2015 IL App (1st) 142867-U

No. 1-14-2867

FIFTH DIVISION
September 30, 2015

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FUAD SULAYMAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff/Counter-Defendant/Appellee,	)	Cook County.
	)	
v.	)	No. 12 M1 167179
	)	
MICHAEL RECINE,	)	The Honorable
	)	Israel A. Desierto,
Defendant/Counter-Plaintiff/Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes concurred in the judgment.
Justice Gordon dissented.

O R D E R

¶ 1 *HELD*: Although landlord failed to pay tenant interest on his prepaid rent in violation of section 5-12-080(c) of the RLTO, the ordinance did not provide tenant with a remedy where the plain language of section 5-12-080(f)(1) of the RLTO only provides damages when a security deposit is collected and tenant was not required to pay a security deposit.

¶ 2 In the underlying landlord-tenant dispute, defendant, Michael Recine, appeals the circuit court's judgment in favor of plaintiff, Fuad Sulayman, on defendant's counterclaim requesting

interest for his prepaid rent and a penalty for plaintiff's failure to provide the requisite interest. Defendant argues he was entitled to twice the amount of his prepaid rent as an award for plaintiff's failure to provide interest on his prepayment. Based on the following, we affirm.

¶ 3 FACTS

¶ 4 Plaintiff and defendant entered into a twelve-month lease for the property located at 130 N. Garland Court, #2503, in Chicago, Illinois. Plaintiff was the landlord of the subject property and defendant was the tenant. Pursuant to the terms of the lease, on March 24, 2011, defendant paid plaintiff $53,550 as prepaid rent, which represented a monthly rent of $4,500 for the twelve-month lease term beginning on April 4, 2011, and ending March 31, 2012, less the prorated days for April 2011. Plaintiff accepted the prepaid rent payment and deposited the sum into his personal account. Following the expiration of the lease term, the parties agreed to a month-to-month tenancy at the rate of $4,500 per month. Defendant never paid any security deposit and plaintiff never requested a security deposit from defendant. Defendant paid all rents due until he moved out of the subject premises on August 15, 2012, having provided plaintiff with two months' notice of his intent to terminate the month-to-month lease. Plaintiff never paid defendant interest on the prepaid rent.

¶ 5 On November 13, 2012, plaintiff filed a complaint against defendant seeking recovery for alleged physical damages to the subject premises. Then, on August 20, 2013, defendant filed a counterclaim pursuant to the Chicago Resident Landlord and Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-010 *et seq.* (2004)) requesting interest on his prepaid rent and for a penalty resulting from plaintiff's failure to pay the requisite interest. On November 6, 2013, defendant filed a motion for summary judgment with regard to plaintiff's complaint. On January 22, 2014, the circuit court granted summary judgment in favor of defendant, thereby dismissing

plaintiff's complaint. The court subsequently denied plaintiff's motion to reconsider the January 22, 2014, order. Defendant's counterclaim proceeded to a bench trial during which the parties agreed to a set of stipulated facts. In addition to the facts presented above, the parties stipulated to the circuit court that, because each month's rent was deducted from the one year prepaid sum, plaintiff held $27,000 for a period of 6 months or longer; $22,500 for 7 months; $18,000 for 8 months; $13,500 for 9 months; $9,000 for 10 months; and $4,500 for 11 months. The applicable rate of interest in 2011 was .073% and in 2012 was .057%, causing the interest due defendant on the prepaid rent to be $112. On September 12, 2014, the circuit court entered an order finding in favor of plaintiff and against defendant. This appeal followed.

¶ 6 ANALYSIS

¶ 7 Defendant contends he is entitled to two times his prepaid rent of $53,550 as a penalty for plaintiff's failure to comply with section 5-12-080(c) of the RLTO (Chicago Municipal Code § 5-12-080(c) (2010)) where plaintiff held defendant's prepaid rent for more than six months without paying any interest to defendant. Plaintiff concedes that he failed to pay defendant interest on his prepaid rent in violation of section 5-12-080(c) of the RLTO; however, plaintiff argues that the penalty clause relied on by defendant, namely, section 5-12-080(f)(1) of the RLTO (Chicago Municipal Code § 5-12-080(f)(1) (2010)), provides damages only when a tenant has paid a security deposit. Where no security deposit has been collected, as was the case here, plaintiff maintains there is no financial penalty under the ordinance.

¶ 8 The question before us requires this court to construe provisions of the RLTO. The rules for interpreting municipal ordinances are the same as those that apply to statutory interpretation. *Steenes v. MAC Property Management,* 2014 IL App (1st) 120719, ¶ 17. The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *Gaffney v.*

Board of Trustees of the Orland Fire Protection District, 2012 IL 110012, ¶ 56. The most reliable indicator of statutory intent is the language of the statute, applying the plain and ordinary meaning to the terms as written. *People v. Hammond*, 2011 IL 110044, ¶ 53. A statute must be viewed as a whole, interpreting the words and phrases in light of other relevant provisions in the statute. *Crittenden v. Cook County Comm'n on Human Rights*, 2012 IL App (1st) 112437, ¶ 81. "We will not depart from the plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the expressed intent of the legislature." *Gaffney*, 2012 IL 110012, ¶ 56. Moreover, unless the statutory language is unclear or ambiguous, a court will not utilize extrinsic aids of statutory interpretation. *Id*. "A statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more different ways." *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 395-96 (2003). The interpretation of a statute is a question of law, which we review *de novo*. *In re Commitment of Fields*, 2014 IL 115542, ¶ 32.

¶ 9 Section 5-12-080(c) of the RLTO provides:

> "A landlord who holds a security deposit or prepaid rent pursuant to this section for more than six months shall pay interest to the tenant accruing from the beginning date of the rental term specified in the rental agreement at the rate determined in accordance with Section 5-21-081 ***. The landlord shall, within 30 days after the end of each 12-month rental period, pay to the tenant any interest, by cash or credit to be applied to the rent due." Chicago Municipal Code § 5-12-080(c) (2010).

Plaintiff concedes that he did not provide defendant with interest for his prepaid rent, which was held for more than six months. At issue is the application of section 5-12-080(f)(1) of the RLTO. Section 5-12-080(f) provides:

"(1) Subject to subsection (f)(2), if the landlord fails to comply with any provision of Section 5-12-080(a)-(e), the tenant shall be awarded damages in an amount equal to two times the security deposit plus interest at a rate determined in accordance with Section 5-12-081. This subsection does not preclude the tenant from recovering other damages to which he may be entitled under this chapter.

(2) If a landlord pays the interest on a security deposit or prepaid rent within the 30-day period provided for in subsection (c), *** but the amount of interest is deficient, the landlord shall not be liable for damages under subsection (f)(2) unless:

(A) the tenant gives written notice to the landlord that the amount of the interest returned was deficient; and

(B) within fourteen days of receipt of the notice, the landlord fails to either:

(i) pay to the tenant the correct amount of interest due plus $50.00; or

(ii) provide to the tenant a written response which sets forth an explanation of how the interest paid was calculated.

If the tenant disagrees with the calculation of interest, as set forth in the written response, the tenant may bring a cause of action in a court of competent jurisdiction challenging the correctness of the written response. If the court determines that the interest calculation was not accurate, the tenant shall be awarded damages in an amount equal to two times the security deposit plus

interest at a rate determined in accordance with Section 5-12-081." Chicago Municipal Code § 5-12-080(f) (2010).

¶ 10 In *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1 (2001), the supreme court examined sections 5-12-080(c) and (f) of the RLTO, concluding:

"A landlord's duty to comply with the statute is absolute. If a landlord requires a security deposit, the landlord is required to pay the tenant interest on that deposit. If he fails to do so, he is liable to the tenant for the damages specified in the ordinance. There are no exceptions. Where a statute is clear and unambiguous, as this one is, the court should not look to extrinsic aids of construction. [Citations.] The statute must be enforced as written, and a court may not depart from its plain language by reading into it exceptions, limitations, or conditions not expressed by the legislature. [Citation.]

*** The purpose of the law is to help protect the rights of tenants with respect to their security deposits, including the right to receive interest. In most cases, the amount of interest landlords owe for security deposits is small, too small to warrant litigation against a landlord who refuses to abide by the law. Without the prospect of liability for significant additional damages, landlords would therefore have little incentive to meet their statutory obligations. They could withhold the interest payments with impunity. And many do. A study cited by plaintiff and presented to the circuit court showed that failure of landlords to pay interest on security deposits is a pervasive problem in the City of Chicago.

The city council has elected to address this problem by imposing an absolute duty on landlords to pay the interest they owe and conferring on tenants

> the right to recover double the amount of their security deposits when that duty is breached. While one may personally disagree with the wisdom of this choice, it is not this court's function to second-guess the city council's judgment in such matters. As our decisions have made clear, responsibility for the wisdom or justice of legislation rests with the legislature. Under our system of government, courts may not rewrite statutes to make them consistent with their own ideas of orderliness and public policy." *Id.* at 9-11.

¶ 11 The facts of the case before us are unique, in that defendant prepaid 12-months of rent, but he was not required to submit a security deposit. There is no question that plaintiff failed to comply with section 5-12-080(c) of the RLTO by failing to provide defendant with interest on the prepayment; however, based on the clear language of section 5-12-080(f)(1) of the RLTO, the penalty imposed for violating the ordinance is two times the *security deposit*. Chicago Municipal Code § 5-12-080(f)(1) (2010). The ordinance does not contemplate a penalty in the absence of a security deposit.

¶ 12 Contrary to defendant's argument, we find the language of the ordinance is not ambiguous. See *Lawrence*, 197 Ill. 2d at 10 (finding the ordinance was "clear and unambiguous," and did not require an element of willfulness when a landlord failed to pay interest on a tenant's pet deposit which constituted a security deposit). There are no terms "capable of being understood by reasonably well-informed persons in two or more different ways" in the ordinance. *Krohe*, 204 Ill. 2d at 395-96. Instead, the city council was clear that a penalty could only take the form of two times the security deposit. Section 5-12-080(f)(1) is penal (*Landis v. Marc Realty, LLC*, 235 Ill. 2d 1, 15 (2009)), and the supreme court has instructed that "[p]enal statutes will be construed strictly, and not extended beyond their terms"

(*Croissant v. Joliet Park District*, 141 Ill. 2d 449, 455 (1990)). Although not applicable to the case at bar, subsection (f)(2), again references prepaid rent such that "if a landlord pays the interest on a security deposit or prepaid rent within the 30-day period provided for in subsection (c), *** but the amount of interest is deficient," a penalty will be imposed if the elements of the ordinance are met. Chicago Municipal Code § 5-12-080(f)(2) (2010). However, even in subsection (f)(2), the prescribed penalty is also limited to two times a security deposit. Chicago Municipal Code § 5-12-080(f)(2) (2010). Therefore, the penalty allowed by the ordinance is clearly linked to a security deposit, and a security deposit was not collected in this instance. As a result, defendant was not entitled to damages.

¶ 13 We recognize the harsh consequences of the ordinance under the circumstances presented here. However, this court may not read conditions into the ordinance not expressed by the city council. *Gaffney*, 2012 IL 110012, ¶ 56. "A court exceeds its authority if it goes beyond construing the statute as it is written and, under the guise of construction, reads new provisions into it to remedy omissions the court may perceive." *Department of Transportation, State of Illinois v. Lowderman, LLC*, 367 Ill. App. 3d 502, 505 (2006); see *City of Chicago v. Cotton*, 356 Ill. App. 3d 1, 6 ("when a statute provides for certain penalties, without providing for additional judicial discretion, the courts will impose only those penalties provided"). Again, based on the language of the statute, defendant was not entitled to a penalty for plaintiff's failure to provide interest where no security deposit was collected.

¶ 14 Because we have concluded that the ordinance is not ambiguous, we need not resort to other aids of construction to assist in interpreting section 5-12-080(f)(1). *Gaffney*, 2012 IL 110012, ¶ 56. We, therefore, need not consider defendant's argument related to the principle of *ejusdem generis*. See *Hagen v. City of Rock Island*, 18 Ill. 2d 174, 179 (1959).

¶ 15 Defendant additionally argues that his prepaid rent should form the basis of the penalty for plaintiff's violation of section 5-12-080(c) because his rent should be considered a security deposit. We disagree.

¶ 16 In analyzing section 5-12-080 of the RLTO, this court noted that the RLTO does not define the term "security deposit." *Steenes*, 2014 IL App (1st) 120719, ¶ 20. Relying on a previous decision defining the term, this court stated that a security deposit has been described as " '[m]oney a tenant deposits with a landlord as security for the tenant's full and faithful performance of the lease terms. [Citation.] Under the terms of a lease agreement, a security deposit remains the tenant's property which the landlord holds in "trust" for the tenant's benefit subject to the tenant fulfilling its obligations under the lease.' " *Id*. at 21 (quoting *Starr v. Gay*, 354 Ill. App. 3d 610, 613 (2004). In contrast, the RLTO defines rent as "any consideration, including any payment, bonus, benefits or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a dwelling unit." Chicago Municipal Code § 5-12-030(f) (2010).

¶ 17 Applying those definitions to prepaid rent, we conclude that the prepayment of rent does not constitute a security deposit. Although plaintiff, in this instance, did hold defendant's prepayments prior to having an ownership interest in the entire prepaid amount, plaintiff then drew from the collective on a monthly basis to satisfy defendant's payment for use of the dwelling. Nothing in the arrangement provided that defendant would retain an ownership interest in the amount submitted if he fulfilled his obligations under the lease. As a result, the prepayment did not share the attributes of a security deposit.

¶ 18 We note that, in his appellate brief, defendant did not request the $112 interest payment he was entitled to pursuant to section 5-12-080(c) of the RLTO. Defendant, therefore, has

waived his ability to request the interest payment on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing").

¶ 19 In sum, we find that, under the unique fact pattern presented, section 5-12-080(f)(1) of the RLTO does not provide defendant with damages despite plaintiff's failure to pay defendant interest on his prepaid rent.

¶ 20 CONCLUSION

¶ 21 Based on the following, we affirm the judgment of the circuit court.

¶ 22 Affirmed.

¶ 23 JUSTICE GORDON, dissenting:

¶ 24 I must respectfully dissent. This is a case of first impression on the issue of whether interest should be paid on prepaid rent. I could find no cases on this point and the majority and the lawyers on both sides failed to cite any authority on the issue. I would award the tenant damages consisting of the interest that would be due on his prepaid rent because the ordinance states: "This subsection does not preclude the tenant from recovering other damages to which he may be entitled under this chapter." Chicago Municipal Code § 5-12-080(f)(i)(2010). The trial court and majority overlook this provision in their analysis.

¶ 25 The best indication of legislative intent is the language of the ordinance, given its plain and ordinary meaning. *Le Compte v. Zoning Board of Appeals*, 2011 IL App (1st) 100423, ¶ 22. When the language of an ordinance is clear and unambiguous, reviewing courts should not depart from the plain language by reading into it exceptions, limitations, or conditions that the city council did not express. See *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990). "We give each word, clause, and sentence reasonable meaning and, to the extent possible, we do not render any statutory language superfluous." *Scott v. City of Chicago*, 2015 IL App (1st) 140570, ¶ 11.

¶ 26 Section 5-12-080(c) of the RLTO provides that:

> "A landlord who holds a security deposit or prepaid rent pursuant to this section for more than six months shall pay interest to the tenant accruing from the beginning date of the rental term specified in the rental agreement at the rate determined in accordance with Section 5-21-081 ***. The landlord shall, within 30 days after the end of each 12-month period, pay to the tenant any interest, by cash or credit to be applied to the rent due." Chicago Municipal Code § 5-12-080(c) (2010).

¶ 27 In the case at bar, the landlord was given prepaid rent for more than six months and was obligated to pay interest under the ordinance. There is nothing in the ordinance that restricts the court from awarding that interest. The provision requiring the landlord to pay the interest on the prepaid rent would be meaningless under the trial court and majority's decision in this case, which clearly was not the intent of the city council. Chicago Municipal Code § 5-12-080(c) (2010).