2014 IL App (1st) 131765-U
No. 1-13-1765
September 16, 2014

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JOAN EDELBERG, Plaintiff-Appellant, v. MELISSA HABERMAN and MIDWEST REALTY VENTURES, LLC d/b/a PRUDENTIAL RUBLOFF PROPERTIES and d/b/a PRUDENTIAL RUBLOFF and d/b/a PRUDENTIAL PREFERRED PROPERTIES, Defendants-Appellees.	)	Appeal from the Circuit Court Of Cook County. No. 11 M1 127355 The Honorable Leon Wool and James Snyder, Judges Presiding.

JUSTICE NEVILLE delivered the judgment of the court, with opinion.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: (A) a landlord is not entitled to summary judgment where material issues of fact exist as to whether the landlord commingled the plaintiff's security deposit with the landlord's personal assets, failed to deliver possession of the apartment to the plaintiff in compliance with the Chicago Landlord Tenant Ordinance and breached the lease by failing to perform repairs as required by the ordinance; (B) if a landlord fails to disclose the identification of the owner and agents to the tenant in writing at or before the commencement of the lease, the

tenant must provide notice to the landlord as prescribed by the ordinance; (C) a real estate broker is not entitled to summary judgment where the tenant alleges that the landlord commingled the security deposit that the tenant tendered to the broker and the landlord disputes receiving the security deposit; (D) the trial court does not abuse its discretion when it denies plaintiff's motion to file an amended complaint where the amendment would have been futile; and (E) the trial court does not abuse its discretion when it allows a defendant to reject an arbitration award where no evidence was presented that defendant deliberately disregarded the rules and the court.

¶ 2 Joan Edelberg, the plaintiff, filed a four count complaint against Melissa Haberman and Midwest Realty Ventures, LLC d/b/a Prudential Rubloff Properties, d/b/a Prudential Rubloff and d/b/a Prudential Preferred Properties (Midwest Realty), the defendants, and alleged that defendants breached the lease and violated several provisions of the Chicago Residential Landlord Tenant Ordinance (RLTO). Chicago Municipal Code § 5-12-010 *et seq*. The defendants' motions for summary judgment were granted by the trial court.

¶ 3 On appeal Edelberg argues that the trial court erred when it granted the defendants' motions for summary judgment because material issues of fact existed which should have precluded summary judgment, or the trial court should have granted summary judgment in her favor. Edelberg also argues that the trial court erred when it denied her motion for leave to file an amended complaint and her motion to debar Haberman from rejecting the arbitration award.

¶ 4 We find the trial court did not err when it granted summary judgment in favor of Haberman and Midwest Realty on count IV. In addition, the trial court did not abuse its discretion when it denied Edelberg's motion to file an amended complaint and motion to debar Haberman from rejecting the arbitration award. But the trial court erred when it granted summary judgment in favor of Haberman on counts I, II and III and in favor of Midwest Realty on counts I and II of Edelberg's complaint.

¶ 5 Background

¶ 6 On July 16, 2010, Edelberg entered into a residential lease with Haberman to lease apartment 401, located at 1250 North LaSalle Street in Chicago, Illinois. The lease commenced on August 2, 2010, and was to terminate on July 31, 2011. The monthly rent was $1,800 and under the terms of the lease, Edelberg was to pay a security deposit of $1,800. Haberman's address was written on the lease as 1250 North LaSalle, # 401, Chicago, IL 60601.

¶ 7 Midwest Realty was the broker retained by Haberman to find a tenant for the apartment. Anna Sroka, a realtor with Midwest Realty, was the listing agent. Prior to the commencement of the lease on August 2, 2010, Edelberg requested that Haberman repair the buckling and broken floor inside the apartment and on July 18, 2010, Edelberg sent an email to Sroka asking for a lock to be installed on the patio door. On Thursday, July 29, 2010, Sroka informed Edelberg that a handyman was going to look at the floor the next day to assess how long it would take and how much it would cost to repair the floor. Later that day in another email, Sroka asked Edelberg if she would be willing to take possession of the apartment if the floor was not fixed prior to her move in date. Edelberg responded that she would not take possession. On Saturday, July 31, 2010, Sroka sent an email to Edelberg stating that "the floor piece was ordered should be taken care of [M]onday when would you like to schedule walk thru?"

¶ 8 On Thursday, August 5, 2010, Sroka forwarded an email from Haberman to Edelberg which read:

> "If you have not occupied the property 1250 North LaSalle # 401by a period of 10 days from the date that the lease began (August 2, 2010) Such that by August 12th, I will consider the property abandoned. ***.
>
> On or before August 12th, you will inform the real-estate agent, Anna Sroka, of your decision to either move in, or terminate the lease. Should termination be your choice, you acknowledge that you forfeit first month's rent and security deposit."

¶ 9 On August 6, 2010, Edelberg responded "[d]ue to lack of disclosure we had no lease." Edelberg did not move into the apartment. On March 25, 2011, Edelberg's attorney wrote a "Termination of Tenancy" letter to Haberman stating "[n]otice is hereby given that Ms. Edelberg shall terminate the rental agreement due to your wilful failure to deliver possession of the premises on August 2010 or any time after in compliance with the rental agreement and the Chicago Residential Landlord and Tenant Ordinance Section 5-12-110(a) and (b)." The letter also requested (A) disclosure of the names and addresses of all owners and managers of the building and (B) that Haberman return the $3,600 for the prepaid rent and the security deposit.

¶ 10 When Haberman did not comply with Edelberg's demands, Edelberg filed a four count complaint against Haberman and Midwest Realty on April 18, 2011. The general allegations of the complaint were that "[p]laintiff demanded certain repairs prior to moving in to [sic] the unit, including having a lock installed on the patio door, and fixing the buckling and broken floors[,] [that] as of July 31, 2010 the floor and other repairs were not made or completed," and that Haberman refused to return the prepaid rent and security deposit.

¶ 11 In count I, Edelberg alleged that the defendants mishandled her security deposit and prepaid rent. Specifically, Edelberg alleged that (A) the defendants never disclosed the name and address of the financial institution where her security deposit was held in violation of section 5-12-080(a)(3) of the RLTO (Chicago Municipal Code § 5-12-080(a)(3) (amended July 28, 2010), and (B) "[u]pon information and belief, the Defendant failed to hold the Plaintiff's security deposit in a separate, interest-bearing, federally insured and/or Illinois bank account," in violation of subsection 5-12-080(a) of the RLTO. Chicago Municipal Code § 5-12-080(a)(3) (amended July 28, 2010).

¶ 12 In Count II, Edelberg alleged that defendants wilfully failed to deliver possession of the apartment to her in compliance with section 5-12-110(b) of the RLTO (Chicago Municipal Code § 5-12-110(b) (eff. Nov. 6, 1991)), and that defendants "never gave or tendered the keys to plaintiff or authorized possession to her."

¶ 13 In count III, Edelberg restated and realleged the general allegations of her complaint to support her breach of contract action against Haberman.

¶ 14 In count IV, Edelberg alleged that the defendants never disclosed the name, address and telephone number of the owner and person authorized to receive service of process in violation of section 5-12-090 of the RLTO. Chicago Municipal Code § 5-12-090 (amended Nov. 6, 1991). Specifically, Edelberg alleged that the address for Haberman that was written in the lease was the address for the leased apartment and was not Haberman's actual address.

¶ 15 Haberman filed an answer to Edelberg's complaint. In response to Edelberg's allegation that "on or about July 18, 2010 the Plaintiff paid to Haberman the sum of $1,800 and another $1,800 to Prudential Rubloff [Midwest realty]," Haberman answered: "[a]dmit that Haberman paid an $1,800 security deposit and first month's rent in the amount of $1,800."

Haberman also admitted that Edelberg demanded that certain repairs be made prior to the commencement of Edelberg's lease, but Haberman alleged that Edelberg did not make the requests with enough time for the repairs to have been completed by July 31, 2010.

¶ 16 On April 4, 2012, Haberman filed a motion for summary judgment and argued that she was not required to disclose the financial institution where the security deposit was being held because the provision of the RLTO that requires the disclosure became effective on July 28, 2010, after the lease was signed. Haberman also argued that because Edelberg did not take possession of the apartment, her tenancy did not begin and Haberman was not required to disclose the ownership information required by section 5-12-090 of the RLTO.

¶ 17 Haberman supported her motion for summary judgment with an affidavit in which she averred that she had agreed to make the repairs to the apartment despite the fact that she was not obligated to do so and that the apartment was ready for occupancy on August 2, 2010. Haberman also averred that she did not receive the $1,800 security deposit from Edelberg. Finally, Haberman averred that in an effort to mitigate her damages she rented the apartment in October 2010.

¶ 18 On May 11, 2012, Edelberg filed a response to Haberman's motion for summary judgment and a cross motion for summary judgment. Edelberg argued that she was entitled to summary judgment because Haberman breached the lease and refused to return the prepaid rent and security deposit with interest. Edelberg also argued that Haberman wilfully failed to provide discovery responses. Edelberg supported her motion with her affidavit in which she averred that Haberman did not repair the "buckling floor" prior to the commencement of the lease. Edelberg also averred that she tendered two checks to Sroka: one check for the security deposit and the other for the first month's rent. Edelberg attached copies of both

checks to her affidavit. Both checks were dated July 18, 2010, for $1,800 each. The first check was made out to Haberman and the endorsement on the back of the check read "credited to account of within named payee for deposit only." The second check was made out to Prudential Rubloff and the endorsement on the back of that check read "Midwest Realty Ventures LLC DBA Prudential Preferred Properties."

¶ 19 Edelberg also supported her motion with Midwest Realty's response to Edelberg's Supreme Court Rule 214 (eff. Jan. 1, 1996) requests for production of documents in which Midwest Realty admitted that it gave the security deposit to Haberman.

¶ 20 On December 9, 2011, the trial court assigned the case for mandatory arbitration. On May 18, 2012, the arbitration hearing set for June 14, 2012, was vacated and reset for July 25, 2012. On June 18, 2012, the trial court vacated the July 25, 2012, arbitration hearing and reset the hearing date for August 16, 2012.

¶ 21 On June 18, 2012, the trial court also (A) granted Haberman's motion for summary judgment on counts I, II and IV but denied the motion on count III, the breach of contract action, and (B) struck Edelberg's cross motion for summary judgment.

¶ 22 On July 16, 2012, Edelberg filed a motion for leave to file an amended complaint with a copy of the proposed amended complaint attached to the motion, but the trial court denied the motion on July 26, 2012.

¶ 23 Although the order setting the arbitration hearing for July 25, 2012, was vacated, the arbitrators' July 25, 2012 order found that no one appeared and stated that plaintiff and defendant did not participate in good faith. The arbitrators also found in favor of defendant and against Edelberg. On August 8, 2012, Edelberg filed a motion to vacate the July 25, 2012 arbitration award.

¶ 24 On August 16, 2012, the scheduled arbitration hearing date, a second arbitration hearing was held. Edelberg's attorney and Midwest Realty's attorney were both present at the hearing and agreed that the hearing would only involve count III, the breach of contract action. Haberman and her attorney did not appear at the hearing. The arbitrators entered an award (A) in favor of Edelberg and against Haberman on count III, but (B) in favor of Midwest Realty and against Edelberg on count III.

¶ 25 On August 22, 2012, Haberman filed an emergency motion to vacate the August 16, 2012 arbitration award and argued that the arbitration award was improperly entered because the trial court had not vacated the July 25, 2012 award. Haberman's attorney supported the motion to vacate with her affidavit and Haberman's affidavit. Haberman's attorney averred in her affidavit that she appeared at the arbitration center on August 16, 2012, and that an employee at the arbitration center advised her that the case was not on the call and would not be heard that day. Haberman averred in her affidavit that she flew into Chicago on August 16, 2012, and was prepared to attend the arbitration hearing, but her attorney advised her that the arbitration would not take place on that day. A copy of Haberman's itinerary from Southwest Airlines was attached to her affidavit and shows that Haberman was scheduled to arrive in Chicago on August 15, 2012, at 8:35 a.m.

¶ 26 On August 24, 2012, the trial court denied Haberman's motion to vacate the August 16 arbitration award. On August 28, 2012, Haberman filed a motion to reject the August 16, 2012 arbitration award and requested a trial.

¶ 27 On September 26, 2012, Edelberg filed a motion to debar Haberman from rejecting the arbitration award and requested that sanctions be imposed against Haberman for failing to

appear at the August 16, 2012, arbitration hearing. The trial court denied Edelberg's motion on December 6, 2012.

¶ 28 On February 21, 2013, Midwest Realty filed its motion for summary judgment on all four counts of Edelberg's complaint. Midwest Realty argued that it could not have breached the agreement between Haberman and Edelberg because it was not a party to the lease and it had only served as Haberman's agent for renting the apartment. Midwest Realty also argued that because the court granted Haberman's motion for summary judgment on counts I, II and IV, it was also entitled to summary judgment on those counts.

¶ 29 On February 28, 2013, Haberman filed a second motion for summary judgment on count III of Edelberg's complaint for breach of contract and alleged that new facts had come to light after the trial court denied the first motion for summary judgment on count III. Haberman attached Edelberg's testimony from the August 16, 2012, arbitration hearing to her motion for summary judgment. First, Haberman argued that because Edelberg testified at the arbitration hearing that she would not have taken possession of the apartment even if she had received the keys to the apartment, Edelberg cannot show that she suffered damages because of Haberman's alleged failure to tender the keys to her. Second, Haberman argued that because Edelberg testified that she requested the repairs after she signed the lease, Haberman had no duty to perform the repairs absent additional consideration for a promise to repair that was made after the execution of the lease.

¶ 30 On March 6, 2013, the trial court denied Edelberg's oral motion to amend her complaint. On May 2, 2013, the trial court granted defendants' motion for summary judgment on count III of Edelberg's complaint and dismissed the claim with prejudice. Edelberg filed this appeal.

¶ 31 Analysis

¶ 32 Standard of Review

¶ 33 The trial court may grant a motion for summary judgment when the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). We construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opposing party. *Illinois State Bar Association Mutual Insurance Co. v. Mondo*, 392 Ill. App. 3d 1032, 1036 (2009). The trial court should not grant a motion for summary judgment unless the right of the moving party is clear and free from doubt. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). Where, as here, cross-motions for summary judgment were filed, the parties "agree that only a question of law is involved and invite the court to decide the issues based on the record. [Citation.] However, the mere filing of cross-motions for summary judgment does not establish that there is no issue of material fact, nor does it obligate a court to render summary judgment." *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. On appeal from a trial court's order granting a motion for summary judgment, our review is *de novo*. *Thompson*, 241 Ill. 2d at 438.

¶ 34 In addition, the construction and interpretation of the RLTO and the lease present questions of law which we review *de novo*. *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1, 9 (2001); *Plambeck v. Greystone Management & Columbia National Trust Co.*, 281 Ill. App. 3d 260, 266 (1996). Generally, in construing municipal ordinances, the same rules apply as those which govern the construction of statutes. *Application of County Collector of Kane County*, 132 Ill. 2d 64, 72 (1989). In interpreting a statute, the primary rule is to

ascertain and give effect to the intent of the legislature. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990).

¶ 35 Count I—Security Deposit

¶ 36 On appeal, Edelberg argues that the trial court erred when it granted Haberman's motion for summary judgment on her claim that Haberman violated section 5-12-080 of the RLTO by commingling her security deposit. Edelberg also argued in the trial court that Haberman failed to disclose the name and address of the financial institution where the security deposit was held in violation of section 5-12-080(a)(3) of the RLTO. Chicago Municipal Code § 5-12-080(a)(3) (amended July 28, 2010). However, on appeal, Edelberg concedes that prior to the amendment of section 5-12-080(a) of the RLTO, the statute did not require disclosure of the name and address of the landlord's financial institution. The requirement mandating disclosure of the name and location of the landlord's financial institution was added by amendment after Edelberg signed the lease in July 2010. Therefore, at the time the parties signed the lease, Haberman was not required by section 5-12-080(a) of the RLTO to disclose the name and location of her financial institution in the lease. *Faison v. RTFX, Inc.*, 2014 IL App (1st) 121893, ¶¶ 38-39; Chicago Municipal Code § 5-12-080(a) (amended Mar. 31, 2004).

¶ 37 Edelberg also contends that a genuine issue of fact remained as to whether Haberman commingled her security deposit with her personal funds in violation of section 5-12-080 of the RLTO. Section 5-12-080(a) of the RLTO provides:

> "A landlord shall hold all security deposits received by him in a federally insured interest-bearing account in a bank, savings and loan association or other financial institution located in the State of Illinois. A security deposit

> and interest due thereon shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the landlord." Chicago Municipal Code § 5-12-080(a) (amended Mar. 31, 2004).

¶ 38 We note that Haberman made inconsistent statements about Edelberg's security deposit in an affidavit, in her answers to the complaint, and in her correspondence. Haberman stated in her answer: "admit that Haberman paid a $1,800 security deposit." But Haberman also stated in her answer that Edelberg did not have a right to a return of the security deposit because Edelberg did not terminate the lease. Haberman stated in an August 5, 2010 email to Edelberg that "[s]hould termination be your choice, you acknowledge that you forfeit first month's rent and security deposit." Finally, Haberman averred in her affidavit that Edelberg never provided her with the $1,800 security deposit.

¶ 39 In response, Edelberg averred in her affidavit that she tendered two checks to Sroka: one check for the security deposit and the other for the first month's rent. Edelberg's averment was corroborated by Midwest Realty's Rule 214 responses in which Midwest Realty admitted that it received the security deposit check from Edelberg and that it delivered the check to Haberman. The endorsements on the back of the checks showed that one check was deposited into Haberman's account and the other into Midwest Realty's account. However, there is no notation on either check to indicate which check was the security deposit.

¶ 40 Based on the aforementioned evidence, we find that a material issue of fact exists as to whether Haberman received Edelberg's security deposit and whether she commingled the security deposit with her own funds. See *Mydlach v. DaimlerChrysler Corp.*, 226 Ill. 2d 307, 311 (2007) (the purpose of a summary judgment proceeding is not to try an issue of fact, but

rather to determine whether one exists). Therefore, the trial court erred when it granted Haberman's motion for summary judgment on count I.

¶ 41 Count II—Failure to Deliver Possession

¶ 42 Next, Edelberg argues that the trial court erred when it granted Haberman's motion for summary judgment on count II, in which she claimed that Haberman denied her possession of the apartment by (A) failing to provide her with the keys to the apartment, and (B) failing to deliver possession of the apartment to her in compliance with section 5-12-070 of the RLTO. First, regarding whether Haberman failed to give Edelberg the keys to the apartment, the facts establish that on July 29, 2010, Sroka asked Edelberg if she would take possession of the apartment if the repairs were not completed by August 2, 2010, and Edelberg replied that she would not. Then, on August 5, 2010, Haberman stated in an email to Edelberg that if Edelberg did not occupy the apartment by August 12, 2010, she would consider the property abandoned and that Edelberg should inform Sroka about her decision to occupy the apartment or terminate the lease. Finally, we note that Edelberg did not provide an affidavit or other evidentiary materials which established that she requested the keys or that Haberman refused to give the keys to her. Therefore, the evidence establishes that Edelberg was not denied the keys to the apartment.

¶ 43 Second, Edelberg argues that Haberman violated section 5-12-110(b) of the RLTO when she failed to deliver possession of the apartment to her in compliance with section 5-12-070 of the RLTO. Section 5-12-070 of the RLTO provides: "[t]he landlord shall maintain the premises in compliance with all applicable provisions of the municipal code and shall promptly make any and all repairs necessary to fulfill this obligation."

¶ 44 Section 5-12-110 of the RLTO prescribes the acts of the landlord which constitute material noncompliance with section 5-12-070 of the RLTO, and provides in pertinent part:

> "For purposes of this section, material noncompliance with section 5-12-070 shall include, but is not limited to, any of the following circumstances:
>
> ***
>
> failure to maintain floors in compliance with the safe load-bearing requirements of the municipal code;
>
> * * *
>
> failure to maintain floors, interior walls or ceilings in sound condition and good repair;
>
> failure to *** provide locks or security devices as required by the municipal code ***." Chicago Municipal Code § 5-12-110 (amended Nov. 6, 1991).

¶ 45 We note that the landlord's duty to comply with the ordinance is absolute and there are no exceptions. *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1, 9-10 (2001). Section 5-12-110 provided that Haberman would be in material noncompliance if she failed to maintain the floors in "good repair," or if she failed to "provide locks" as required by the Municipal code. Haberman averred in her affidavit that she was not obligated to make the repairs, but she "agreed to do so and the apartment was ready for occupancy on August 2, 2010." On July 31, 2010, Sroka sent an email to Edelberg stating that the floor piece was ordered and that the repairs would "be taken care of [M]onday." Edelberg averred in her affidavit that Haberman did not repair the floor prior to the commencement of the lease. The record does

not contain any repair receipts, work order or any other documents which would establish that the floor was repaired or that locks were installed on the patio door. We also note that Haberman did not state in her affidavit when the repairs were completed. When we construe the pleadings and affidavits strictly against Haberman and in favor of Edelberg, Haberman's right to a judgment on count II of Edelberg's complaint was not clear and free from doubt. See *Purtill*, 111 Ill. 2d at 240. Therefore, we find the evidence raises a genuine issue of material fact as to whether the repairs were completed and locks were installed on August 2, 2010, in compliance with section 5-12-110 of the RLTO and, thus the trial court erred when it granted Haberman's motion for summary judgment on count II of Edelberg's complaint.

¶ 46 Count III—Breach of Contract

¶ 47 Next, Edelberg argued that the trial court erred when it granted summary judgment in favor of Haberman on count III, the breach of contract action. Edelberg argued that Haberman breached the contract by failing to deliver possession of the apartment to her in compliance with section 5-12-070 of the RLTO and by failing to return her security deposit and the interest thereon. Edelberg also argues that because the provisions of the RLTO are implied terms of the contract (*Mitchell Buick & Oldsmobile Sales v. McHenry Sav. Bank*, 235 Ill. App. 3d 978, 985 (1992)), Haberman breached the contract when she failed to perform the repairs and deliver the apartment to Edelberg in compliance with section 5-12-070 of the RLTO.

¶ 48 If the landlord violates section 5-12-070 of the RLTO by failing to maintain the premises in compliance with the provisions of the municipal code, by failing to make all necessary repairs, and by failing to deliver possession of the dwelling unit to the tenant in compliance with the lease and section 5-12-070 of the RLTO, the tenant is allowed to terminate the lease

pursuant to the termination clause in section 5-12-110(b)(1) of the RLTO and the landlord "shall return all prepaid rent and security" to the tenant. Chicago Municipal Code § 5-12-110(b)(1) (eff. Nov. 6, 1991). Edelberg's right to a return of her security deposit is contingent upon whether Haberman breached the contract. Here, Edelberg's breach of contract arguments are based on the same grounds argued in count II—that Haberman failed to deliver possession of the apartment in compliance with section 5-12-110 of the RLTO. Because we found that the evidence raised a material issue of fact as to whether the repairs were completed on August 2, 2010, we also find that there is a material issue of fact as to whether Haberman breached the lease by failing to make all necessary repairs and by failing to deliver possession of the apartment to Edelberg in compliance with section 5-12-070 of the RLTO. Therefore, the trial court erred when it granted Haberman's motion for summary judgment on count III of Edelberg's complaint.

¶ 49 Count IV—Identification of Owner and Agents

¶ 50 Next, Edelberg argues that the trial court erred when it granted Haberman's motion for summary judgment on count IV of her complaint where it was alleged that Haberman failed to make the necessary ownership disclosure information available in the lease pursuant to section 5-12-090 of the RLTO. Specifically, Edelberg argues that the address written on the lease for Haberman was not Haberman's address, but the address for the apartment that Edelberg leased.

¶ 51 Section 5-12-090 of the RLTO is titled "Identification of Owner and Agents" and provides:

> "A landlord or any person authorized to enter into an oral or written rental agreement on the landlord's behalf shall disclose to the tenant in

> writing at or before the commencement of the tenancy the name, address, and telephone number of:
>
> (a) the owner or person authorized to manage the premises; and
>
> (b) a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands."

¶ 52 Here, Haberman's name was written on the face of the lease and Haberman signed the lease, but the address listed for Haberman was Edelberg's apartment, and the lease did not provide Haberman's address and telephone number. Therefore, Haberman did not comply with section 5-12-090 of the RLTO.

¶ 53 Next, because Haberman failed to comply with section 5-12-090 of the RLTO, Edelberg had a right to terminate the rental agreement pursuant to the notice provisions of section 5-12-110(a). Chicago Municipal Code § 5-12-110(a) (amended Nov. 6, 1991). Section 5-12-110(a) of the RLTO prescribes the manner in which the tenant is to provide notice to the landlord and provides in pertinent part:

> "*** the tenant under the rental agreement may deliver a written notice to the landlord specifying the acts and/or omissions constituting the material noncompliance and specifying that the rental agreement will terminate on a date not less than 14 days after receipt of the notice by the landlord, unless the material noncompliance is remedied by the landlord within the time period specified in the notice." Chicago Municipal Code § 5-12-110(a) (amended Nov. 6, 1991).

¶ 54 The evidence establishes that Edelberg did not take possession of the apartment on August 2, 2010; instead she sent an email to Sroka on August 6, 2010, stating that "due to lack of disclosure we had no lease." The evidence also establishes that Edelberg's attorney sent a termination letter to Haberman on March 25, 2011. We note that the attorney's March 25, 2011, termination letter requested disclosure of the name and address of all owners and managers of the building and specified that the floor was buckling, the act or omission constituting the material noncompliance, but the correspondence did not specify that the rental agreement will terminate on a date not less than 14 days after receipt of the notice by the landlord unless the material noncompliance is remedied by the landlord within the time period specified in the notice. Therefore, Edelberg failed to specify that the rental agreement will terminate on a date not less than 14 days after receipt of the notice by the landlord unless the material noncompliance is remedied by the landlord within the time period specified in the notice, as required by section 5-12-110(a) of the RLTO. Accordingly, because Edelberg failed to provide Haberman with the notice prescribed by section 5-12-110(a), we find that the trial court did not err when it granted Haberman's motion for summary judgment on count IV of Edelberg's complaint.

¶ 55 Midwest Realty's Motion for Summary Judgment

¶ 56 Edelberg has chosen not to appeal the trial court's decision that granted summary judgment in favor of Midwest Realty on count III, the breach of contract claim. Edelberg, however, maintains that Midwest Realty should be held jointly and severally liable with Haberman on counts I, II and IV because Midwest Realty acted as Haberman's agent in renting the apartment. Midwest Realty responds that it acted as Haberman's agent for the

sole purpose of renting the apartment and that once the apartment was rented, its relationship with Haberman ended.

¶ 57 Section 5-12-030(b) of the RLTO defines a landlord as "the owner, agent, lessor, or sublessor, or the successor in interest of any of them, of a dwelling unit or the building of which it is part." Chicago Municipal Code, 5-12-030(b). Midwest Realty admitted that it was Haberman's agent for the purpose of renting the apartment and that it received the security deposit check from Edelberg and delivered it to Haberman. The facts are undisputed that Midwest Realty received the two checks from Edelberg. In our analysis of count I against Haberman, we found that a material issue of fact exists as to whether Haberman received the security deposit and whether she commingled the security deposit with her own assets. Therefore, because Midwest Realty was the entity that received the checks from Edelberg, and Haberman is disputing that she received the security deposit, we find that the trial court erred when it granted summary judgment in favor of Midwest Realty on count I.

¶ 58 Edelberg also argues that Midwest Realty should be held liable on count II for Haberman's failure to deliver possession of the apartment to Edelberg in compliance with section 5-12-110(b) of the RLTO. Because Midwest Realty admitted that it was Haberman's agent and we found that there are material issues of fact as to whether Haberman delivered the apartment to Edelberg in compliance with section 5-12-110(b) of the RLTO, we also find that Midwest Realty was not entitled to summary judgment on count II of Edelberg's complaint.

¶ 59 Next, Edelberg argues that Midwest Realty was liable on count IV for Haberman's failure to disclose the ownership information in the lease as required by section 5-12-090 of the RLTO. Because we found that Edelberg failed to provide notice to Haberman as required by

section 5-12-110(a) of the RLTO, we also find that Midwest Realty was entitled to summary judgment on count IV of Edelberg's complaint.

¶ 60 Motion to Debar

¶ 61 Finally, Edelberg argued that the trial court erred when it denied her motion to debar Haberman from rejecting the arbitration award. We review a trial court's decision not to debar a party from rejecting an arbitration award for an abuse of discretion. *Campuzano v. Peritz*, 376 Ill. App. 3d 485, 490 (2007).

¶ 62 Pursuant to Rule 90(g), a party whose absence is not waived by stipulation or excused by the trial court may be debarred from rejecting the arbitration award. Ill. S. Ct. R. 90(g) (eff. July 1, 2008). A court may impose sanctions on a party for failure to appear at an arbitration hearing if the party's conduct was characterized by "a deliberate and pronounced disregard for the rules and the court." *Zietara v. Daimlerchrysler Corp.*, 361 Ill. App. 3d 810, 822 (2005).

¶ 63 On August 16, 2012, when the second arbitration hearing was held, the trial court had not ruled on Edelberg's motion to vacate the first arbitration award that was entered on July 25, 2012. Haberman's attorney averred in an affidavit that she showed up for the hearing on August 16, 2012, but was told by an employee at the arbitration center that the hearing was not on the call for that day. Also, Haberman averred in her affidavit that she flew into Chicago and was ready to appear at the arbitration hearing on August 16, 2012, but her attorney advised her that the hearing would not be held on that day. We find there is no evidence that Haberman's or her attorney's absence from the arbitration hearing was characterized by a deliberate and a pronounced disregard of the rules and the court.

Accordingly, the trial court did not abuse its discretion when it refused to debar Haberman from rejecting the arbitration award.

¶ 64 Motion to Amend Complaint

¶ 65 Edelberg also argues on appeal that the trial court erred when it denied her motion to file an amended complaint. The standard of review applicable when the trial court denies a motion for leave to amend is whether the trial court abused its discretion. *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 351 (2002). The trial court has discretion in deciding a motion to amend pleadings, and a reviewing court will not reverse the trial court's decision absent an abuse of that discretion. *Clemons*, 202 Ill. 2d at 351. An abuse of discretion will be found only where no reasonable person would take the view adopted by the trial court. *Fennell v. Illinois Central Railroad, Co.*, 2012 IL 113812, ¶ 21.

¶ 66 Here, because Edelberg's complaint was not defective and an amendment to the complaint would have been futile, the trial court did not err when it denied Edelberg's motion to amend her complaint. *Nelson v. Quarles & Brady, LLP*, 2013 IL App (1st) 123122, ¶ 69; *Rusch v. Leonard*, 399 Ill. App. 3d 1026, 1036-37 (2010).

¶ 67 CONCLUSION

¶ 68 The trial court did not err when it granted Haberman's and Midwest Realty's motions for summary judgment on count IV because Edelberg did not provide notice to Haberman as required by section 5-12-110(a) of the RLTO. The trial court also did not err when it denied Edelberg's motion to file an amended complaint, and when it denied Edelberg's motion to debar Haberman from rejecting the arbitration award. But, the trial court erred when it granted summary judgment in favor of Haberman on counts I, II and III and in favor of Midwest Realty on count 1 and II of Edelberg's complaint because the pleadings and

evidentiary materials created material issues of fact. Therefore, we affirm the trial court's orders that granted Haberman's and Midwest Realty's motions for summary judgment on count IV and that denied Edelberg's motion to file an amended complaint and her motion to debar Haberman from rejecting the arbitration award. But, we reverse the trial court's orders that granted Haberman's motion for summary judgment on counts I, II and III and Midwest Realty's motion for summary judgment on count I and II.

¶ 69 Affirmed in part and reversed in part; cause remanded.