permit IPT to recoup costs for Premier’s work or for Colliers’ engineering fees. It did allow IPT to recover for \$2,571.08 in Collier’s construction management fees.

¶ 29 In total, the court permitted IPT to charge \$54,348.08 in costs for payments made to its hired vendors and for its construction management fees. Combining this sum with the \$89,900.83 in rent owed amounted to \$144,248.91 that Star owed IPT. The court continued that

“of course [Star] is entitled to be credited for the \$100,000 security deposit,” and therefore the net balance due was \$44,248.91. Accordingly, the court entered judgment in favor of IPT for \$44,248.91. The court specifically found that IPT prevailed on its complaint and on Star Creations’ counterclaim.

¶ 30 The trial court also entered a written order the same day, (1) confirming judgment in favor of IPT in the amount of \$44,248.91, (2) granting IPT leave to file a petition for attorney fees and costs, and (3) setting a hearing on IPT’s petition for January 4, 2018.

¶ 31 IPT filed its petition for attorney fees and costs on November 29, 2017. The court heard the petition on January 4, 2018, and it ruled the same day. The court first explained that the terms of lease did not mention a “prevailing party” but instead awarded attorney fees to the party in whose favor judgment was entered. Therefore, because the court entered judgment in IPT’s favor for \$44,248, IPT was entitled to recover reasonable attorney fees under terms of the lease. The court granted IPT’s petition and awarded it \$49,970 in attorney fees and \$1,661 in costs, bringing the total judgment in favor of IPT to \$95,879.91.

¶ 32 Star Creations moved for rehearing, arguing (1) that the trial court lacked authority under the Forcible Entry and Detainer Act (Detainer Act) (735 ILCS 5/9-101, *et seq.* (West 2016)) to enter judgment beyond that for rent and possession, (2) that IPT could not recover for claims beyond the claim for rent in its complaint, and (3) that IPT failed to provide Star with written notice of default pursuant to the lease. The court heard Star’s motion, and it denied it on January 22, 2018.

¶ 33 Star Creations timely appealed.

¶ 34

II. ANALYSIS

¶ 35

A. Authority under the Detainer Act

¶ 36 Star Creations first argues that the trial court lacked jurisdiction to award IPT any relief beyond its claims for rent. In support, Star cites *Campana Redevelopment, LLC v. Ashland Group, LLC (Campana)*, 2013 IL App (2d) 120988. In *Campana*, the plaintiff filed a complaint in forcible entry and detainer against the defendant, seeking possession, past-due rent, and other charges plus attorney fees and costs. *Id.* ¶ 7. The plaintiff secured judgment on the complaint in the trial court, including for “unamortized improvement costs.” *Id.* ¶¶ 8, 9. We affirmed in part and vacated in part, vacating the award for unamortized improvement costs because the Detainer Act did not permit recovery other than for past-due rent, and the unamortized improvement costs were not germane to the issue of possession. *Id.* ¶¶ 12, 20.

¶ 37 Star argues that this case is similar to *Campana* because IPT’s complaint was brought pursuant to the Detainer Act, and the trial court permitted evidence beyond the issues of rent and possession. Witnesses testified to dust removal, plumbing work, and other repairs and replacements on the premises. Star concludes that these repair and replacement costs were not unpaid rent and were therefore outside the scope of the Detainer Act.

¶ 38 IPT responds that the trial court had authority to enter its judgment. It argues that Star Creations counterclaimed for setoff in the amount of its security deposit, and IPT pled in its answer to the counterclaim that it was entitled to deduct repair and replacement costs from the security deposit. IPT stresses that it did not seek repair and replacement costs as components of its rent claim, and it presented evidence of repair and replacement costs as a defense to Star’s counterclaim. In addressing Star’s counterclaim, the court found that IPT was entitled to \$54,358.08 of Star’s \$100,000 security deposit for repair and replacement costs, and therefore it setoff IPT’s rent claim of \$89,900.83 by the \$45,651.02 remainder of Star’s security deposit,

resulting in the \$44,248.91 judgment on the rent claim. IPT further argues that Star's reliance on *Campana* is misplaced, as IPT did not seek additional costs beyond rent in its complaint.

¶ 39 We hold that the trial court had jurisdiction to enter its judgment and that it was not otherwise precluded by the Detainer Act from considering evidence of IPT's repair and replacement costs. The general purpose of the Detainer Act is to provide a speedy remedy to allow a person entitled to possession of real property to be restored to possession. *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930, ¶ 14. A forcible entry and detainer action is a limited proceeding (*id.*), and matters that are not germane to the purpose of the distinctive proceeding may not be raised by joinder, counterclaim, or otherwise (735 ILCS 5/9-106 (West 2016)). Germane means closely related, closely connected, or appropriate. *Poulos v. Reda*, 165 Ill. App. 3d 793, 798 (1987). The Detainer Act is in derogation of common law, and therefore courts must strictly construe its provisions. *Circle Management, LLC v. Olivier*, 378 Ill. App. 3d 601, 608 (2007).

¶ 40 The Detainer Act permits a plaintiff, however, to couple a claim for possession with a claim for unpaid rent. 735 ILCS 5/9-106 (West 2016); *Milton v. Therra*, 2018 IL App (1st) 171392, ¶ 23. A claim for rent is viable even when the claim for possession is moot. *Poulos*, 165 Ill. App. 3d at 797-98. A counterclaim to a claim for rent is therefore permissible so long as it is germane to the issue of rent. See *Kelley/Lehr & Associates, Inc. v. O'Brien*, 194 Ill. App. 3d 380, 389 (1990) (“[T]he issue of the amount of rent is germane when the cause of action is based on nonpayment of rent.”). We review *de novo* whether the trial court had authority to enter its judgment under the Detainer Act. See *Chicago Tribune v. College of Du Page*, 2017 IL App (2d) 160274, ¶ 29.

¶ 41 Here, Star Creations counterclaimed that it was permitted to set off any judgment against it by an amount up to its \$100,000 security deposit. In forcible entry and detainer actions, Illinois courts have previously held that rent credits were germane to a judgment for rent due (*Quel v. Hansen*, 126 Ill. App. 3d 1086, 1089 (1984)) and that evidence of an agreement to reduce rent payments should have been admitted on the issue of rent due (*Poulos*, 165 Ill. App. 3d at 799). Evidence of repair payments made by the tenant to the landlord was also admissible in a forcible entry and detainer action where the tenant alleged that he was entitled to rent credit for the payments. *Rodriguez v. Owaynat*, 137 Ill. App. 3d 1017, 1021-22 (1985). Similarly, Star's counterclaim was germane to IPT's claim for rent, as it sought to set off Star's liability for unpaid rent based on its security deposit required by the lease.

¶ 42 Moreover, IPT's complaint is distinguishable from the complaint in *Campana*. In *Campana*, the plaintiff's complaint sought relief for " 'rent and other charges.' " *Campana*, 2013 IL App (2d) 120988, ¶ 7. The judgment in favor of the plaintiff included unamortized improvement costs, and we held that those costs were not recoverable under the Detainer Act, as they were not part of the past-due rent. *Id.* ¶¶ 15, 20. In contrast, IPT's complaint sought only unpaid rent and possession. The evidence that Star objects to—various repair and replacement costs incurred by IPT to restore the premises—was relevant to defend Star's counterclaim for setoff. The record shows that IPT first pled allegations of repair and replacement costs in its answer to Star's counterclaim for setoff. In other words, the repair and replacement costs were germane to the issue of rent, in that the court had to consider both the security deposit and the repair and replacement costs in determining Star's proper credit against its unpaid rent.

¶ 43 We briefly address the trial court's calculation of the judgment. The judgment in favor of IPT on its claim for rent was \$44,248.91. The court calculated the judgment by first adding

Star's \$89,900.83 in rent due and IPT's \$54,348.08 in various repair and replacement costs. The sum of the rent and the costs was \$144,248.91, and the court subtracted the \$100,000 security deposit to yield the \$44,248.91 judgment. This method of calculation may give the impression that the court awarded IPT both rent and costs, but the court's method of calculation is not determinative of the nature of the judgment. The \$44,248.91 judgment for rent can also be reached by reducing the \$89,900.83 in rent owed by \$45,651.92, which is the difference between the \$100,000 security deposit and the \$54,348.08 in repair and replacement costs. In substance if not form, the trial court awarded IPT unpaid rent, and the repair and replacement costs were germane to the issue of rent because the total rent due was reduced by Star Creation's remaining portion of its security deposit.

¶ 44

B. Notice of Claims

¶ 45 Star Creations next argues that IPT failed to provide sufficient notice of its additional claims beyond its claim for unpaid rent. Star cites section 2-603 of the Code of Civil Procedure (Code) (735 ILCS 5/2-603 (West 2016)) to argue that IPT failed to plead any claims beyond recovery of rent and possession. Accordingly, it contends that the trial court should have limited evidence at trial to the issue of unpaid rent, and that it was error to allow evidence of damages to the premises and IPT's vendor costs. Star also argues that, as a consequence of IPT's failure to properly plead, Star was unable to file affirmative defenses and a jury demand.

¶ 46 IPT responds that Star's argument ignores its counterclaim for setoff and IPT's answer to Star's counterclaim. IPT further argues that Star had a right to a jury trial under the Detainer Act.

¶ 47 We hold that Star had sufficient notice of the issues for trial. We agree with IPT that Star's counterclaim for setoff invited the evidence at trial that it now complains of. IPT's answer

to Star's counterclaim admitted that IPT retained Star's \$100,000 security deposit, but it denied that Star was entitled to a setoff of \$100,000. IPT's answer further alleged that Star had failed to surrender the premises in broom clean condition and with certain equipment in good order and repair, and that due to Star's breach of the lease terms, it incurred \$87,838 in repair and replacement costs. IPT concluded, therefore, that only \$12,162 of the security deposit remained to offset a judgment against Star. This was clear notice that IPT intended to show at trial that it incurred repair and replacement costs on the premises. Moreover, Star's argument assumes that IPT was awarded damages beyond its claim for rent. As we explained *supra*, IPT did not secure judgment beyond that for unpaid rent. Rather, Star's counterclaim made the repair and replacement costs germane to IPT's claim for rent, and the trial court credited a portion of Star's security deposit to reduce IPT's judgment for unpaid rent from \$89,900.83 to \$44,248.91.

¶ 48 Finally, Star was not deprived of the opportunity to file affirmative defenses. In fact, it filed an estoppel defense and a counterclaim for setoff. Nor was Star prohibited from filing a jury demand because of IPT's pleadings. IPT is correct that Illinois recognizes a right to a jury trial under the Detainer Act, whether demanded by the plaintiff or the defendant. See *Twin-City Inn, Inc. v. Hahne Enterprises, Inc.*, 37 Ill. 2d 133, 137 (1967); *Poulos*, 165 Ill. App. 3d at 798 (commercial tenants were entitled to trial by jury on the plaintiff's rent claim).

¶ 49 C. Notice of Default under the Lease

¶ 50 Star Creations also argues that IPT failed to send it notice under the terms of the lease. In particular, Star argues that IPT was required to send it written notice that it was in default because it left the premises in a damaged condition, pursuant to section 10.02(c) of the lease. It contends that IPT never sent such notice, and as a consequence, Star lacked notice of claims for damage to the premises and lacked an opportunity to cure the default.

¶ 51 IPT responds that written notice was not required under section 10.02(c). IPT sought to terminate the lease for failure to pay rent, not for failure to maintain the premises. IPT argues that once the lease expired, Star was not entitled to notice under 10.02(c).

¶ 52 We agree with IPT that Star was not entitled to notice under section 10.02(c) of the lease. The issue here is primarily a matter of contract interpretation. We generally review *de novo* the interpretation of a contract, such as a lease. *Tanna Farms, L.L.C. v. Golfvisions Management, Inc.*, 2018 IL App (2d) 170904, ¶ 11. To the extent, however, that we review the trial court's application of the contract terms to the facts, that matter is reviewed for an abuse of discretion. *Id.*

¶ 53 Article 10 of the lease governs defaults and remedies for defaults, and section 10.02 lists several different events of default for the tenant. Relevant here are sections 10.02(b) and 10.02(c). Section 10.02(b) provides that the tenant shall be in default if it fails to pay rent when due, and the rent is not paid within five days of written notice from the landlord. Section 10.02(c) provides for default if the tenant fails to perform non-monetary obligations under the lease for a period of thirty days after written notice from the landlord. Star does not dispute that IPT served it with written notice pursuant to section 10.02(b) for unpaid rent, instead contending that IPT needed to send additional written notice pursuant to section 10.02(c).

¶ 54 This argument is misplaced. IPT served written notice on Star pursuant to section 10.02(b) for failure to pay rent, and Star defaulted for failure to pay rent. Star later vacated the premises, and the lease term expired. IPT did not need two separate events of default to pursue its remedies under the lease; the default for failure to pay rent sufficed. Section 10.03 makes this clear, stating “[o]n the occurrence of any default by Tenant, Landlord may, at any time thereafter, with or without notice or demand” terminate the tenant's right of possession,

terminate the lease, reenter the premises to cure any defaults, or pursue any other remedies available in law or equity. Accordingly, separate notice pursuant to section 10.02(c) was not a predicate to any of IPT's claims for breach of the lease.

¶ 55

D. Attorney Fees and Costs

¶ 56 Star Creations' final argument is that the court erred in awarding IPT attorney fees and costs. Star argues that section 12.01 of the lease provides essentially that the "winning" party is entitled to recover attorney fees from the losing party. Star argues that it actually won the litigation as defined by the lease, pointing to its counterclaim for setoff and its success in reducing the judgment for unpaid rent. On the other hand, it argues that IPT recovered only about 40% of the amount it sought and that the trial court found against IPT for various repair and replacement costs. Therefore, Star concludes that IPT was not the prevailing party, and the trial court erred in awarding it attorney fees and costs.

¶ 57 IPT responds that the trial court correctly applied the lease terms in awarding it attorney fees and costs. It argues that section 12.01 does not mention a "winning" party but rather provides fees for the party in whose favor judgment was entered. IPT continues that even if section 12.01 is construed as a prevailing party provision, IPT was the prevailing party. The trial court found that IPT was entitled to \$89,900.83 in unpaid rent, and it further found that IPT was entitled to deduct \$54,348.08 for various costs from Star's \$100,000 security deposit. IPT concludes that the trial court did not abuse its discretion in awarding it attorney fees and costs.

¶ 58 We agree with IPT that the trial court properly awarded it attorney fees and costs under the terms of the lease. To the extent we review the interpretation of the lease provision, our review is *de novo*, and to the extent we review the trial court's application of the lease terms to the facts, we review for an abuse of discretion. *Peleton, Inc. v. McGivern's, Inc.*, 375 Ill. App.

3d 222, 22-26 (2007). An abuse of discretion occurs where the trial court's decision is unreasonable or arbitrary or where no reasonable person would adopt the view of the circuit court. *Sentry Insurance v. Continental Casualty Co.*, 2017 IL App (1st) 161785, ¶ 32.

¶ 59 Here, section 12.01 of the lease provided, in pertinent part, that “if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action *shall award to the party in whose favor a judgment is entered*, a reasonable sum as attorneys’ fees and costs.” (Emphasis added.) The lease continued that “[t]he losing party in such action shall pay such attorneys’ fees and costs.” We must strictly construe section 12.01 in ascertaining the parties’ intent on the payment of fees. *Peleton, Inc.*, 375 Ill. App. 3d at 226.

¶ 60 We reject Star’s interpretation that the lease provides fees to the “winning” party. We note that the terms “prevailing party” and “winning” do not appear in section 12.01. Rather, the plain language specifically provides that attorney fees and costs shall be awarded to the party in whose favor judgment was entered. While the next sentence of the provision mentions the “losing party,” that term is reasonably interpreted as the party against whom judgment was entered, in light of the full lease provision. Therefore, the proper interpretation of section 12.01, strictly construed, is to award fees to the party who secured judgment in its favor.

¶ 61 Moreover, the trial court did not abuse its discretion in finding that IPT was the party in whose favor judgment was entered. The trial court reasonably stated that it “entered judgment in favor of the plaintiff IPT for \$44,248. So by the terms of the lease, IPT is therefore entitled to *** recover the reasonable attorney’s fees and costs it incurred in securing the judgment.” While Star successfully set off a portion of its \$89,900.83 in unpaid rent, the setoff was not a judgment in its favor but rather a reduction in the judgment against it.

¶ 62 We further note that Star did not challenge the trial court’s authority to award attorney fees pursuant to section 12.01, nor did it challenge whether the amount of attorney fees and costs was reasonable. Accordingly, the trial court’s award of \$49,970 in attorney fees and \$1,661 costs was not error.

¶ 63 IPT also requests that we remand for a determination of attorney fees and costs for its defense of this appeal. On remand, IPT will have the opportunity to file a petition for attorney fees and costs related to this appeal. See Ill. S. Ct. R. 369(b) (eff. July 1, 1982) (“When the reviewing court *** affirms the judgment and the mandate is filed *** enforcement of the judgment may be had *and other proceedings may be conducted* as if no appeal had been taken.”); *cf. Glens of Hanover Condominium Ass’n v. Carbide*, 2014 IL App (2d) 130432, ¶ 4 (explaining that while a trial court is revested with jurisdiction after the appellate court affirms a judgment, it is not revested after a reversal without remand).

¶ 64

¶ 65

III. CONCLUSION

¶ 66 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 67 Affirmed.