2015 IL App (1st) 140103-U

FIRST DIVISION
June 15, 2015

No. 1-14-0103

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SVETLANA LIN, on behalf of herself and all others similarly situated, Plaintiff-Appellant, v. SABOVIC MANAGEMENT GROUP LLC, and RAJAN K. RAJ a/k/a AN RAJ, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 2013 CH 08029 Honorable Mary Lane Mikva, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

Held: The trial court's order granting defendant's motion to dismiss plaintiff's class-action complaint is affirmed where plaintiff was not a tenant within the meaning of the Residential Landlord and Tenant Ordinance, the move-in fee she paid was not a security deposit or pre-paid rent, and the doctrine of unjust enrichment did not apply since a valid contract governed the relationship between the parties.

¶ 1 Plaintiff, Svetlana Lin, appeals the order of the circuit court granting defendant, Sabovic Management Group, LLC's motion to dismiss her class action complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (725 ILCS 5/2-615, 5/2-619 (West 2010)). On appeal, plaintiff contends the trial court erred in dismissing her claim because (1) although defendant had an enforceable order of possession against her she was still entitled to the remedies of the Residential Landlord and Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-010 *et seq*. (amended Mar. 31, 2004)), and she gave proper notice; (2) the move-in fee she paid under the lease was a security deposit and defendant did not comply with the RLTO's requirements for holding a security deposit; (3) alternatively, the move-in fee was pre-paid rent and defendant did not pay plaintiff the accrued interest as required by the RLTO; and (4) defendant's retention of the move-in fee constituted unjust enrichment. For the following reasons, we affirm.

¶ 2 JURISDICTION

¶ 3 The trial court granted defendant's motion to dismiss on January 6, 2014. Plaintiffs filed their notice of appeal on January 8, 2014. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 4 BACKGROUND

¶ 5 On June 19, 2011, plaintiff entered into a lease with defendant to rent a unit in an apartment building located at 5906 N. Sheridan Road in Chicago, Illinois. The term of lease was from July 1, 2011, to June 30, 2012, with a monthly rent of $645. Plaintiff attached a copy of the lease to her complaint. The lease also has a box designating the amount of security deposit. In the box, the amount listed as security deposit is "$0.00" but underneath, in

parentheses, it states "(Move-in Fee paid $250)." The parties do not dispute that at all relevant times, their relationship was governed by the RLTO.

¶ 6 On November 21, 2011, defendant served plaintiff with a notice that she owed $1,290 in rent with a demand for payment within five days of receiving the notice. Defendant subsequently obtained an eviction order against plaintiff for failure to pay rent. On February 29, 2012, defendant obtained an order for possession against plaintiff in the eviction matter. The eviction was stayed through March 7, 2012. On March 19, 2012, while still in possession of her unit, plaintiff's attorney sent defendant a letter demanding that defendant disclose all building code violations and all code enforcement proceedings on her building.[1] Among other demands, plaintiff requested that defendant "disclose as it relates to the above-captioned property all building code violations, all code enforcement proceedings, and the names and addresses of all owners and managers of the building." The letter also stated that the building "failed its annual conservation inspection on June 16, 2011, less than a month prior to Ms. Lin's execution of the Lease agreement. Your failure to notify Ms. Lin of this may render you liable to her for statutory damages in the amount of one month's rent, or $645.00." The letter further stated that "the law requires you to pay for reasonable attorney's fees, which are currently $525.00" but also acknowledged that plaintiff would be willing to settle the entire matter for $5,000. It requested "the courtesy of your response on or before March 23, 2012." When defendant failed to respond, plaintiff's attorney sent another letter dated April 3, 2012, as "our final attempt to resolve the issues relating to the above-captioned tenancy outside of court." It requested a response by April 10, 2012.

[1] Plaintiff's brief and the trial court's order state that the letter was dated March 16, 2012. However, the letter contained in the record is dated March 19, 2012.

¶ 7 Plaintiff was evicted from her unit on April 27, 2012. She alleges that she left the unit in "substantially the same condition as when her tenancy commenced," but defendant did not return her move-in fee, nor did she receive any interest on her move-in fee.

¶ 8 On March 25, 2013, plaintiff filed her class action complaint alleging four counts. Count I alleged defendant's failure to disclose code violations upon plaintiff's demand as required under section 5-12-100(a) of the RLTO. Count II alleged that the move-in fee was prepaid rent held for more than six months and therefore plaintiff is entitled to interest accrued on the move-in fee. Count III alleged, in the alternative, that the move-in fee was a security deposit and defendants did not comply with the requirements of the RLTO that security deposits be held in an interest-bearing account. Count IV alleged a claim for unjust enrichment regarding the move-in fee.

¶ 9 Defendants filed a motion to dismiss under sections 2-615 and 2-619 of the Code. A hearing on the motion was held on December 16, 2013. The trial court orally ruled on counts II, III and IV, and reserved count I for oral argument. [2] In its order after oral argument, the trial court summarized its findings on counts II through IV. It found that the move-in fee was neither pre-paid rent nor a security deposit on which interest would be due. It was "simply a fee." The court also addressed plaintiff's argument that the fee was an illegal charge, finding that the "RLTO does not prohibit this kind of charge nor does it require that a landlord return a move-in fee to the tenant." It dismissed counts II and III pursuant to section 2-615. The trial

[2] The record on appeal does not contain the transcripts of the hearing. Without this material, we cannot know the arguments presented at the proceedings or the trial court's reasoning when it made its determination. In this circumstance, we must presume that the trial court acted in conformity with the law and had a sufficient factual basis for its determination. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

court also dismissed count IV, finding that because plaintiff alleged that a valid express contract governed the relationship, unjust enrichment does not apply.

¶ 10 As to count I, the trial court found that at the time of her March 19, 2012, letter, plaintiff was a former tenant who did not have the right under the RLTO to demand building code violation information from the landlord. It granted defendant's motion to dismiss count I pursuant to section 2-619. Due to this determination, the trial court found it "unnecessary to address the sufficiency of plaintiff's notice" in the letter. Plaintiff filed this timely appeal. [3]

¶ 11 ANALYSIS

¶ 12 Plaintiff first contends that the trial court erred in dismissing count I of her complaint pursuant to section 2-619 of the Code. A section 2-619 motion admits the legal sufficiency of the complaint but asserts affirmative matter that defeats the claim. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). Affirmative matter is something that negates the cause of action completely or refutes conclusions of law or material fact contained in the complaint. *Dewan v. Ford Motor Co.*, 363 Ill. App. 3d 365, 368 (2005). We review the trial court's dismissal of a complaint under section 2-619 of the Code *de novo*. *Kean*, 235 Ill. 2d at 361.

¶ 13 In count I of her complaint, plaintiff alleged that defendant violated section 5-12-100 of the RLTO when it failed to notify her of building code violations prior to plaintiff signing her lease. Therefore, she is entitled to the remedies listed in section 5-12-090 of the RLTO. Section 5-12-100 provides:

> "Before a tenant initially enters into or renews a rental agreement for a dwelling unit, the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing:

[3] Defendant Ranjan K. Raj is not a party to this appeal.

> (a) Any code violations which have been cited by the City of Chicago during the previous 12 months for the dwelling unit and common areas and provide notice of the pendency of any code enforcement litigation or compliance board proceeding pursuant to Section 13-8-070 of the municipal code affecting the dwelling or common area. ***
>
> (b) * * * If a landlord violates this section, the tenant or prospective tenant shall be entitled to remedies described in Section 5-12-090." Chicago Municipal Code § 5-12-100 (amended Nov. 6, 1991).

Section 5-12-090 states, in relevant part:

> "If the landlord fails to comply with this section, the tenant may terminate the rental agreement pursuant to the notice provisions of Section 5-12-110(a). If the landlord fails to comply with the requirements of this section after receipt of written notice pursuant to Section 5-12-110(a), the tenant shall recover one month's rent or actual damages, whichever is greater." Chicago Municipal Code § 5-12-090 (amended Nov. 6, 1991).

¶ 14 Section 5-12-110 specifies the notice to the landlord required before tenants may utilize the remedies of section 5-12-090. It states, in relevant part:

> "(a) Noncompliance by Landlord. If there is material noncompliance by the Landlord with a rental agreement *** which renders the premises not reasonably fit and habitable, the tenant under the rental agreement may deliver a written notice to the landlord 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. If the material

> noncompliance is not remedied within the time period so specified in the notice, the rental agreement shall terminate, and the tenant shall deliver possession of the dwelling unit to the landlord within 30 days after the expiration of the time period specified in the notice. If possession shall not be so delivered, then the tenant's notice shall be deemed withdrawn and the lease shall remain in full force and effect." Chicago Municipal Code § 5-12-110 (amended Nov. 6, 1991).

Read in conjunction with section 5-12-090, section 5-12-110 requires that a tenant inform the landlord of the material noncompliance and specify whether she is seeking termination of the lease or one month's rent/actual damages as a remedy. *Ranjha v. BJBP Properties, Inc. and Elm II, LLC*, 2013 IL App (1st) 122155, ¶ 18.

¶ 15 Here, the trial court determined that plaintiff, as a former tenant, was not entitled to the remedies of section 5-12-090. Whether plaintiff was a tenant for purposes of the RLTO is a question of statutory construction. The objective of statutory construction is to ascertain and give effect to the intent of the legislature. *People ex rel. Birkett v. Jorgensen*, 216 Ill. 2d 358, 363 (2005). The best indicator of that intent is the statutory language, given its plain and ordinary meaning. *Holly v. Montes*, 231 Ill. 2d 153, 159 (2008). When the statutory language is plain and unambiguous, it must be applied as written and a reviewing court will not read into the language any exceptions, limitations, or conditions not expressed by the legislature. *People ex rel. Madigan v. Kinzer*, 232 Ill. 2d 179, 184-85 (2009).

¶ 16 Section 5-12-30(i) of the RLTO defines "tenant" as "a person entitled by written or oral agreement *** to occupy a dwelling unit to the exclusion of others." Chicago Municipal Code § 5-12-30(i) (amended Nov. 6, 1991). Through the lease, this right to possession and control of

the premises passes to the tenant to the exclusion of "the whole world, including the lessor." *Illinois Central R.R. Co. v. Michigan Central R.R. Co.*, 18 Ill. App. 2d 462, 477 (1958). Defendant here, however, prevailed in its forcible entry and detainer action brought pursuant to the Illinois Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101 *et seq.* (West 2010)), and as a result obtained an order of possession against plaintiff. The Act provides a mechanism for the peaceful adjudication of possession rights in the trial court. *Circle Management, LLC. V. Oliver*, 378 Ill. App. 3d 601, 608 (2007). " 'The distinct purpose of the forcible entry and detainer proceeding is to determine only who should be in rightful possession.' " *Id*. at 609, quoting *Miller v. Daley*, 131 Ill. App. 3d 959, 961 (1985). Since defendant obtained an order of possession for plaintiff's unit through this proceeding, the trial court had determined that defendant has the right to possess the property. Although the trial court stayed execution of the possession order, the stay does not alter defendant's right to possess the property. Since plaintiff did not have the right to possess the premises to the exclusion of defendant, she was not a tenant as defined by the RLTO. According to the plain language of the statute, the sections of the RLTO at issue are applicable to tenants. The trial court did not err in granting summary judgment on count I of plaintiff's complaint.

¶ 17 Plaintiff disagrees, arguing that former tenants are entitled to rights under the RLTO, even if they have been forcibly removed from the property. Specifically, plaintiff refers to claims for security deposits and for retaliation under sections 5-12-080 and 5-12-150. Plaintiff, however, provides no further argument or analysis, does not include those actual provisions in her brief and cites no authority for her position in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) (argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of record relied on").

Nonetheless, just because a former tenant may retain certain rights does not mean she also has the exclusive right to possess the property and is therefore a tenant as defined by the RLTO. Plaintiff also argues that she is a tenant because a landlord cannot dispossess a tenant from the property until an order of possession is "lawfully executed by the sheriffs," and although she did not have an approved tenancy when she sent her letter, she occupied her unit "to the exclusion of others." Plaintiff first raises this argument in her reply brief in violation of Rule 341(h)(7) (eff. Feb. 6, 2013) ("[p]oints not argued are waived and shall not be raised in the reply brief"). Also, as discussed above, the material issue is whether one has the exclusive right to possession, not the possession in and of itself. Summary judgment on count I was proper. Due to our disposition of this issue we need not address whether plaintiff gave defendant proper notice pursuant to section 5-12-110.

¶ 18 Plaintiff also alleged that the move-in fee she paid was a security deposit or, alternatively, pre-paid rent, and as such defendant owed her accrued interest on the fee. She contends that the trial court erred in finding that the move-in fee she paid was not a security deposit, or alternatively, pre-paid rent. The trial court dismissed these counts pursuant to section 2-615 of the Code. A 2-615 motion attacks "the legal sufficiency of a complaint based on defects apparent on its face." *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). Dismissal is proper under section 2-615 if the pleadings in the complaint, viewed in the light most favorable to the nonmoving party, do not state a claim upon which relief can be granted. *Willis v. NAICO Real Estate Property & Management Corp.*, 379 Ill. App. 3d 486, 489 (2008); *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 18. Mere conclusions of law or fact are insufficient to withstand a section 2-615 motion to dismiss. *Pooh-Bah Enterprises*,

Inc., 232 Ill. 2d at 473. We review the trial court's grant of a section 2-615 motion *de novo*. *Id*.

¶ 19 Whether the move-in fee is considered a security deposit requires an examination of the lease agreement executed between plaintiff and defendant. Our goal is to give effect to the parties' intent, which must be ascertained from the terms of the lease alone where the language is unambiguous. *Faison v. RTFX, Inc.*, 2014 IL App (1st) 121893, ¶ 31. In determining the parties' intent, we consider the lease as a whole and construe its provisions so that no part is rendered meaningless. *Id*.

¶ 20 *Steenes v. Mac Property Management, LLC*, 2014 IL App (1st) 120719, is instructive. In *Steenes*, the plaintiff also alleged that the move-in fee she paid was a security deposit. The lease listed the monthly rent as $715 and included a paragraph stating that the "[l]essee has deposited with Lessor the security deposit * * * to be retained by Lessor to ensure that Lessee shall fully perform each and every obligation provided in the lease." *Id*., ¶ 4. However, the lease did not list an amount paid as security deposit, and plaintiff did not allege that she paid a security deposit under that provision. *Id*.

¶ 21 The plaintiff in *Steenes* also received a welcome statement which listed nonrefundable fees, including a "Move-in Fee" of $350 to be paid before plaintiff signed the lease. *Id*., ¶ 5. Plaintiff contended that she did not receive consideration from defendants in exchange for the move-in fee. *Id*., ¶ 6. Plaintiff filed a complaint and alleged that the move-in fee was a security deposit, and the defendant did not handle the money as required by the RLTO. *Id*., ¶ 8.

¶ 22 The court in *Steenes* noted that the RLTO does not define "security deposit." *Id*., ¶ 20. However, it found that "security deposit" has been defined as " 'money a tenant deposits with a landlord as security for the tenant's full and faithful performance of the lease terms.' " *Id*., ¶ 21

(quoting *Starr v. Gay*, 354 Ill. App. 3d 610, 613 (2004)). The *Steenes* court determined that the move-in fee was not a security deposit because its amount of $350 was less than half of the monthly rent and is thus "inadequate to be considered as security for any nonpayment" of rent or to secure the tenant's full and faithful performance of the lease terms. *Id.*, ¶ 23. Furthermore, the move-in fee was non-refundable, and there was no indication in the welcome statement that the move-in fee was security to guarantee plaintiff's performance under the lease. *Id.*

¶ 23 The plaintiff in *Steenes* also argued that the move-in fee was pre-paid rent. The *Steenes* court noted that 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." *Id.*, ¶ 35. Chicago Municipal Code § 5-12-030(f) (amended May 12, 2010). It determined that the move-in fee was not pre-paid rent because it was a one-time fee for moving into the unit, and was not made " 'for or in connection with the use or occupancy' " of the unit. [Internal citations omitted.] *Id.*

¶ 24 Like the lease in *Steenes*, the lease here has a box indicating "Security Deposit." However, unlike in *Steenes*, there was an amount entered in the box and that amount was "$0.00." The box also contains the following: "(Move-In Fee paid $250)." The plain and clear terms of the lease indicate that plaintiff paid $0.00 as security deposit and paid a move-in fee of $250. Furthermore, the fee appears to be a one-time, non-refundable payment and, like the fee in *Steenes*, the amount of the fee is less than half of the monthly rent rendering it inadequate as security for any nonpayment of rent. See *Steenes*, 2014 IL App (1st) 120719, ¶ 23. We find that the move-in fee paid by plaintiff was not a security deposit, and summary judgment as to this count was proper.

¶ 25 Plaintiff disagrees, arguing that the move-in fee "had all of the earmarks of a security deposit, and Defendant did nothing to describe the move-in fee as anything but a security deposit." As support, plaintiff points to the fact that the move-in fee was entered in the security deposit box on the lease, and that the lease contained general provisions outlining the purpose of a security deposit. We are not persuaded by plaintiff's argument. Although the move-in fee was entered in the security deposit box on the lease, the box clearly indicates that the amount of security deposit paid was $0.00. Furthermore, the security deposit provision in the preprinted lease is a standard provision with no reference to an actual security deposit made in accordance with the provision. Defendant stated, and plaintiff acknowledges, that the move-in fee "help[ed] to defray Landlord's costs" in leasing to a new tenant and made no reference to the fee as payment to secure plaintiff's performance under the lease. Although plaintiff alleges that the move-in fee is a "disguised security deposit or other illusory charge," this conclusory allegation, without sufficient facts to support it, cannot withstand a section 2-615 motion to dismiss. *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473.

¶ 26 Plaintiff also cites two cases in support of her argument: *Pool v. Insignia Residential Group*, 136 Ohio App. 3d 266 (1999), and *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1 (2001). These cases are distinguishable. In *Pool*, an Ohio case, evidence showed that the refundable pet deposit was used to secure performance by the tenant under the lease. *Pool*, 136 Ohio App. 3d at 268. In *Lawrence*, which involved a claim for interest owed on a pet deposit, the sole issue before our supreme court was "whether the trial court was correct in concluding that the RLTO requires a landlord's violation of the interest payment provisions to have been willful before the tenant is entitled to recover" damages. *Lawrence*, 197 Ill. 2d at 9. The trial

court's finding that the pet deposit constituted a security deposit was "undisputed." *Id*. *Pool* and *Lawrence* do not support plaintiff here.

¶ 27 Plaintiff alternatively argues that the move-in fee was pre-paid rent because "rent" under the RLTO should be liberally construed to include "*all* monies received or demanded by a landlord related to an applicable lease agreement." Plaintiff claims she is therefore owed interest on the fee pursuant to section 5-12-080(c) of the RLTO, which requires interest payments on pre-paid rent held for more than six months. Plaintiff's complaint, however, does not allege facts supporting her allegation that defendant held her pre-paid rent for more than six months. As defendant points out, plaintiff's lease began on July 1, 2011, and on November 21, 2011, plaintiff was served with a notice that she owed $1,290 in past due rent. If the $250 move-in fee was pre-paid rent, it was used before November 21, 2011, less than five months after the start of plaintiff's lease term. Plaintiff counters that her allegations may be supported by a hypothetical example where she made her prepayment in April of 2011. However, plaintiff made no such allegation in her complaint, and even if she had, an allegation based on hypotheticals rather than supporting facts is insufficient to withstand a motion to dismiss. See *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473.

¶ 28 Plaintiff's final contention is that the trial court erred in dismissing the unjust enrichment count of her complaint. In her count for unjust enrichment, plaintiff claimed that defendant demanded she pay a $250 move-in fee "when she executed the Lease agreement." She also incorporated paragraphs 1 through 18 of her complaint which contain references to the lease agreement. Plaintiff attached a copy of the lease agreement to her complaint. "Because it is an equitable remedy, unjust enrichment is only available when there is no adequate remedy at law. [Citation.] In other words, [w]here there is a specific contract that governs the relationship

of the parties, the doctrine of unjust enrichment has no application." *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604 (2005). Therefore, dismissal of the unjust enrichment count is proper where it incorporated allegations of a valid agreement and plaintiff also attached a copy of the relevant contract to the complaint. *Id*. at 604-05.

¶ 29 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 30 Affirmed.