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2013 IL App (3d) 130135-U

Order filed December 17, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

ST. ANDREWS INVESTMENT)	Appeal from the Circuit Court
PROPERTIES, L.L.C.,)	of the 14th Judicial Circuit,
)	Rock Island County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-13-0135
v.)	Circuit No. 12-SC-952
)	
ALEXANDER BENTLEY and DAVIDA)	Honorable
BENTLEY,)	Frank R. Fuhr,
)	Judge, Presiding.
Defendant-Appellant.)	

JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Carter concurred in the judgment.

ORDER

¶ 1 *Held:* A trial court's judgment will be affirmed where the appellant fails to present any evidence of reversible error.

¶ 2 Plaintiff, St. Andrews Investment Properties, L.L.C., (St. Andrews) and defendant, Alexander Bentley, were parties to a residential rental lease agreement. The lease was for a term of twelve months, August 1, 2011, to July 31, 2012. Defendant appeals from trial court's judgment requiring him to pay plaintiff for repairs, utilities and unpaid rent. We affirm.

¶ 3

FACTS

¶ 4 Plaintiff's complaint alleged that defendant owed St. Andrews \$991.39 for unpaid rent and damages to the residence. The complaint also requested reasonable attorney's fees. Neither of the parties' briefs is very helpful in understanding the background of this case. While we have constructed the following accounting based on the record, we remind defendant that Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) provides that an appellant's statement of facts "shall contain the facts necessary to an understanding of the case."

¶ 5 Steven J. Fiers, the sole owner of St. Andrews, testified that defendant "abandoned" the property in May of 2012. Fiers explained: "From my understanding, he (defendant) was in the reserves, and so I think he was wherever the reserve headquarters was at." Fiers also added that defendant was "behind on a water bill at that time." Fiers sent out an itemized statement of repairs, damages and unpaid rent. The alleged net due to plaintiff was \$991.39. Fiers continued that he is now requesting more than \$991.39 because additional costs have been incurred since the previous itemized statement. The new itemized statement was admitted into evidence. It stated:

"Clean Carpet (estimate): \$235.00

Replace Door Locks: \$66.39

Mow Grass: \$225.00

Replace Smoke Detectors: \$38.91

Unpaid Water Bill (estimate) \$873.38

Subtotal: \$1439.18

Delinquent June Rental Payment: \$595.00

Security Deposit: (\$595.00)

Net Due to Plaintiff: \$1439.18."

¶ 6 The itemized bill had receipts and copies of checks supporting the utilities and repairs. Plaintiff also offered testimony related to repairs and utilities. For example, Fiers testified that he paid the water bill after defendant failed to pay it because the water company was going to shut off water to the unit and he did not want to have to pay a reconnection fee. Fiers also testified to mowing the grass and replacing the locks.

¶ 7 After Fiers' testimony, defendant requested a continuance to gather witnesses. The trial court granted the continuance on this basis and also to allow plaintiff to "check with the water department to see if they do, to confirm Mr. Fiers' testimony."

¶ 8 When the trial reconvened, plaintiff's attorney arrived approximately 20 minutes late. The court asked defendant if his witnesses were present. Defendant answered in the affirmative. He then explained: "They would be Robert Ruddell, the person I had mow the lawn, and then Charles Ruddell, his father, who had to bring in gas for mowing the lawn." Fiers informed the court that his water bill assessment was incorrect and it should have been split in half because the residence is a duplex. Thus, the appropriate water bill assessment was \$436.69. Defendant claimed that he paid plaintiff directly for the water bill. When the court asked defendant if he had any checks establishing that he paid the water bill, defendant replied: "Not for that one, your Honor. All I have is the receipt from May showing that the only water bill owed was \$445.25."

¶ 9 Defendant called Robert Ruddell who testified he mowed defendant's grass on May 20, 2012. Defendant then sought to call Charles Ruddell to validate Robert's story. The court refused to allow Charles to testify on the basis that his testimony would be cumulative. The

court then inquired whether defendant had any other witnesses. Defendant responded: "No, I did not, your Honor."

¶ 10 Ultimately, the court denied St. Andrews' request for expenses for carpet cleaning, mowing the grass and replacing the locks. The court did, however, award plaintiff \$436.69 for the water bill and \$38.91 for the replacement of the smoke detectors. The court also awarded plaintiff \$200 in attorney's fees. The total amount of the judgment was \$675.60.

¶ 11 ANALYSIS

¶ 12 First, defendant argues that he is entitled to relief under section 535 of the Servicemembers Civil Relief Act (the Act) (50 USCS Appx § 535) (West 2012)). Defendant argues that he told Fiers in May 2012 that he was terminating his lease pursuant to the terms of the Act. Thus, defendant believes he is entitled to that portion of his security deposit (\$595.00) that was applied towards the June 2012 rent. We disagree. While it appears clear that Fiers was at least aware that defendant was in the reserves, defendant did not present any evidence that he complied with section 535©, which provides:

"© Manner of termination.

(1) In general. Termination of a lease under subsection (a)

is made--

(A) by delivery by the lessee of written

notice of such termination, and a copy of the

servicemember's military orders, to the lessor, or to

the lessor's agent."

¶ 13 Second, defendant argues that he had more witnesses that he was unable to present as a

result of the plaintiff's attorney being 20 minutes late on the second day of the trial. The record rebuts this claim. Prior to his case in chief, plaintiff only identified two witnesses. After tendering those two witnesses and having one excluded by the court, defendant informed the court that he did not have any other witnesses to present. Defendant has failed to identify any additional witnesses or explain the content of their potential testimony. He has, therefore, presented no evidence in support of this claim of error.

¶ 14 Third, defendant claims that Fiers perjured himself with respect to his testimony concerning the water utility bill. Defendant does not provide us with any evidence of perjury. Instead, defendant merely challenges Fiers' credibility with respect to the water bill. The credibility of Fiers, however, was before the trial court and we will not reweigh it here on appeal. *People v. Erbe*, 344 Ill. App. 3d 350, 373 (2003). Moreover, we note that the court granted defendant a continuance so he could "check with the water department to see if they do, to confirm Mr. Fiers' testimony." Fiers then corrected his own prior mistaken testimony. Defendant did not present the court with any evidence supporting his claim that he paid Fiers directly for the water bill and expressly acknowledged this lack of evidence at trial. We will not disturb the court's holding as to the water bill.

¶ 15 Fourth, defendant claims that Fiers perjured himself with respect to his testimony about mowing the lawn and getting the carpet cleaned. These claims are not relevant to this appeal as the court denied plaintiff's request for expenses for cleaning the carpet and mowing the grass.

¶ 16 Finally, defendant presents us with a "Request for Monetary Reimbursement." In the request, defendant demands that he be reimbursed for his security deposit, the water bill and fees and costs. These are matters that should have been pled in the trial court and established through

presentation of evidence at that time. Defendant's briefs fail to illustrate that he met this burden.

Thus, we find defendant's request here on appeal waived.

¶ 17 For the foregoing reasons, we affirm the trial court's judgment.

¶ 18 Affirmed.