

No. 1-13-1828

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN HIERA,)	Appeal from the
)	Circuit Court of
Plaintiff and Counterdefendant-Appellant,)	Cook County
)	
v.)	No. 07 M1 136266
)	
BARBIE GREIWE and ALL UNKNOWN OCCUPANTS,)	Honorable
)	Casandra Lewis,
Defendants and Counterplaintiffs-Appellees.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court erred in finding landlord interfered with tenant's possession of her apartment when he changed lock after the tenant moved her personal belongings out of the apartment and was living elsewhere and after she informed landlord that she did not intend to return. Trial court erred in ruling in favor of tenant on her willful and wanton destruction of property count where the trial court made no finding that landlord engaged in "willful and wanton" misconduct consistent with the cause of action raised in her pleading. Landlord was not entitled to attorney fees on counts pled by tenant even though the counts were resolved in landlord's favor because landlord was not the "prevailing plaintiff" as required under the Chicago Municipal Code.

¶ 2 Plaintiff and counterdefendant John Hiera appeals from the trial court's finding in favor of defendant and counterplaintiff Barbie Greiwe, who rented an apartment from him and alleged he illegally locked her out of the apartment and committed willful and wanton destruction of her personal property. On appeal, Hiera claims the trial court erred in finding that he illegally locked Greiwe out of the apartment because he changed the apartment's lock after she moved her personal belongings out of the apartment, no longer slept in the apartment and lived elsewhere. Hiera also claims the trial court erred in finding he engaged in willful and wanton destruction of Greiwe's property because the trial court did not enter a finding that he acted intentionally or in reckless disregard of Greiwe's safety and personal belongings. Hiera further claims the trial court awarded an insufficient amount of attorney fees because no fees were awarded relating to the counts Greiwe pled, but were resolved in his favor, and additional fees should have been awarded for defending against Greiwe's affirmative defenses to his claim of unpaid rent. Because the record fails to support Greiwe's claims against Hiera, we affirm in part, reverse in part and vacate in part.

¶ 3 **BACKGROUND**

¶ 4 On November 29, 2005, Hiera leased apartment 2F located at 3833 N. Southport in Chicago to Greiwe for monthly rent of \$800. The lease term commenced on January 1, 2006 and ended on March 31, 2007. Apartment 2F was the top floor apartment in the building. During the course of the tenancy, Greiwe withheld rent for August and September 2006 because of water leaks inside the apartment that damaged her personal belongings. Greiwe also complained to Hiera in February 2007 that it was "raining" inside her apartment because water was again leaking into her apartment damaging her personal belongings. Greiwe surrendered possession of the apartment in February 2007.

¶ 5 Hiera commenced this lawsuit against Greiwe in April 18, 2007, and filed an amended complaint seeking past due rent in the amount of \$1,942.86 for the rental periods of August 1, 2006-September 30, 2006 and February 1, 2007-February 12, 2007. Hiera also requested \$75 in late charges and reasonable attorney fees and costs expended in the lawsuit.

¶ 6 In her second amended affirmative defenses and counterclaims filed February 14, 2011, Greiwe asserted the following affirmative defenses: (1) material noncompliance with the Chicago Municipal Code; (2) breach of the implied warranty of habitability; and (3) waiver of rent. Greiwe raised the following counts as counterclaims: (1) material noncompliance with the Chicago municipal code; (2) breach of the implied warranty of habitability; (3) failure to attach the current Residential Landlord Tenant Ordinance (RLTO) summary; (4) illegal lockout: unlawful interruption of tenant occupancy; (5) willful and wanton destruction of personal property; and (6) knowing destruction of personal property.

¶ 7 This landlord-tenant dispute proceeded to a bench trial. We summarize only so much of the evidence as is relevant to the issues presented on appeal.

¶ 8 Hiera testified that during the early part of 2006, Greiwe contacted him about a leaky bathroom faucet. Hiera installed a new faucet to fix the problem and Greiwe did not again complain about the leak.

¶ 9 According to Hiera, in either August or September 2006, Greiwe sent him a letter demanding a rent abatement for damages resulting from a leak, which was the first notice he received about any leak other than the bathroom faucet. In response, Hiera went to the apartment where he saw water dripping from the kitchen ceiling. Hiera and his workman went on the roof in an attempt to discover the source of the leak, but they could not find any apparent way water would be coming in from the roof.

¶ 10 Hiera then went to the store and purchased several five gallon containers of a product called "Top Coat," which seals areas of a roof that may have opened. Hiera's workman applied the product to the section of the roof directly above Greiwe's apartment. After the application, the leak stopped right away and Greiwe did not immediately complain to Hiera about any further leaking problems.

¶ 11 Greiwe withheld rent for August and September, ostensibly because of three episodes of leaking. Other than the kitchen ceiling leak and the bathroom faucet leak both of which Hiera addressed, Greiwe had not complained of any other leaks prior to that time.

¶ 12 On February 1, 2007, Greiwe sent Hiera a letter enclosing a February rent check, but requested he hold the check until February 15, 2007. Greiwe also stated she wanted to renew her lease, but anticipated buying a condo within the year and inquired about his policy for terminating the lease early.

¶ 13 During the evening of February 6, 2007, Greiwe called Hiera to inform him the roof was leaking again. After that conversation, Hiera called his workman, Gerardo Fabiny, who was on the building's roof at approximately 9:15 p.m., but he was not successful in finding the source of the leak. The next day, Hiera then called various roofing companies, but they were unable to come out to look at the roof until Friday, February 9, 2007. Hiera also went to the apartment building and entered Greiwe's apartment where he saw water dripping from the ceiling in the exact same spot as the prior leak in August and September 2006.

¶ 14 On Friday, February 9, roofers from two different companies examined the apartment building's roof. One roofer believed the water was coming in through the roofing layers and working its way down the roof line. The earliest the roofer could start working on the roof was

the following Monday, February 12, 2007. The other roofer believed the entire roof should be replaced.

¶ 15 At approximately 10 - 10:30 a.m. on Monday, February 12, 2007, Hiera and Fabiny went to the apartment building because Greiwe told Hiera water was still leaking and she was moving. When Hiera arrived at the building, he saw a moving truck in front of the building. Hiera asked Greiwe for permission to enter her apartment so he could determine where the water was coming from, but she refused entry until she moved, which would possibly be the next day. Hiera told Greiwe that if she would not let him inside the apartment, he would call the police, and she told him to call them. Hiera called the police and they arrived in approximately 10 to 15 minutes.

¶ 16 Hiera met the police officers outside and informed them water was leaking into an apartment, but the tenant, who was moving out, denied him entry into the apartment. The police officers went upstairs to speak with Greiwe. When the officers returned, one officer told Hiera that the building's main water valve needed to be shut off and the city's water department was called to do so. Based on what the officer told Hiera, he left the building because nothing further could be done.

¶ 17 When Hiera returned to the building later that day at approximately 5 p.m., he saw Greiwe walking down the building's interior staircase carrying some small items. Hiera again asked Greiwe if he could enter the apartment to determine the source of the leak, but she refused entry. Hiera then went outside and called the police again. Shortly thereafter, Lieutenant William Frapolly of the Chicago police department arrived at the building. Hiera and Lieutenant Frapolly approached Greiwe, who stated she was not completely moved out and she would not allow Hiera to enter her apartment. Greiwe told Lieutenant Frapolly that all she wanted to do was get her things out and move. Lieutenant Frapolly told Hiera he had permission to enter the

apartment, but Hiera decided it would be best to return the next day because it was late in the day. At some point, Greiwe told Hiera, "I am out of here, I am not coming back."

¶ 18 Early in the afternoon on February 13, 2007, Hiera, Fabiny and Able, Fabiny's son, arrived at the apartment building. Greiwe was not there. After they entered the apartment, Hiera saw wet towels on the floor, assorted debris and papers that people always leave behind when they move out. Hiera instructed his workmen to cut a hole in a specific area in the ceiling and, after they did, they saw a galvanized plumbing pipe that was the source of the leaking water. Hiera observed rust fissures in the pipe, which may re-seal and he believed that likely occurred with the pipe. Hiera stated pipes are not normally located in the ceiling and when the roof was sealed, he had no knowledge about the pipe in the ceiling. Hiera instructed his workmen to remove the galvanized pipe and install a copper bypass line, but not in the ceiling to ensure what had happened in the apartment would not happen again. The repair took several days.

¶ 19 Before leaving the apartment for the night on February 13, 2007, Hiera changed the front hallway door's lock and left the following note on the door:

"Wednesday 14 February 2007

Dear Ms. Greiwe,

Since I can only assume that you have vacated your apartment, since there is no furniture in it, I have changed the locks.

This will allow my workmen to facilitate repairs to the broken water pipe, which at this point we know to be the case, and not the roof.

John Hiera

(773) 491-8205"

According to Hiera, he did not plan to dispossess Greiwe when he changed the lock because she moved out of her own accord. Hiera also stated his workmen left their tools inside the apartment to complete the repairs.

¶ 20 Within the next couple of days, Greiwe's friend contacted Hiera and asked him if he would meet her and Greiwe to provide Greiwe with access to the apartment to ensure she left nothing behind. Hiera agreed, and they all entered the apartment. Hiera stated there was some discussion about a missing ring, but Greiwe apparently later found it elsewhere.

¶ 21 Greiwe sent Hiera a letter dated February 27, 2007, which stated the following:

"Anything left in my apartment at 2822 N. Southport #2F may be thrown out. Rugs, furniture, etc. ruined in flood from Feb. 6-12, 2007. On Feb. 12th, both the firefighters and police officers who walked through my apartment stated that my apartment was not habitable and I should evacuate immediately.

I have gotten a P.O. Box and my mail will start to transfer over within the next few weeks. My keys will be sent to you by the end of March."

Greiwe sent Hiera her keys to the apartment in early April.

¶ 22 Greiwe testified at trial that on Tuesday, February 6, 2007, it was "raining" in the hallway and bedroom corner of her apartment and "drizzling" in the study area. At approximately 8 p.m., she called Hiera to tell him that it was "raining" in her apartment. Because water was gushing in her bedroom the next day, Greiwe stayed at a friend's house instead of her apartment.

¶ 23 On Friday, February 9, 2007, Hiera went inside Greiwe's apartment and saw the apartment's condition. Greiwe was packing boxes and when Hiera asked her when she was moving out, she responded she did not know, maybe in a month or so. Greiwe hired two different movers. The first movers arrived on Friday, February 9, 2007 and they moved her couch,

bedroom dresser, television and other items out of the apartment. The other movers arrived on Monday, February 12, 2007 at approximately 10:30 a.m., and they packed up what was left in her apartment and moved out her belongings.

¶ 24 Also on Monday, February 12, Hiera and two other individuals entered Greiwe's apartment and drilled a hole in the ceiling. Water started coming out of the hole and Greiwe told them to "get out, stop." Hiera said he had to check the ceiling, but according to Greiwe, he was making the situation worse and she ordered him to get out. Hiera then called the police. During a conversation with Hiera and a police officer, Greiwe said she was going to a friend's house, but she did not tell Hiera she was giving up the apartment for good.

¶ 25 Greiwe left the apartment late that afternoon and the movers finished at approximately 5 p.m. After the movers left, some of Greiwe's personal belongings still remained inside the apartment. When Greiwe returned to the apartment on another day, she saw a note Hiera posted on her door stating he changed the lock. Greiwe did later gain access to the apartment to acquire what she wanted back of her personal property.

¶ 26 Greiwe acknowledged that after February 12th, her bed and furniture were out of the apartment and she was living someplace else. Greiwe stated Hiera did not give her a new key to the apartment after changing the lock, but admitted that she never asked him for a new set of keys and stated she did not want to move back into the apartment.

¶ 27 Patty Tobin, Greiwe's friend, testified she visited Greiwe at her apartment on Wednesday, February 7, 2007 and saw cracks in the ceiling with water dripping down, the walls were swollen, blistering with water seeping down and water was coming down the hallway. The next day, Tobin spoke with Hiera on the telephone and told him "it was really bad and raining in the

apartment." Tobin suggested he should have a building inspector look at the apartment because the cause of the leak was something else if he had the roof previously repaired.

¶ 28 Chicago Officer Pamela Bottoms testified that she went to the apartment building on February 12, 2007, and said it appeared to be "raining" in the apartment because water was leaking from the ceiling and the apartment was uninhabitable. According to Officer Bottoms, Greiwe packed all of her belongings and said she was moving out.

¶ 29 On February 24, 2012, after taking the matter under advisement, the trial court entered the following order:

"(1) Defendant resided in Plaintiff's property from January 2006 to February 2007;

(2) Defendant failed to pay rent for August 2006, September 2006 and February 2007;

(3) Defendant had no legal excuse to withhold rent for August 2006 and September 2006;

(4) Leased premises were uninhabitable during February 2007;

(5) Plaintiff knew or by exercise of ordinary care should have known that the water was from a source other than the roof;

(6) Plaintiff unlawfully locked defendant out of unit;

Accordingly, it is hereby ordered:

I. on plaintiff's complaint:

JF/plaintiff on count I [unpaid rent, late charges, attorney fees and costs pursuant to the lease]; JF/plaintiff on count II [pled in the alternative

for unpaid rent and reasonable fees pursuant to the RLTO]; counts merged damages set at \$1,650

II. on counterplaintiff's claims:

JF/counter-defendant on Count I [material noncompliance with the Chicago Municipal Code]; JF/counter-plaintiff on Count II [breach of the implied warranty of habitability]; JF/counter-plaintiff on Count IV [unlawful interruption of tenant occupancy] damages \$1,600; JF/counter-plaintiff on count V [willful and wanton destruction of personal property] \$4,482; JF/counter-defendant on Count VI [knowing destruction of personal property]; Count III [failure to attach current RLTO summary] having been disposed of previously pursuant to agreement of the parties."

¶ 30 Both Hiera and Greiwe filed post-trial motions, which the trial court denied on July 24, 2012. The trial court also granted the parties leave to file petitions for attorney fees. On January 18, 2013, the trial court entered an order awarding Hiera \$8,421.97 in attorney fees and Greiwe \$4,521.43 in attorney fees. In the order, the trial court stated Hiera prevailed on four claims (one common law claim and three RLTO claims) and Greiwe prevailed on three claims (two common law claims and one RLTO claim). Both parties filed a motion to modify the trial court's order adjudicating claims for attorney fees. On May 3, 2013, the trial court entered a modified order entering judgment in favor of Hiera and against Greiwe in the amount of \$4,454.75 and entering judgment in favor of Greiwe and against Hiera in the amount of \$7,819. The judgment amount included the award for damages and attorney fees. Hiera timely appealed.

¶ 31 On August 13, 2014, this court entered an order finding that Greiwe had failed to file a brief within the prescribed time and this case would be taken for consideration on the record and

Hiera's brief only. Because the record is simple and Hiera's claimed errors can be decided without the aid of Greiwe's brief, we will decide this appeal on Hiera's brief alone. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 32 ANALYSIS

¶ 33 Hiera first claims on appeal that the trial court erred in finding he unlawfully locked Greiwe out of the apartment in violation of section 5-12-160 of the RLTO because Greiwe vacated the apartment before he changed the lock.

¶ 34 The standard of review applied in a bench trial is whether the judgment is against the manifest weight of the evidence. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12. A judgment is against the manifest weight of the evidence "when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based on the evidence." *Samour, Inc. v. Board of Election Commissioners*, 224 Ill. 2d 530, 544 (2007).

¶ 35 Section 5-12-160 of the Chicago Municipal Code states, in pertinent part:

"It is unlawful for any landlord or any person acting at his direction knowingly to oust or dispossess or threaten or attempt to oust or dispossess any tenant from a dwelling unit without authority of law, by plugging, changing, adding or removing any lock or latching device." Chicago Municipal Code § 5-12-160 (added Nov. 6, 1991).

¶ 36 The question presented on appeal is whether Hiera's conduct in changing the lock on the apartment after Greiwe moved out served to "oust or dispossess" Greiwe from her apartment. We first examine the language of the Municipal Code and then apply that language to the evidence in the record on appeal.

¶ 37 When interpreting a statute, the fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 6 (2009).

The statute's language is the best indicator of the legislature's intent and the language used must be accorded its plain and ordinary meaning. *Id.* Municipal ordinances are interpreted employing the same general rules of statutory interpretation. *Id.* at 7.

¶ 38 Because section 5-12-160 and section 5-12-030 of the RLTO (Chicago Municipal Code § 5-12-030 (added Sept. 8, 1986)), which is the definition section, do not define the terms "oust" and "dispossess," we must assume the legislature intended those words to have their ordinary and popularly understood meaning. *Marc Realty, L.L.C.*, 235 Ill. 2d at 8. A dictionary may be used to determine the meaning of an undefined word. *Id.* at 8.

¶ 39 Black's Law Dictionary defines the term "oust" as: "To put out of possession; to deprive of a right or inheritance." Black's Law Dictionary 1128 (7th ed. 1999). The dictionary defines the term "dispossess" as: "To oust or evict (someone) from property." Black's Law Dictionary 484 (7th ed. 1999). The dictionary definition of the term "evict" is: "1. To expel (a person, esp. a tenant), from real property, usu. by legal process. 2. Archaic. To recover (property or title) from a person by legal process. – evictor." Black's Law Dictionary 575 (7th ed. 1999).

¶ 40 Hieria does not dispute that he changed the lock to the apartment's door on February 13, 2007. But for Greiwe to receive the relief set forth in section 5-12-160, Hieria must have knowingly "ousted" or "dispossessed" Greiwe from the apartment when he changed the lock.

¶ 41 Based on the evidence in the record, Hieria clearly did not "oust" or "dispossess" Greiwe from the premises; instead, she voluntarily moved her belongings from the apartment and, through her own admission, no longer wished to occupy the apartment after February 12, 2007. The evidence adduced at trial also indisputably establishes Greiwe had no intention to use the apartment after she moved her belongings on February 12, 2007, prior to Hieria changing the lock. Greiwe's own testimony established that on February 12, 2007, she was living elsewhere.

Greiwe also stated she was allowed to and did enter the apartment after Hiera changed the lock to see if she left something behind in the apartment. Importantly, Greiwe never expressed to Hiera that she wished to move back into the apartment and continue her tenancy; rather, she acknowledged during trial that she did *not* want to move back.

¶ 42 Hiera's testimony reveals that he reasonably believed Greiwe vacated the apartment after observing moving trucks outside the apartment building, movers packing her belongings and her statement to him that "I'm out of here, I am not coming back." Officer Bottoms' and Lieutenant Frapolly's testimony corroborates Hiera's testimony because they testified that on February 12, 2007, Greiwe was in the process of moving out and had packed up her belongings. Hiera also testified that he changed the lock because his workmen who were repairing the apartment left their tools inside the apartment, which creates a reasonable inference that he changed the lock to facilitate the repairs and prevent theft of the tools, but not to knowingly "oust" Greiwe.

¶ 43 Based on the plain and ordinary language of section 5-12-160, the intended purpose of the provision is to provide relief to tenants when a landlord changes a lock in an effort to prevent a tenant from living in her home and having access to her property. Here, Greiwe's testimony establishes she was no longer living in the apartment and, aside from residual items, she moved all of her belongings out of the apartment before the lock was changed. See generally *Perry v. Evanston Young Men's Christian Association*, 92 Ill. App. 3d 820, 825 (1981) (stating a forcible entry occurs when entry is against the will of the person in *actual* possession). Moreover, Greiwe mailed February 2007 rent to Hiera at the beginning of the month, but requested that he hold the check until February 15, which was after Greiwe moved out of the apartment. Hiera sued for rent from February 1-12, and nothing in the record contradicts the trial court's finding that Greiwe failed to pay February 2007 rent. We must assume, therefore, that Greiwe stopped payment on

her February rent check after she moved out. Accordingly, no argument can be made that Greiwe had a right to occupy the apartment after she moved out.

¶ 44 In this case, there is no evidence in the record establishing that Hiera knowingly "ousted" or "dispossessed" Greiwe. Consequently, Hiera did not unlawfully interrupt Greiwe's occupancy of the apartment in violation of section 5-12-160 and the trial court's finding that Greiwe is entitled to the relief provided for in that section is contrary to the manifest weight of the evidence. Accordingly, the trial court's award of \$1,600 as damages to Greiwe on this count is vacated.

¶ 45 Hiera next claims the trial court's finding that he engaged in willful and wanton destruction of Greiwe's personal property was against the manifest weight of the evidence because the trial court did not find that his conduct was intentional or committed with a reckless disregard for Greiwe's safety and her property. Because the trial court made no findings consistent with "willful and wanton" misconduct, Hiera claims the trial court's ruling in favor of Greiwe on this count must be reversed. We agree.

¶ 46 A plaintiff seeking damages for willful and wanton misconduct must allege "either a deliberate intention to harm or an utter indifference to or conscious disregard for the welfare of the plaintiff." *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 518 (1989). The nature of Greiwe's counterclaim is not one sounding in ordinary negligence, but one of willful and wanton misconduct, which required her "to plead and prove the elements of negligence: duty, breach, proximate causation, and damages - as well as a deliberate intention to harm or a conscious disregard for plaintiff's welfare." *Jane Doe-3 v. McLean County Unit Dist. No. 5 Board of Directors*, 2012 IL 112479 (2012), ¶ 29. In contrast, case law defines "negligent conduct" as: " 'a failure to exercise the care that a reasonable man of ordinary prudence would

exercise to guard against any reasonably foreseeable, unreasonable risk of harm which might flow from his conduct.' " *Ziarko v. Soo Line Railroad*, 161 Ill. 2d 267, 272 (1994) (quoting *Beccue v. Rockford Park District*, 94 Ill. App. 2d 179, 190 (1968)).

¶ 47 In count V of Greiwe's second amended counterclaim, upon which she prevailed, she sought \$18,993 as damages resulting from Hiera's willful and wanton conduct in destroying her property. Greiwe asserted that Hiera was grossly negligent because he knew or should have known that a burst water pipe caused flooding in her apartment, he acted in deliberate disregard of his duty to make prompt repairs and he knew or should have known that the failure to repair the water pipe would damage or completely destroy her personal property. Greiwe also asserted that Hiera "acted in willful and wanton disregard of the potential and actual threat to the safety of the counterplaintiff's person and property."

¶ 48 Although the trial court found that through the exercise of ordinary care, Hiera should have known the cause of the water was something other than a leak in the roof, the trial court made no finding supporting an allegation of "willful and wanton" misconduct, *i.e.*, that Hiera deliberately intended to harm Greiwe and/or her property, or that Hiera displayed an utter indifference or reckless disregard for her welfare. Absent such a finding, the trial court's ruling in favor of Greiwe on this count was error.

¶ 49 Moreover, the record does not support a finding that Hiera engaged in "willful and wanton" misconduct where he responded to Greiwe's complaints of water leaking through the ceiling of her apartment, he undertook an investigation to determine the source of the leak and he testified it was uncommon for pipes to be located in a ceiling and that he was unaware prior to the leaks in Greiwe's unit that water pipes were located in the ceiling. Hiera also obtained two work proposals from roofers after they viewed the roof knowing there was a water leak problem,

which supported Hiera's belief that the leak may have been coming from the roof, especially when the leak was occurring only in the top floor apartment. Hiera continued to explore the cause of the leak by drilling a hole in the apartment's ceiling, but when water started coming out of the hole, Greiwe told Hiera and his workers to "get out, stop" preventing further investigation of the water leak from inside the apartment. Furthermore, neither Greiwe nor Tobin testified that they told Hiera a burst pipe was causing the leak, which creates the reasonable inference that the leak's actual cause was not readily apparent to an ordinary person. After examining the record, we find no evidence that Hiera deliberately refused to investigate the leak in Greiwe's apartment. Consequently, the trial court's ruling in favor of Greiwe on her "willful and wanton" misconduct count must be reversed. Accordingly, we need not address Hiera's contention that the amount of damages Greiwe was awarded lacked evidentiary basis; instead, the trial court's award of \$4,482 as damages relating to this count in favor of Greiwe is vacated because the record does not support a finding of "willful and wanton" misconduct.

¶ 50 Lastly, Hiera contends the trial court awarded him an insufficient amount of attorney fees. Hiera claims he is entitled to attorney fees not only for the RLTO count that he raised in his second amended complaint and which was resolved in his favor, but also on the two RLTO counts (counts I and VI) raised in Greiwe's second amended counterclaim that were also resolved in his favor. Hiera claims that as prevailing plaintiff, he was entitled to all reasonable attorney fees arising out of his or Greiwe's pursuit of the rights and remedies provided by the RLTO.

¶ 51 Section 5-12-180 provides:

"Except in cases of forcible entry and detainer actions, the *prevailing plaintiff* in any action arising out of a landlord's or tenant's application of the rights or remedies made available in this ordinance shall be entitled to all court costs and reasonable

attorney's fees; provided, however, that nothing herein shall be deemed or interpreted as precluding the awarding of attorney's fees in forcible entry and detainer actions in accordance with applicable law or as expressly provided in this ordinance." (Emphasis added). Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991).

¶ 52 Section 5-12-180's plain language entitles the "prevailing plaintiff" to reasonable attorney fees. *Id.*; *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 131231, ¶ 20. Hiera seeks attorney fees for the successful defense of the two RLTO counts (counts I and VI) raised in Greiwe's second amended counterclaim. Because Hiera was the counter-*defendant* and not the "prevailing plaintiff" regarding those two counts, he is not entitled to any attorney fees as to those counts under section 5-12-180.

¶ 53 Hiera also claims that the trial court erred in the amount of attorney fees it awarded for the services his attorneys rendered defending against Greiwe's affirmative defenses for the unpaid August and September 2006 rent. Hiera specifically contends additional fees should have been awarded for preparing, reviewing and/or attending the depositions of Greiwe, Hiera and the Illinois Tenants Union's assistant director who testified regarding the apartment's defective condition in defense of the non-payment of rent.

¶ 54 A trial court has broad discretion in awarding a party attorney fees and its decision will not be reversed absent an abuse of discretion. *In re Estate of Callahan*, 144 Ill. 2d 32, 44 (1991). A trial court abuses its discretion where its decision "is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *People v. Rivera*, 2013 IL 112467, ¶ 37.

¶ 55 Based on a review of the record, we conclude the trial court's reduction of hours allocated for specific services rendered was not unreasonable given the nature of the dispute, and the trial court disallowed fees that appeared to be included in other general entries, such as "review

depositions for trial." Moreover, Greiwe's attorneys filed a motion to modify the trial court's fee order requesting the trial court to recalculate the amount of attorney fees awarded relating to the unpaid rent claim, and Greiwe had previously acknowledged that time spent defeating affirmative defenses against the complaint should be included in the amount of attorney fees awarded to a prevailing plaintiff. Consequently, the record reflects that considerable attention was devoted to the issue of attorney fees, and we find no abuse of discretion regarding the amount of attorney fees awarded to Hiera.

¶ 56 Because the trial court erred in ruling in favor of Greiwe on her illegal lockout claim (count IV) premised on a violation of the RLTO, we vacate the trial court's award of \$1,737 as attorney fees to Greiwe on that claim given that she is no longer the prevailing plaintiff entitled to fees under section 5-12-180.

¶ 57 CONCLUSION

¶ 58 The trial court erred in finding that Hiera illegally locked Greiwe out of the apartment (count IV) and that he engaged in the "willful and wanton" destruction of Greiwe's personal property (count V). The trial court did not err in the amount of attorney fees awarded to Hiera because he is not entitled to attorney fees relating to RLTO counts Greiwe raised in her second amended counterclaims, and the amount of attorney fees awarded relating to his claim for unpaid rent was not an abuse of discretion. Consequently, we reverse the trial court's order entering judgment in favor of Greiwe and against Hiera and vacate the amount awarded to Greiwe of \$7,819, which is comprised of the following: (1) \$1,600 awarded as damages for the illegal lockout (count IV); (2) \$4,482 awarded as damages for the "willful and wanton" destruction of her property (count V); and (3) \$1,737 for attorney fees as prevailing plaintiff on the RLTO based illegal lockout count.

No. 1-13-1828

¶ 59 Affirmed in part, reversed in part, and vacated in part.