2015 IL App (1st) 140530-U

FOURTH DIVISION
May 28, 2015

No. 1-14-0530

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CRYSTAL GLENN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 M1 163813
	)	
EBONY LUCAS,	)	The Honorable
	)	Sheryl Pethers,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Ellis concurred in the judgment.

ORDER

HELD: Trial court properly granted summary judgment in favor of plaintiff-tenant, as there was no legal basis for defendant-landlord's withholding of plaintiff's security deposit based on CHA's abatement of HAP subsidy to defendant, as this subsidy is not considered rent payable by a tenant and, thus, no genuine issue of material fact remained. In addition, trial court's attorney fee award in plaintiff's favor was not an abuse of discretion where the record deomonstrates court thoroughly reviewed and considered the petition in light of parties' arguments and all appropriate factors.

¶ 1 Following defendant-appellant Ebony Lucas' (defendant) failure to return plaintiff-appellee Crystal Glenn's (plaintiff) security deposit at the end of her tenancy, plaintiff filed suit against her. The trial court granted summary judgment in plaintiff's favor, awarding her $4,200 in damages and $10,000 in attorney fees. The trial court subsequently denied defendant's motion for reconsideration and further awarded plaintiff an additional $1,725 in attorney fees. Defendant appeals, contending that summary judgment was improper because genuine issues of material fact exist and that the attorney fees award was excessive and without explanation, thereby constituting an abuse of discretion. She asks that we reverse the trial court's rulings or, if summary judgment is affirmed, that we, at the very least, remand with respect to the fee award with instruction on what fees are compensable, and that we grant any further appropriate relief. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 In December 2010, plaintiff, who participated in the Housing Choice Voucher program (voucher program) administered by the Chicago Housing Authority (CHA), rented an apartment owned by defendant, an attorney. Pursuant to the voucher program, the CHA was to pay a portion of plaintiff's rent to defendant and plaintiff was to pay the rest. The lease for the apartment sought a $1,400 security deposit and $1,400 per month in rent. Prior to plaintiff moving in, the CHA conducted an inspection of defendant's property. Defendant's apartment passed inspection; however, based on its own findings, the CHA set its portion of rent payment, known as a housing assistance payment (HAP), based on a sum lower than the $1,400 monthly rent defendant sought. The parties agreed to proceed with the tenancy accordingly and, at the time she moved in, plaintiff paid defendant the $1,400 security deposit.

¶ 4 In January 2012, the CHA conducted its annual housing quality standard (HQS) inspection and concluded this time that the apartment failed, finding, for example, deteriorating paint, a broken toilet, nonfunctioning carbon monoxide detectors and electrical, plumbing and flooring hazards. The CHA determined that the violations were defendant's responsibility, not plaintiff's, and allowed defendant time to remedy them.

¶ 5 Later in January 2012, defendant sent a letter to plaintiff detailing that the lease had expired on December 31, 2011, and that she was now in a month-to-month tenancy. Defendant noted in the letter the failed HQS inspection, and informed plaintiff that she had "made several attempts" to call and come by the property, but that plaintiff failed to respond. Defendant also reminded plaintiff that defendant presented her with a new lease with a higher rental rate, which plaintiff had failed to sign and return. Defendant's letter concluded that, "[a]s a result of these issues," plaintiff's lease was to expire on March 1, 2012, and that she was to vacate the apartment by that date. Defendant also sent letters to CHA authorities describing that the damage to the apartment was caused by plaintiff, that she and contractors she hired had attempted various times to obtain access to the apartment to fix the violations but that plaintiff thwarted these, and that she had begun eviction proceedings against plaintiff.

¶ 6 Following two more failed HQS inspections conducted in February 2012, and having concluded that the fault lay with defendant, the CHA abated its subsidy payment of the rent for the month of March 2012 due to defendant's failure to remedy the violations. Plaintiff moved out of defendant's apartment on March 17, 2012.

¶ 7 In April 2012, defendant sent a letter to plaintiff informing her that she (defendant) would not be returning her security deposit. Stating therein that plaintiff had only paid $1,300 as a

security deposit (instead of $1,400 as stated on the lease), defendant informed her that this, along with any interest, was being withheld because, as she alleged, plaintiff had refused her access to the apartment and because the CHA withheld its subsidy for the January, February and March 2012 rent owed her. Defendant also informed her that she was withholding her security deposit because plaintiff had received a notice in January to vacate the apartment within 30 days which she did not, forcing defendant to file for eviction for which she incurred costs. Upon her calculations, and after deducting the security deposit and interest which she withheld, defendant told plaintiff that plaintiff owed her $2,641.51.

¶ 8 In response, plaintiff sent defendant a letter (via her representative) disputing defendant's withholding of her security deposit. First, plaintiff noted that, contrary to defendant's insistence, she did receive the CHA HAP subsidy for January and February 2012, as CHA records showed. It was only after the third failed inspection in February 2012 and the CHA's determination that the violations were defendant's, and not plaintiff's, fault that the CHA abated payment, which occurred only in March 2012. Then, plaintiff clarified that she had paid and defendant had deposited $1,400, not $1,300, as a security deposit when the tenancy began, and she noted that defendant was not legally allowed to retain this security deposit for the reasons she alleged pursuant to the Chicago Residential Landlord and Tenant Ordinance (RLTO).

¶ 9 When defendant did not return her security deposit, plaintiff filed a complaint. Eventually, plaintiff filed a motion for summary judgment and a petition for attorney fees, and a hearing was held. With respect to summary judgment, the trial court found in plaintiff's favor. As threshold matters, the court determined first that, as evidenced by the lease and an admission in defendant's answer to plaintiff's complaint, the amount of the security deposit at issue was $1,400, and not

$1,300. Second, the court confronted defendant on the issue of when the subsidy was abated, and defendant admitted, contrary to the letter she had sent plaintiff, that the CHA had indeed paid her the HAP for January and February 2012, having abated only its payment for March 2012. Then, substantively, the court examined the RLTO and federal law and concluded that these did not allow defendant to withhold plaintiff's security deposit to cover rent she was not getting from the subsidy provider. Accordingly, the trial court calculated the damages and awarded plaintiff $4,200.

¶ 10 With respect to plaintiff's fees petition, the trial court noted that plaintiff had asked for $15,229 in fees. However, after considering defendant's response and making its own "calculations," the trial court disagreed with the amount. The court stated that it "evaluated [the petition] under all the factors" to be considered and that it went "through every time entry." While the court considered the hourly rate of plaintiff's attorneys to be reasonable, it noted that it could not award for the "tremendous amount of time spent" by them discussing the case among themselves because they were not doing so for a private, paying client. The court offered to "go through and point all that out;" plaintiff told the court that would not be necessary, and defendant did not respond. Continuing its colloquy, the court also pointed out, however, that the time spent by plaintiff's attorneys on this case was as much as it was because defendant, herself an attorney and knowing under the RLTO that she "potentially at least" would have to pay plaintiff's fees, "took her time" in appearing and arguing the matter, causing reschedulings and late filings, which, the trial court found under the circumstances to be "mind boggling." Ultimately, the court stated that it "went through and *** took off all kinds of time *** t[aking] off 3 hours at one point, 2 and a half hours at another point, an hour and a half, .7, minus 1, minus 1.5, minus minus *** [until it] got

down to where [it] thought 10,000 in fees was reasonable." It acknowledged, in accordance with defendant's response on the matter, that "there was a lot of duplicative effort" and, after citing some examples and questioning plaintiff about them, the court agreed with defendant regarding "the time that [she] wanted to take off" and noted that it took off "pretty much what [she] wanted taken off." Thus, after describing all of its calculations, the trial court award plaintiff attorney fees in the amount of $10,000.

¶ 11 Thereafter, defendant filed a motion for reconsideration and plaintiff filed a supplemental petition for attorney fees. Following a hearing, the trial court denied defendant's motion. With respect to the merits of the cause, the court reminded defendant that it had already considered all the arguments and concluded that the motion to reconsider presented nothing new. With respect to the fee award, the court described that it had gone "through [the petition] line by line by line," that it "took things off *** [and] cut out all the time where the lawyers were talking to one another," and "on top of it" that it had "asked [defendant] what [she] thought should be taken out." The court stated that it believed its "ruling was right in line with everything [defendant] suggested, that we got it as low as we could." Defendant replied that she did not feel the court had been specific enough in its findings, to which the court responded that it believed it had been "quite fair," especially in light of the unsupportive case law defendant presented. The court then addressed plaintiff's supplemental fee petition and, after again cutting some of the hours therein and ensuring that the hourly rate coincided with what it had determined to be proper in the original petition, the court awarded plaintiff an additional $1,725 in attorney fees.

¶ 12 ANALYSIS

¶ 13 Defendant raises two issues on appeal. First, she contends that the trial court improperly

granted summary judgment in plaintiff's favor because genuine issues of material fact remain as to whether the security deposit was validly withheld. Second, she contends that the trial court abused its discretion in granting the award to plaintiff pursuant to her attorney fees petition, citing it as excessive and issued without any explanation.

¶ 14 There are two threshold factual clarifications we wish to make for the record here. First, it is clear from the contents of the record before us that defendant did receive HAP subsidies from the CHA on plaintiff's behalf for the months of January and February 2012. Indeed, defendant herself finally admitted these facts when confronted by the trial court during the hearing on plaintiff's motion for summary judgment. Thus, despite any prior assertion by defendant regarding HAP payments for the first three months of 2012, it is established that the CHA only abated its HAP payment for March 2012 and, just as the trial court concluded, this is the only amount to be considered in this cause.

¶ 15 Second, there was also a dispute concerning the amount of the security deposit paid by plaintiff. Plaintiff has consistently maintained that she paid $1,400 as a security deposit. However, in her April 2012 letter to plaintiff in which she refused to return the security deposit, defendant insisted that plaintiff had paid only $1,300 because the original amount of monthly rent sought (*i.e.*, $1,400) had been reduced by the CHA according to its first inspection of the apartment before plaintiff assumed tenancy. Yet, apart from this letter and her attempt to explain this discrepancy to the trial court during the hearing on plaintiff's motion for summary judgment (which the trial court did not accept), defendant points to nothing in the record to verify her claim. In contrast, copies of the lease and accompanying documentation in the record indicate that plaintiff did, indeed, pay defendant a $1,400 security deposit. And, defendant admitted this in

paragraph 5 of her answer to plaintiff's amended complaint. With this admission, and with nothing to contradict the evidence demonstrating that plaintiff paid the full $1,400 security deposit, it is this amount, just as the trial court concluded, that stands at the center of this litigation. See, *e.g.*, *Abruzzo v. City of Park Ridge*, 2013 IL App (1st) 122360, ¶ 36 (admission made by a party in a verified pleading which is not the product of mistake or inadvertence is a formal and binding judicial admission, constituting a sworn statement of fact that remains binding on the party who made it and cannot later be contradicted, and has the effect of withdrawing the fact from issue and dispensing with the need for proof of that fact).

¶ 16 Now, turning to the first substantive issue, we begin by noting that summary judgment is appropriate when the pleadings, affidavits, depositions and admissions of record, construed strictly against the moving party, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001). Although summary judgment has been called a "drastic measure," it is an appropriate tool to employ in the expeditious disposition of a lawsuit in which " 'the right of the moving party is clear and free from doubt.' " *Morris*, 197 Ill. 2d at 35, quoting *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). Appellate review of a trial court's grant of summary judgment is *de novo* and reversal will occur only if we find that a genuine issue of material fact exists. See *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992); *Addison v. Whittenberg*, 124 Ill. 2d 287, 294 (1988).

¶ 17 In contending that the trial court improperly granted summary judgment in plaintiff's favor, defendant asserts that a genuine issue of material fact existed as to whether the CHA validly withheld, or abated, its March 2012 HAP payment. This is because, as she describes, she claimed

the damages to the apartment which caused the failed HQS inspections were caused by plaintiff and plaintiff's subsequent refusal of access to her to fix them, thereby validating her right to withhold plaintiff's security deposit. We disagree with defendant's assertions and find, based on the record, that the trial court properly granted summary judgment in plaintiff's favor as no genuine issues of material fact remained.

¶ 18 The voucher program in which plaintiff and defendant participated is a federal one instituted by the Department of Housing and Urban Development (Department), governed by the Code of Federal Regulations (Code), and administered at a local level by public housing agencies (PHAs). See 24 C.F.R. § 982.1(a)(1). As noted earlier, under this program, a qualifying tenant rents housing in the private market from a landlord and the PHA pays the landlord a monthly subsidy known as a housing assistance payment (HAP). See 24 C.F.R. §§ 982.1(a), 982.451. There are both landlord and tenant obligations under this program. See 24 C.F.R. §§ 982.404(a), (b). For example, a landlord must maintain the property in accordance with the Department's housing quality standards (HQS), which the PHA must investigate at the time of occupancy and at least annually thereafter. See 24 C.F.R. §§ 982.404(a)(1), 982.405(a). If the landlord breaches the HQS, the PHA "must take prompt and vigorous action to enforce the owner obligations," including terminating, suspending or reducing HAP payments. 24 C.F.R. § 982.404(a)(2). A PHA cannot give any HAP payment for a property that fails to meet the HQS unless the landlord corrects the defects within the time specified by the PHA. See 24 C.F.R. § 982.404(a)(3). A landlord is not responsible for a breach of the HQS that is not caused by the landlord and for which the tenant is responsible. See 24 C.F.R. § 982.404(a)(4). Meanwhile, if the tenant causes a breach of the HQS, the PHA must take action to enforce her obligation and may terminate assistance. See 24

C.F.R. § 982.404(b)(3). And, just as the landlord, the tenant must correct any HQS breaches she causes within the time specified. See 24 C.F.R. § 982.404(b)(2).

¶ 19 In addition, the voucher program permits a landlord to collect a security deposit from the tenant. See 24 C.F.R. § 982.313(a). "When the tenant moves out of the dwelling unit, the owner, subject to State or local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid rent payable by the tenant, damages to the unit or for any other amounts the tenant owes under the lease." 24 C.F.R. § 982.313(c). If the landlord does retain the security deposit or any amount thereof, she must give the tenant a "written list" of the items charged against the deposit and their amounts, and she must then return any unused portion of the deposit to the tenant. 24 C.F.R. § 982.313(d).

¶ 20 With respect to the HAP payment paid by the PHA to the landlord, the voucher program makes clear that this is a subsidy owed under a HAP contract created between the PHA and the landlord. See 24 C.F.R. §§ 982.451, 982.310(b). In other words, in contrast to the security deposit paid by the tenant to the landlord pursuant to the lease, the HAP is not part of the lease but its own separate agreement between the PHA and the landlord, not involving the tenant. See 24 C.F.R. §§ 982.451 (noting the HAP is paid pursuant to a HAP contract between the PHA and the landlord, with the HAP "credited toward the monthly rent" paid to the landlord under the tenant's lease), and 982.310(b). Thus, rent paid by the tenant to the owner and the HAP paid by the PHA to the owner are two distinct payments. As the federal regulations explain, the "total of rent paid by the tenant plus the PHA housing assistance payment may not be more than the rent to the owner" and, conversely, the "part of the rent to owner which is paid by the tenant may not be more than" the rent to the owner minus the PHA housing assistance payment. 24 C.F.R. §§ 982.451(b)(3),

(4)(i). Accordingly, then, the HAP is paid by the PHA, not the tenant, and, under the voucher program, its payment is not the tenant's responsibility. In fact, the federal regulations specifically state:

> "The [tenant] is not responsible for payment of the portion of rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA" (24 C.F.R. §§ 982.451(b)(4)(iii);

and, again, that:

> "Nonpayment by PHA: Not grounds for termination of tenancy.
>
> (1) The [tenant] is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA.
>
> (2) The PHA failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the owner. During the term of the lease the owner may not terminate the tenancy of the [tenant] for nonpayment of the PHA housing assistance payment" (24 C.F.R. § 982.310(b)).

¶ 21 In the instant cause, plaintiff tenant and defendant landlord agreed to a lease under the voucher program. Pursuant to the program, administered locally by the CHA as the PHA, defendant was permitted to collect a $1,400 security deposit from plaintiff at the time she began her tenancy, which plaintiff paid under the lease between her and defendant. Then, the CHA contracted with defendant in a HAP contract to determine the HAP it would pay her for plaintiff's tenancy, with the remainder of the rent to be paid by plaintiff under the lease. Thus, defendant received two separate payments: rent from the plaintiff under the lease and a subsidy from the

CHA under the HAP contract.

¶ 22 Also pursuant to the program, defendant was required to meet HQS for the property. Upon the CHA's inspection at the time of the tenancy's inception, defendant passed. However, in January 2012, upon an annual inspection, the CHA determined that the property failed, in several respects. The CHA also determined at that time that the cited HQS breaches were, specifically, the responsibility of defendant, and not of plaintiff, and afforded her time to remedy them. However, after two more failed inspections in February 2012, and after again concluding that the HQS breaches were defendant's responsibility (and noting that she had not remedied them as ordered), the CHA abated its HAP payment to defendant for March 2012. Plaintiff then moved out of defendant's apartment that month, and defendant refused to return to her the $1,400 security deposit plaintiff had paid under the lease.

¶ 23 Defendant has never disputed that plaintiff paid all of that portion of rent she owed during her tenancy pursuant to the lease agreement. Moreover, defendant has never alleged that she withheld the security deposit for damages or for anything else owed to her by plaintiff. Instead, defendant's contention lies wholly in her claim that she retained the security deposit because she did not receive the HAP payment for March 2012. However, she had no right to do so. Again, pursuant to the federal regulations and the voucher program itself, a landlord may retain a tenant's security deposit only for "*unpaid rent payable by the tenant*, damages to the unit or for any other amounts *the tenant owes* under the lease." 24 C.F.R. § 982.313(c) (emphasis added). Having failed to assert that she withheld the deposit for damages or something else, defendant clearly violated the federal regulations, since, as we have demonstrated, those repeatedly make clear that the HAP payment is not payable by the tenant and does not constitute a tenant's rent. See 24 C.F.R.

§§ 982.451, 982.310(b).

¶ 24 Defendant asserts that a genuine issue of material fact exist as to "whether the rent was withheld due to damages caused by [p]laintiff and [p]laintiff's subsequent refusal of access." However, whether the CHA withheld the HAP subsidy based on a proper or improper basis is totally irrelevant to the cause at hand. Whatever the outcome of that question, it has nothing to do with plaintiff and her security deposit. Again, this is because defendant had no right to offset any amount owed to her by the CHA from plaintiff's security deposit which, as the federal regulations make clear, is a completely separate and distinct payment involving different parties and different contracts, *i.e.*, a HAP payment which is made pursuant to the HAP contract between the CHA and the landlord, as opposed to the security deposit which is made pursuant to the lease between the tenant and the landlord. The CHA abated the HAP payment to defendant based on its determination that there were HQS breaches at the property and that, specifically, these were attributable to defendant and not to plaintiff. Even were this determination incorrect, it would still have no bearing on plaintiff's claim to her security deposit, since the HAP is not rent payable by her for which she is responsible. Rather, this would be an issue defendant would have to take up against the CHA, as plaintiff has made all payments for which she was responsible, including the security deposit. Thus, contrary to defendant's insistence, there is no genuine issue of material fact remaining here.

¶ 25 Moreover, even if defendant had alleged that she was retaining plaintiff's security deposit as reimbursement for any unpaid rent payable by plaintiff, damages or for anything else owed to her by plaintiff under the lease (which she does not), defendant would have been required to provide plaintiff a written list of the items charged against the deposit and their amount. See 24

C.F.R. §§ 982.313(c), (d). Defendant never provided such a list, and no list is included in the record.

¶ 26 The fact remains here that, as specifically, strongly and repeatedly worded in the Code governing the voucher program, plaintiff, as the tenant, was not responsible for payment of the HAP subsidy to defendant, which was separate and distinct from her payment to defendant of the security deposit under the lease. See 24 C.F.R. §§ 982.451(b)(4)(iii), 982.310(b). Thus, defendant's withholding of plaintiff's security deposit in response to the CHA's abatement of its March 2012 HAP subsidy payment, while plaintiff was otherwise current in all rent and obligations due to defendant, was completely improper and without any legal basis.

¶ 27 Our holding here is in direct line not only with the Code, but also with Illinois case law and our local law governing landlord-tenant relationships. For example, our state supreme court has officially declared that federal housing assistance payments received by a landlord on behalf of a tenant paid by the Department are not considered "rent" payable by a tenant. In *Midland Management Co. v. Helgason*, the defendant-tenant entered into a lease agreement with the plaintiff-landlord for the lease of an apartment subsidized under section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f (1991)). See 158 Ill. 2d 98, 99-100 (1994). Similar to the voucher program in the instant cause, the tenant and the landlord entered into a lease, and the remainder of the rent was to be paid to the landlord in the form of a housing assistance payment via a separate contract between the landlord and the Department. At one point during the tenancy, the landlord served the tenant with a demand for reimbursement for the repair of a water-damaged floor; the tenant refused the demand and tendered his portion of the rent to the landlord, which it accepted. A month later, the landlord served the tenant with notice of termination for failure to

reimburse, but it continued to receive and accept the housing assistance payments for the next several months. When the tenant failed to vacate, the landlord brought an action in forcible entry and detainer. In response, the tenant claimed that the landlord waived its right to forfeit the lease because it continued to accept the housing assistance payments. The trial and appellate courts agreed, likening the landlord's acceptance of these payments to the acceptance of rent and, thus, inconsistent with termination of the lease. See *Midland*, 158 Ill. 2d at 100.

¶ 28 However, our state supreme court reversed, finding, principally, that "housing assistance payments do not constitute rent." *Midland*, 158 Ill. 2d at 106 (thus, the acceptance of these payments are not inconsistent with termination of the lease and do not result in waiver of the right to forfeit the lease). First, the *Midland* court noted, as we have, that there are two distinct contracts at play in this special relationship; the Department is not a party to the lease agreement between the landlord and the tenant, and the tenant is not a party to the housing assistance contract between the landlord and the Department. See *Midland*, 158 Ill. 2d at 103. Then, it explained that in a lease agreement, rent is paid in consideration of the lease, and possession and control of the property passes to the tenant via its payment. See *Midland*, 158 Ill. 2d at 105 (the lease and its dictates controls the relationship between the landlord and tenant). However, with a housing assistance payment contract, there is no such relationship created between the landlord and the Department; the Department does not acquire any possessory interest in the property with its housing assistance payments. See *Midland*, 158 Ill. 2d at 105 (the Department is not a party to the lease agreement and, in contrast to a rent-paying tenant, is given no use of the land in return for its payments). Rather, the purpose of this contract is only to fulfill the Department's goal of making non-low-income housing available to low-income families, thereby creating economically-mixed

housing diversity. See *Midland*, 158 Ill. 2d at 105. As our state supreme court explained and clarified, "[a]lthough the housing assistance payment is equal to some portion of the fair market rent to which the landlord is entitled, that fact does not define the nature of the payment as rent." *Midland*, 158 Ill. 2d at 105 (stating that at the heart of the matter, the Department did not intend that housing assistance payments be considered rent). See also *East Lake Management & Development Corp. v. Irvin*, 195 Ill. App. 3d 196, 202 (1990) (cited by *Midland* for its factual similarity and its conclusion that a landlord's "acceptance of HUD payments do not constitute acceptance of rent").

¶ 29 Moreover, our local RLTO supports both the federal regulations and the judicial acknowledgment that HAP payments are not rent for which a tenant is responsible. That is, just like the federal regulations described above, the RLTO also mandates that a landlord must return a tenant's security deposit and may retain it for only one of two reasons: for "any unpaid rent" or for damage to the premises caused by the tenant excluding reasonable wear and tear. See Chicago Municipal Code §§ 5-12-080(d)(1), (d)(2) (amended July 28, 2010). Also, just as with the federal regulations, if the landlord retains the security deposit for damages, she must send the tenant an itemized statement of the damage and the cost to repair it. See Chicago Municipal Code § 5-12-080(d)(2) (amended July 28, 2010). Because defendant here never alleged she was withholding plaintiff's security deposit for such damage, and because she never sent plaintiff an itemized statement, the only other option she would be legally able to retain plaintiff's security deposit would be for unpaid rent. See Chicago Municipal Code § 5-12-080(d)(1) (amended July 28, 2010). However, plaintiff was current with her rent, and defendant admitted the only amount owed her was the March 2012 HAP payment from the CHA. Since our state supreme court has declared

that HAP payments do not constitute rent payable by a tenant, defendant had no right to retain plaintiff's security deposit under the RLTO, either. See Chicago Municipal Code §§ 5-12-080(d)(1), (d)(2) (amended July 28, 2010).

¶ 30 Accordingly, having concluded, in line with federal regulations, case law and local ordinance, that HAP payments do not constitute rent for which a tenant can be held responsible, we find that, based on the facts of the instant cause, there was no legal basis for defendant's withholding of plaintiff's security deposit and the trial court correctly granted summary judgment in plaintiff's favor.

¶ 31 Defendant's second, and final, contention on appeal concerns the trial court's judgments granting plaintiff's petitions for attorney fees. She asserts that the trial court issued the awards without any explanation, *i.e.*, never specifying or accounting for the amounts it did and did not consider, thereby abusing its discretion and resulting in excessive awards to plaintiff. Again, based upon our review of the record, we disagree.

¶ 32 Just as with the prior issue, there is a threshold matter we wish to address for the record here. As we have noted, following hearing on her motion for summary judgment and petition for attorney fees, the trial court awarded, on February 3, 2014, summary judgment and $10,000 in fees to plaintiff. On February 13, 2014, defendant filed a notice of appeal, specifically citing the February 3, 2014 order of the trial court as the order being appealed. Later, defendant filed a motion to reconsider in the trial court, and plaintiff filed a subsequent fee petition. On May 20, 2014, while denying defendant's motion to reconsider, the court awarded plaintiff an additional $1,725 in attorney fees. Defendant never filed a notice of appeal concerning the May 20, 2014 order.

¶ 33 In her brief on appeal, defendant, when contesting the fee award, challenges both the "initial" award and the "second" award. However, plaintiff asserts that we have no jurisdiction to consider any challenge to the second fee award because defendant failed to file a notice of appeal challenging it. Plaintiff is correct. A party seeking to challenge an alteration or amendment to a judgment upon a postjudgment motion must file a new or an amended notice of appeal. See *Hollywood Blvd. Cinema, LLC v. FPC Funding II, LLC*, 2014 IL App (2d) 131165, ¶ 27. In the instant cause, the subsequent May 20, 2014 order of the trial court altered and amended the trial court's original February 3, 2014 judgment of $10,000 in fees to plaintiff by awarding her an additional $1,725 in fees. Wanting to challenge this subsequent award, defendant was required to filed a new or amended notice of appeal, as her prior one, filed before her postjudgment motion to reconsider, only cited the original fee award. Having never done so, defendant has not conferred jurisdiction upon us to review the subsequent award. Thus, we do not consider any of her arguments in that regard.[1]

¶ 34 Turning to the original $10,000 award, then, we begin by noting that a reviewing court examines a trial court's award of attorney fees pursuant to an abuse of discretion standard. See *Cavitt v. Repel*, 2015 IL App (1st) 133382, ¶ 58. This is because the party challenging the trial court's decision regarding fees is, essentially, challenging the trial court's discretion in determining what is reasonable. See *Peleton, Inc. v. McGivern's, Inc.*, 375 Ill. App. 3d 222, 225 (2007). An abuse of discretion occurs only when the trial court acts arbitrarily, without conscientious

[1]Apart from the lack of jurisdiction, and even were we to address her challenge to the additional fee award, our consideration of that issue would follow the same reasoning we present herein concerning the initial award, finding her claims of excess and abuse of discretion to be meritless.

judgment, or, in view of all the circumstances, exceeds the bounds of reason and ignores recognized principles of law, resulting in substantial injustice. See *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 26. In assessing the reasonableness of fees, the trial court should consider several factors, including the skill and standing of the attorneys, the nature of the case, the novelty and difficulty of the issues, the responsibility required, the usual and customary charge for such services in the community, and the connection between the services rendered and the fees charged. See *Sampson v. Miglin*, 279 Ill. App. 3d 270, 281 (1996), citing *Chicago Title & Trust Co. v. Chicago Title & Trust Co.*, 248 Ill. App. 3d 1065, 1072 (1993). It should also consider the entire record before it and its personal knowledge of the cause. See *Sampson*, 279 Ill. App. 3d at 281. Significantly, the trial court is not required to make specific findings as to its various considerations in awarding fees. See *In re Marriage of Powers*, 252 Ill. App. 3d 506, 510 (1993). Instead, we presume with all reasonableness that the trial court understood and applied the law correctly. See *Powers*, 252 Ill. App. 3d at 510. Ultimately, even where the trial court has included improper fees or excluded recoverable fees in its calculation, we will not disturb its decision unless " 'the total fees and costs awarded *** was [so excessive or] so inadequate as to amount to a clear abuse of discretion by the court.' " *Sampson*, 279 Ill. App. 3d at 281, quoting *Warren v. LeMay*, 142 Ill. App. 3d 550, 582 (1986).

¶ 35 Upon our review of the record here, we find no abuse of discretion on the part of the trial court with respect to its attorney fee award to plaintiff.

¶ 36 Plaintiff's original fee petition asked for $15,229 in fees. However, the trial court disagreed with this amount, citing its review of defendant's response to plaintiff's request and its own "calculations." The court specified that it "evaluated [the petition] under all the factors" to be

considered and that it went "through every time entry" listed by plaintiff. For example, it considered the hourly rate plaintiff's attorneys charged, but noted that it could not award them for what it viewed to be the "tremendous amount of time spent" by them discussing the case among themselves because they were not doing so for a private, paying client. The court also noted that there appeared to be times when plaintiff's attorneys were educating younger attorneys via this matter, and it believed that this time should not be charged either. In addition, another factor that the court examined was the amount of time spent on the case, and it explicitly noted that this was high with respect to plaintiff's attorneys precisely because defendant "took her time" in appearing and arguing the matter, causing reschedulings and late filings. In its view, the court found this to be "mind boggling" because defendant herself is an attorney and knew under the RLTO that she "potentially at least" would have to pay a portion of plaintiff's fees and costs.

¶ 37 It is apparent here that the court conducted a balanced examination in reaching its award. It addressed both parties' attempts at running up attorney costs, pointing to defendant's tardiness while likewise addressing plaintiff's "duplicative effort[s]." In the end, the court actually agreed with defendant's arguments regarding "the time that [she] wanted to take off" and, in fact, took off "pretty much what [she] wanted taken off," cutting plaintiff's request by 14 hours and thereby reducing its award to $10,000.

¶ 38 Defendant's insistence that the trial court's award was excessive and without explanation is simply without merit. First, contrary to her assertions, the trial court did provide an explanation with respect to its award. As discussed, it examined and commented on several factors involved, including hourly rate, amount of hours spent, reasons therefore, and duplicative work. In fact, at one point in its colloquy, the court specifically offered to "go through and point all that out" to both

parties; plaintiff told the court that this would not be necessary and defendant remained silent. The court continued by noting that it "went through and *** took off all kinds of time *** t[aking] off 3 hours at one point, 2 and a half hours at another point, an hour and a half, .7, minus 1, minus 1.5, minus minus ***" until it found that $10,000 in fees was "reasonable" based on the circumstances. Later, during the hearing on the motion to reconsider, the court again revisited this issue upon defendant's insistence and again noted that it had gone through the petition "line by line by line" and that it not only "took things off" but had also conferred with defendant regarding "what [she] thought should be taken out." The court stated that it believed its "ruling was right in line with everything [defendant] suggested, that we got it as low as we could," and that it had been "quite fair," especially in light of the unsupportive case law and argument defendant had presented during this litigation.

¶ 39 Briefly, defendant makes a few assertions on appeal concerning specific items she insists require a remand here. These cannot stand. For example, she cites charges for a motion to compel letter plaintiff's attorneys prepared and sent her allegedly knowing that she was on maternity leave, and she claims that plaintiff's attorneys' bills contained work that amounted to only "administrative tasks" which should not have been considered by the court. However, defendant raises both of these assertions for the first time on appeal; she never did so to the trial court, even after the court expressed its willingness to go through all the calculations with her. Accordingly, these claims are forfeited. See *Pefferle v. Prairie Mills, Inc.*, 72 Ill. App. 2d 440, 443 (1966) (where issue regarding particular attorney fee charged was not raised before the trial court but only, and for the first time, on appeal, issue was waived and could not be considered by reviewing court); accord, *e.g.*, *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 45 (issue not raised in trial court is forfeited on

appeal). Defendant also insists that the trial court was not permitted to award fees for time spent preparing the fee petitions. However, such an assertion is contrary to both our case law (see *Powers*, 252 Ill. App. 3d at 512-13, citing *Rackow v. Human Rights Comm'n*, 152 Ill. App. 3d 1046, 1064 (1987) (courts may allow fee recovery for preparation of fee petition)), and the RLTO (see Chicago Municipal Code, § 5-12-180 (added Nov. 6, 1991) (prevailing plaintiff in action under this ordinance is entitled to "all court costs and reasonable attorney's fees")).

¶ 40 Ultimately, that the trial court perhaps did not make specific and articulated findings with respect to each and every factor to be considered in awarding fees to defendant's satisfaction is not fatal to the award. Clearly, the court understood and applied the law correctly, and afforded defendant every practicable consideration in her favor as evidenced by both its comments and its actual reduction of the award to the amount it reached. Without more, we cannot, and based on the record before us which most aptly demonstrates the trial court's thorough and considered examination of the factors at play here, most certainly will not find an abuse of discretion regarding the trial court's final fee award to plaintiff.

¶ 41 CONCLUSION

¶ 42 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court awarding summary judgment in plaintiff's favor, as well as its awards of $10,000 and $1,725 to plaintiff in attorney fees.

¶ 43 Affirmed.