2015 IL App (1st) 140765-U

No. 1-14-0765

Fifth Division
December 31, 2015

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PAULINA SERWAH ADDO, Plaintiff-Appellant, v. LINDA ALILOSKA, WILMETTE REAL ESTATE AND MANAGEMENT COMPANY, CAMEEL HALIM and BCHS830 LLC, As Illinois Limited Liability Company, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 06 M1 139513 The Honorable Moira Johnson, Mary K. Rochford, Mary L. Mikva, James E. Snyder, Raymond Funderburk, Judges Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

¶1 *Held:* In this residential landlord-tenant action, multiple trial court orders concerning discovery, as well as orders granting dismissal of various claims, an order granting summary judgment on various claims, an order denying class certification, and the final order following a bench trial are affirmed.

¶2 Plaintiff Paulina Serwah Addo filed a complaint against defendants Linda Aliloska, Wilmette Real Estate and Management Company, Cameel Halim, and BCHS830 for

common law and statutory violations relating to her residential tenancy in defendants' building. Plaintiff appeals eight orders from the trial court in total. She appeals: (1) an order denying plaintiff's motion to deem facts admitted; (2) an order granting defendants' motion to dismiss on two counts; (3) an order granting defendants' motion to reconsider and dismissing a count with prejudice rather than with leave to amend; (4) an order granting defendants' motion to stay class discovery; (5) an order granting summary judgment in part to defendants; (6) an order denying plaintiff's motion for class certification and dismissing class counts; (7) an order closing all discovery; and (8) the final trial order entered following a bench trial. For the reasons that follow, we affirm.

¶3 BACKGROUND

¶4 I. Residential Leases

¶5 The instant appeal involves a landlord-tenant dispute following plaintiff's residential tenancy in defendants' multi-family apartment building. The amended complaint, which is the subject of this appeal, alleges the following facts. On July 16, 2004, plaintiff Paulina Serwah Addo entered into a residential lease agreement with defendant Wilmette Real Estate & Management Co. (Wilmette) for a studio apartment in north Chicago. The initial lease was for a year, to begin on September 1, 2004, and end on August 31, 2005. The lease required plaintiff to pay $431 in monthly rent. The lease also read "none" in the box designated for a security deposit.

¶6 Defendant Linda Aliloska was the onsite property manager for the property management company, Wilmette. Cameel Halim, also named as a defendant, was the owner of the property. Plaintiff's first amended complaint alleges that in August 2004, defendant Halim sold or transferred the subject matter property to defendant BCH5830.

¶7 Wilmette sent plaintiff a revised lease agreement, dated February 17, 2005, along with a letter that requested plaintiff to renew the lease before March 10, 2005. The letter also read, "[i]f we do not receive this documentation back by 3/10/05, we will assume you will be moving out and your apartment will be shown to the public." Plaintiff alleged in her complaint that she signed the revised lease agreement in April 2005. The revised lease provided for a tenancy to begin on September 1, 2005, and end on May 31, 2006. Plaintiff vacated the apartment on March 31, 2006.

¶8 II. The Complaints

¶9 In June 2006, plaintiff filed a complaint against defendants. In the complaint, plaintiff alleged that on July 17, 2004, when plaintiff signed the original lease, plaintiff and defendant Aliloska also entered into an oral agreement whereby plaintiff would pay $431 as a security deposit. According to the complaint, plaintiff paid that security deposit. The complaint alleges that from September 2004 to March 2006, plaintiff lived in the studio apartment in north Chicago. In February 2005, plaintiff alleges that she extended her lease, with the extended tenancy to begin in September 2005 and end in May 2005, though she vacated the apartment on March 31, 2005. The rent for the renewed lease was $441. Plaintiff alleges that she complied with all lease obligations.

¶10 The initial complaint alleges five counts, all of which concern violations of the Chicago Residential Landlord Tenant Ordinance. Count I alleges that defendants failed to give her a receipt for the security deposit. Count II alleges that defendants never returned plaintiff's security deposit to her. Count III alleges that defendants commingled plaintiff's security

deposit.[1] Count IV alleges that defendants failed to pay interest on the security deposit. Count V alleges that defendants unlawfully entered plaintiff's apartment.

¶11 The complaint was amended on May 3, 2007, to include class action counts. The first amended class action complaint is what governs the instant appeal. It alleged 3 class counts and 14 individual counts. Plaintiff filed the first amended class action complaint on behalf of two classes. The first class, Class A, was to consist of the tenants who lived in buildings that were owned or managed by defendants during the time that plaintiff lived there, and who did not receive interest on either their security deposit or prepaid rent. The second class, Class B, was to consist of tenants of those buildings during the time that plaintiff lived there who were required to renew their lease agreement more than 90 days prior to the termination of their lease. The amended class action complaint also included nine additional individual claims, discussed below.

¶12 The naming of the counts led to confusion, summarized by the trial court on February 20, 2008.

> "Plaintiff confusingly alleges three Class Action counts labeled Counts I, II, and III and then alleges counts individual to herself labeled Counts I-XIV. Plaintiff should replead to eliminate the duplicative labeling which can only lead to confusion as the case progresses."

Plaintiff did not replead.

¶13 Since all 17 counts of the complaint are at issue, we describe each briefly. Class action count I alleges that defendants failed to pay interest on the security deposits paid by

[1] The initial complaint does not allege what account defendants comingled plaintiff's security deposit with, only that defendants failed to hold plaintiff's security deposit in a separate, interest-bearing, federally insured Illinois bank account.

Class A, in violation of section 5-12-080(c) of the Chicago Residential Landlord and Tenant Ordinance (Landlord Tenant Ordinance). Chicago Municipal Code §5-12-080(c) (amended July 28, 2010). Class action count II alleges that defendants failed to pay interest on the prepaid rental payments that Class A paid to defendants, also in violation of section 5-12-080(c). Chicago Municipal Code §5-12-080(c) (amended July 28, 2010). Class action count III alleges that defendants required some or all of Class B to renew their leases more than 90 days before the termination of their current lease, which was prohibited by section 5-12-130(i) of the Landlord Tenant Ordinance. Chicago Municipal Code §5-12-130(i) (amended Nov. 6, 1991).

¶14 Individual count I, pertaining only to plaintiff, alleges that defendants violated section 5-12-080(b) of the Landlord Tenant Ordinance. Chicago Municipal Code §5-12-080(b) (amended July 28, 2010). Plaintiff alleges that she paid defendants a security deposit and defendants failed to provide a receipt for that security deposit.

¶15 Individual count II alleges that defendants failed to return plaintiff's security deposit or to provide plaintiff with an itemized list of deductions taken from her security deposit in violation of section 5-12-080(d) of the Landlord Tenant Ordinance. Chicago Municipal Code §5-12-080(d) (amended July 28, 2010).

¶16 Individual count III alleges that defendants violated section 5-12-080(a) of the Landlord Tenant Ordinance by failing to deposit plaintiff's security deposit in a separate, interest-bearing, federally insured Illinois bank account. Chicago Municipal Code §5-12-080(a) (amended July 28, 2010).

¶17 Individual count IV alleges that defendants failed to notify plaintiff of the transfer of her security deposit, following the sale of the property to BCH5830, violating section 5-12-

080(e) of the Landlord Tenant Ordinance. Chicago Municipal Code §5-12-080(e) (amended July 28, 2010).

¶18 Individual count V alleges that defendants violated the Illinois Security Deposit Return Act (765 ILCS 715/1 (West 2006)) when they failed to return plaintiff's security deposit or to provide plaintiff with an itemized list of deductions taken from her security deposit.

¶19 Individual count VI alleges that defendants violated the Illinois Security Deposit Interest Act (765 ILCS 715/1 (West 2006)) when they failed to pay plaintiff interest on her security deposit within 30 days after the end of her first rental period, or within 30 days of her vacation of the apartment, on March 31, 2006.

¶20 Individual count VII alleges that defendants breached their fiduciary duty by failing to deposit plaintiff's security deposit and/or prepaid rent in a separate, interest-bearing, federally insured Illinois bank account in violation of their fiduciary duty as "landlord."

¶21 Individual count VIII alleges that on numerous occasions defendant Aliloska, as well as other agents of the defendants, unlawfully entered plaintiff's apartment without giving her notice or obtaining her consent; and that such conduct violated section 5-12-050 of the Landlord Tenant Ordinance. Chicago Municipal Code §5-12-050 (amended Nov. 6, 1991).

¶22 Individual count IX alleges that the defendants failed to maintain the upkeep and repair of the apartment in violation of section 5-12-070 of the Landlord Tenant Ordinance. Chicago Municipal Code §5-12-070 (amended Nov. 6, 1991).

¶23 Individual count X alleges that defendants breached the implied warranty of habitability by failing to repair or correct unsanitary or uninhabitable conditions in plaintiff's apartment.

¶24 Individual count XI alleges that defendants unlawfully interrupted plaintiff's occupancy, in violation of section 5-12-160 of the Landlord Tenant Ordinance, by interfering with plaintiff's telephone services and by not providing a telephone jack. Chicago Municipal Code§5-12-160 (amended Nov. 6, 1991).

¶25 Individual count XII alleges that defendants breached their lease with plaintiff by failing to return any portion of plaintiff's security deposit.

¶26 Individual count XIII alleges that defendants violated the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2 (West 2006)). Count XIII alleges that at the time of the execution of the written lease agreement, defendant Aliloska represented to plaintiff that the apartment was being renovated and repairs would be made, that the repairs and renovations were insufficient, and that plaintiff would not have entered into the lease agreement if she had known the falsity of defendant Aliloska's representations.

¶27 Individual count XIV alleges that defendants committed common law fraud as an alternative pleading to count XII.

¶28 On March 12, 2007, defendant Wilmette filed a counterclaim against plaintiff for breach of contract. Wilmette alleges that plaintiff breached the terms of the lease agreement by vacating the apartment two months before the expiration of the lease. Wilmette's counterclaim further alleges that since the plaintiff prepaid the last month's rent, the amount that plaintiff allegedly owed was one month's rent, or $441.

¶29 III. Pretrial Motions

¶30 A. Discovery

¶31 On July 10, 2006, plaintiff filed a Request to Admit Facts. Specifically relevant to this appeal, Request to Admit No. 25 requested defendants to admit, "[t]hat the Plaintiff paid rent each and every month of her tenancy."

¶32 On August 7, 2006, defendants filed a response to plaintiff's Request to Admit. The answer to Request to Admit No. 25 read, "Defendants admit request to Admit No. 24."

¶33 On September 13, 2006, plaintiff moved the court to deem the facts admitted. Plaintiff argued that the facts from the Request to Admit should be deemed admitted because defendants did not properly sign or verify their response. Plaintiff also claimed that defendants "provided no evidentiary materials or asserted any operative facts to establish that [the attorney who signed defendants' response] is the authorized representative of any of the Defendants." Plaintiff argued that because the attorney withdrew as counsel for defendants on July 28, 2006, he could not have been authorized to sign the response on August 7, 2006.

¶34 On September 28, 2006, the trial court denied plaintiff's motion to deem facts admitted. In the same order, the trial court ruled that "Defendants' responses and objections as stated in their Response to Plaintiff's Request to Admit filed on August 7, 2006 stand, as stated."

¶35 On December 20, 2006, defendants' counsel deposed plaintiff. In her deposition, plaintiff testified that she paid $441 in February 2005 as a security deposit for her renewal lease. Plaintiff testified that her security deposit was applied to her April 2006 rental obligation. Plaintiff also testified that she did not pay rent for the month of May 2006.

¶36 B. Motion to Dismiss

¶37 On June 28, 2007, defendants filed motions to dismiss class action counts I through III and individual counts IV and VI, under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2006)). Defendants argued that class action count I and II should be dismissed because plaintiff did not pay her last month of rent, and as a result, defendants did not owe plaintiff any money. Defendants further argued that since plaintiff was not entitled to any damages, she was not an appropriate class representative so the class action counts should be dismissed.

¶38 The trial court dismissed class action count I because the amount of unpaid rent would exceed any unpaid interest on the security deposit. The trial court denied the motion to dismiss for class action count II, regarding the interest amount, reasoning that defendants "did not offer any information on how the amount was calculated." Defendants withdrew their motion as to class action count III, so the trial court did not address that count.

¶39 The trial court granted defendants' motion to dismiss individual count IV because the claim was time-barred by a two-year statute of limitations under section 13-202 of the Code of Civil Procedure (735 ILCS 5/13-202 (West 2006)), with leave to amend. Finally, the trial court denied defendants' motion to dismiss count VI because defendants had not established as a matter of law that they paid plaintiff the required amount of interest.

¶40 On March 7, 2008, defendants filed a motion to reconsider the trial court's February 20, 2008, order. Defendants argued that the trial court should not have given plaintiff leave to amend individual count IV because the discovery rule—which permits a tolling of the statute of limitations—does not apply where a plaintiff is aware of a cause of action within the

statute of limitations period. On June 6, 2008, the trial court granted defendants' motion to dismiss individual count IV, with prejudice.

¶41 On February 2, 2009, plaintiff filed a motion for class certification. On February 5, 2009, the trial court continued the motion for class certification. The trial court found that the leases required prepaid rent, rather than a security deposit.

¶42 On April 3, 2009, defendants moved to stay class discovery. On April 20, 2009, the trial court granted defendants' motion to stay class discovery, "pending the completion of discovery on the purported class representative." The trial court also granted defendants leave to take plaintiff's supplemental deposition.

¶43 C. Motion for Summary Judgment

¶44 On January 22, 2010, defendants filed a motion for summary judgment as to all counts from the first amended class action complaint. Defendants argued that because the leases required prepaid rent, rather than a security deposit, the correct amount of interest was paid to plaintiff for that prepaid rent. Defendants further argued that plaintiff was not required to renew her lease more than 90 days before the original tenancy ended. Defendants also argued that plaintiff provided no evidence that defendants unlawfully entered her apartment. Finally, defendants argued that plaintiff waived all counts that related to the "defective conditions" of the apartment because both of the lease agreements that she signed demonstrated that she agreed the apartment was in good condition.

¶45 On September 28, 2011, the trial court granted summary judgment, in part, to defendants on the counterclaim for unpaid rent.[2] However, the trial court instructed that

[2] While there is no motion for summary judgment by Wilmette on its counterclaim in the record, defendants' motion for summary judgment as to plaintiff's complaint does make arguments related to the counterclaim and plaintiff filed a separate response specifically as to the

defendants would be required to prove up damages on the counterclaim at a later time. The trial court also found that the money plaintiff paid at the time of signing her two lease agreements was prepaid rent, therefore, plaintiff could not recover on the counts related to a security deposit. Thus, on September 28, 2011, the trial court granted summary judgment for individual counts I through III, V through VII, and XII, all of which related to a security deposit. The trial court also granted summary judgment as to class action count II for purported Class A and for plaintiff in particular. Class action count II was an alternative pleading, if the court determined that the leases required prepaid rent rather than a security deposit. The trial court also found that plaintiff was credited for the proper interest on the prepaid rent, which would also be less than the rent she failed to pay in May 2006.

¶46 D. Motion for Class Certification

¶47 On October 11, 2011, plaintiff filed an amended motion for class certification, as well as an amended memorandum in support of her motion for class certification.

¶48 On May 4, 2012, the trial court denied the plaintiff's motion for class certification, thereby dismissing with prejudice the remaining class claim, class action count III. Specifically, the trial court found that plaintiff failed to plead facts sufficient to show commonality, a prerequisite for class certification. The trial court reasoned that the letter that allegedly pressured Class B tenants to renew their leases more than 90 days before the lease expired was not attached to the amended class action complaint. However, the trial court did not dismiss the individual count that was brought concurrently with class action count III.

---

counterclaim. Moreover, while the counterclaim was only filed on behalf of defendant Wilmette, the trial court stated that it was granting summary judgment in part to all defendants on the counterclaim.

Once class action count III, the only remaining class claim, was dismissed, the trial court transferred the case to the first municipal division.

¶49 On June 18, 2012, six years after the original complaint was filed, the trial court closed all discovery. The trial court also assigned the case to mandatory arbitration. On December 5, 2012, three arbitrators unanimously ruled in favor of defendants on all counts.

¶50 On June 11, 2013, plaintiff voluntarily non-suited individual counts XIII and XIV.

¶51 IV. Bench Trial

¶52 At a bench trial on December 16 and 17, 2013, the trial court addressed the remainder of the claims in this case: the individual count encompassed by class action count III (requiring renewal of lease), as well as individual counts VIII (unlawful entry), IX (failure to maintain), X (breach of implied warranty of habitability), and XI (interruption of tenant occupancy). Defendants' ability to prove up damages for their counterclaim was also an issue at the bench trial.

¶53 At trial, regarding class action count III, plaintiff testified that she received a lease renewal in February 2005. The court admitted into evidence the lease renewal itself, which read "February 17, 2005," under the box titled "Date of Lease." The court also admitted into evidence an undated letter that accompanied the renewal lease from Elisa Wolter, an employee of defendant Wilmette, to plaintiff. The letter stated that "[i]f we do not receive this documentation back by 3/10/05, we will assume you will be moving out and your apartment will be shown to the public." On cross-examination, plaintiff testified that she did not remember exactly when she signed the renewal lease. She also testified that she did not date her signature.

¶54 Regarding individual count VIII, plaintiff testified that she believed defendants unlawfully entered her apartment without first giving her notice. She testified that she double-locked her door, using a chain door fastener, and left a chair behind the door. Plaintiff described returning home on several occasions and observing that the chain was removed from the door fastener and the chair was moved away from where she left it. Plaintiff also testified that she left some items on her bed and believed that those items were later moved while she was away from the apartment. Plaintiff testified that she never actually observed anyone enter or leave her apartment without first giving notice. She testified that she knew it was the management because after she noticed these changes in her apartment, she called defendant Aliloska, who would admit that someone had been inside her apartment for inspection or maintenance purposes. On cross-examination, plaintiff testified that she knew that when she requested maintenance, the management would need to enter her apartment.

¶55 As to individual counts IX and X, for failure to maintain and breach of the implied warranty of habitability, plaintiff testified that when she first moved into the apartment the stove was broken. Plaintiff testified that defendants replaced that stove, but the new one did not work either. Plaintiff further testified that as a result of the lack of a working stove, she spent between $400 and $500 to eat out. On cross-examination, plaintiff testified that prior to March 2005, the stove was replaced, the sink was repaired, and the carpet was cleaned.

¶56 Finally, plaintiff testified about individual count XI, regarding the interference with the tenancy by lack of a telephone line in the apartment. Plaintiff testified that she did not have a landline in her apartment at any point during her tenancy and she was forced to use a prepaid cell phone.

¶57 During defendants' case-in-chief, defendant Aliloska testified as an adverse witness that as manager of the property, she did not enter or authorize anyone to enter plaintiff's apartment without plaintiff's knowledge. Aliloska testified that she would only authorize maintenance or inspection to respond to complaints by tenants. She also testified that plaintiff did not complain about any other maintenance issues, other than the stove, sink, and carpeting. Finally, Aliloska testified that she gave notice in writing and over the phone to plaintiff whenever she authorized entry into plaintiff's apartment for maintenance purposes. However, Aliloska testified that she did not remember specifically calling plaintiff to give notice.

¶58 Defendant Wilmette's general counsel Alan Didesch testified that plaintiff renewed her lease on or around July 28, 2005, and that the accounts receivable ledger for plaintiff showed that a money order in the amount of $431 was deposited on July 28, 2005. Didesch explained that the money order was described in the ledger as plaintiff's last month's rent deposit that plaintiff was required to provide to defendants with her renewal lease.

¶59 The trial court found in favor of defendants on all remaining counts of the complaint. However, the trial court found that defendants did not prove up damages as to defendants' counterclaim. Thus, while the trial court originally granted summary judgment to defendants on defendants' counterclaim, the trial court ultimately entered judgment in plaintiff's favor on the counterclaim because defendants did not prove that they mitigated their damages.

¶60 This appeal followed.

¶61 ANALYSIS

¶62 Plaintiff appeals the eight orders from the trial court, which we address in sequential order.

¶63 I. Pretrial Motions

¶64 A. Discovery: Order Entered September 28, 2006

¶65 First, plaintiff appeals the September 28, 2006, denial of her motion to deem facts admitted. Plaintiff points out that the defendants' prior attorney signed the response to the Rule 216 Requests to Deem Facts Admitted and argues that Rule 216 requires the parties rather than defendants' attorney to sign the response. As an initial matter, defendants argue that plaintiff forfeited the objection to the trial court's ruling on the motion to deem facts admitted by failing to raise an objection at the time of the ruling. We agree with defendants. "The failure to object at the trial and to raise the issue in a posttrial motion waives the issue." *Limanowski v. Ashland Oil Co.*, 275 Ill. App. 3d 115, 211 (1995). We affirm the September 28, 2006, order because plaintiff has forfeited her objection on this ground for appeal.

¶66 B. Motion To Dismiss: Orders Entered February 20, 2008, and June 6, 2008

¶67 Next, plaintiff appeals the February 20, 2008, trial court order granting in part and denying in part defendants' motions to dismiss. The order from February 20, 2008, dismissed class count I but afforded plaintiff leave to amend individual count IV. However, on June 6, 2008, the trial court granted defendants' motion to dismiss individual count IV, with prejudice. Following the order on June 6, 2008, class action count I and individual count IV were dismissed with prejudice. Plaintiff appeals both the February 20, 2008, and June 6, 2008, orders, which we address in turn.

¶68 1. February 20, 2008, Order

¶69 On appeal, plaintiff asks us to reverse the trial court's partial dismissal order, issued pursuant to section 2–619 of the Code of Civil Procedure (Code) (735 ILCS 5/2–619 (West 2006)). The trial court dismissed class action count I, which alleges that defendants failed to

pay interest on plaintiff's security deposit. "A motion to dismiss, pursuant to section 2–619 of the Code, admits the legal sufficiency of the plaintiffs' complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiffs' claim." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006); *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). For a section 2–619 dismissal, our standard of review is *de novo*. *Solaia Technology*, 221 Ill. 2d at 579; *Morr–Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 488 (2008). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). When reviewing "a motion to dismiss under section 2–619, a court must accept as true all well-pleaded facts in plaintiffs' complaint and all inferences that can reasonably be drawn in plaintiffs' favor." *Morr–Fitz*, 231 Ill. 2d at 488. "In ruling on a motion to dismiss under section 2–619, the trial court may consider pleadings, depositions, and affidavits." *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262 (2004).

¶70 "For a motion to be properly brought under section 2–619, the motion (1) must be filed 'within the time for pleading,' and (2) must concern one of nine listed grounds." *River Plaza Homeowner's Ass'n v. Healey*, 389 Ill. App. 3d 268, 275 (2009) (quoting 735 ILCS 5/2–619(a) (West 2006)).

¶71 In the case at bar, we cannot determine from the appellate record whether the first requirement of a timely filing was met regarding the February 20, 2008, order by the trial court. However, we do not find defendants' motion defective on this ground for two reasons. First, plaintiff did not claim either at trial or on this appeal that defendants failed to file its section 2–619 motion "within the time for pleading." 735 ILCS 5/2–619(a) (West 2006). "Issues not raised are waived." *River Plaza*, 389 Ill. App. 3d at 275 (appellate court found

that plaintiff had forfeited the issue of whether certain defendants had filed a timely section 2–619 motion). See also *Wilson v. Molda*, 396 Ill. App. 3d 100, 105 (2009) (although the appellate court could not determine from the appellate record whether defendant's section 2–619 motion was timely, it held that plaintiff had forfeited this issue). Second, if there was something necessary and material that was missing from the appellate record, such as evidence of an objection, it was the appellant's burden to provide it. *Wilson*, 396 Ill. App. 3d at 105 (citing *Luss v. Village of Forest Park*, 337 Ill. App. 3d 318, 331 (2007)); *Pelleton, Inc. v. McGivern's, Inc.*, 375 Ill. App. 3d 222, 227 (2007); *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757 (2006). For these reasons, we do not find defendants' motion defective on timeliness grounds.

¶72 The second requirement for a section 2–619 motion is that it must concern one of the nine grounds listed in section 2–619. *River Plaza*, 389 Ill. App. 3d at 275. In the case at bar, the February 20, 2008, order dismissing of class action count I was granted on ground nine: some "other affirmative matter" defeating the legal effect of the claim. 735 ILCS 5/2–619(a)(9) (West 2006).

¶73 " 'Affirmative matter,' in a section 2–619(a)(9) motion, is something in the nature of a defense which negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 486 (1994). In the case at bar, defendants argued, and the trial court agreed, that since the unpaid rent would exceed any interest on the monies paid, plaintiff was not entitled to any damages and, thus, she was not an appropriate class representative. It is plaintiff's position that the money given to defendants was not prepaid rent but was a security deposit and should have been deposited in a separate account.

However, the lease demonstrates that the money was prepaid rent under the lease because the lease says that there was no security deposit, and the initial lease says, "tenant prepaid $431.00 to be applied to the last month(s) of the lease" and the renewal lease says, "tenant prepaid $441.00 to be applied to the last month(s) of the lease." We can find no error in the trial court's determination that the money paid was prepaid rent.

¶74 In her deposition, plaintiff admitted that she did not pay rent for April or May in 2006. Plaintiff also testified that the money that she paid was applied to her April 2006 rental obligation. Thus, based on her deposition testimony, plaintiff's May rent remained unpaid and the trial court correctly found that the unpaid rent for May 2006 would exceed any unpaid interest by defendants on the prepaid rent. Accordingly, plaintiff would not be entitled to any damages and would not be able to state a cause of action under section 5-12-080(c) of the Landlord Tenant Ordinance (Chicago Municipal Code §5-12-080(c) (amended Nov. 6, 1991)); *Griffith v. Wilmette Harbor Ass'n, Inc.*, 378 Ill. App. 3d 173, 184 (2007) ("if a putative class action plaintiff has not suffered the injury that he alleges other members of the putative class have suffered, that purported plaintiff cannot represent the class"). Where, as here, a putative class representative has no valid claim in her own right, she cannot bring such a claim on behalf of a putative class. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 139 (2005). Since plaintiff could not maintain an individual claim under class action count I, we affirm the February 20, 2008, order dismissing class action count I.

¶75 2. June 6, 2008, Order

¶76 Next, plaintiff appeals the order granting the defendant's motion to reconsider the order entered on February 20, 2008. Defendants moved the trial court to reconsider its legal analysis of the statute of limitations and the discovery rule. *De novo* review is proper where a

motion to reconsider raises a question of whether the trial court erred in its previous application of existing law. *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 259 (2008); *Duresa v. Commonwealth Edison Co.*, 348 Ill. App. 3d 90, 97 (2004). As noted, *de novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶77 The June 6, 2008, order dismissed individual count IV, which alleges a failure to notify plaintiff of the transfer of her security deposit following the sale of the property to BCH5830. The trial court dismissed individual count IV because it found the claim barred by the two-year statute of limitations for a statutory penalty under section 13-202 of the Code (735 ILCS 5/13-202 (West 2006)). On appeal, plaintiff argues that while she knew that BCH5830 had a property interest in the building, she did not know that Halim had transferred ownership to BCH5830 on August 14, 2004, until December 2006, after the two-year statute of limitations had run. Plaintiff argues that the discovery rule should have allowed plaintiff a tolling of the statute of limitations. Thus, plaintiff argues that individual count IV, which was included in the amended class action complaint and filed on May 3, 2007, was timely.

¶78 Defendants argue that the discovery rule does not apply where, as here, plaintiff was aware of a cause of action within the statute of limitations period. Defendants argue that initial complaint named the new property owner, defendant BCH5830, so plaintiff knew or should have known of BCH5830's ownership in the property by June 2006, within the two-year statute of limitations.

¶79 Under the discovery rule, the statute of limitations accrues when the party knows or reasonably should know of an injury and that the injury was wrongfully caused. *Clay v. Kuhl*, 189 Ill. 2d 603, 608 (2000). "The discovery rule is the exception to the traditional rules, to be

applied only when the discovery occurs after the statute of limitations has run or when discovery occurs at a time so near the running that the action, for all practical reasons, has been barred before a party has learned of the accrual." *Dolce v. Gamberdino*, 60 Ill. App. 3d 124, 127-28 (1978).

¶80 In *Namur v. Habitat Co.*, 294 Ill. App. 3d 1007, 1013 (1998), the plaintiffs' complaint was filed more than two years from the dates that the causes of action accrued. The court held that the trial court erred in not dismissing the action. *Namur*, 294 Ill. App. 3d at 1013. When the plaintiff argued the discovery rule should apply, the appellate court also rejected that argument. *Namur*, 294 Ill. App. 3d at 1014. "It is incumbent upon a plaintiff seeking to take advantage of the discovery rule to plead in the complaint that the cause of action remained undiscovered." *Namur*, 294 Ill. App. 3d at 1014. The court explained that the plaintiffs did not plead in their complaint that they did not discover their causes of action until after the termination of their lease. *Namur*, 294 Ill. App. 3d at 1014. Thus, the discovery rule did not apply. *Namur*, 294 Ill. App. 3d at 1014.

¶81 We agree with defendants that the trial court properly found individual count IV time-barred. Section 13-202 of the Code of Civil Procedure requires that claims brought for "a statutory penalty," such as individual count IV, "shall be commenced within 2 years next after the cause of action accrued." 735 ILCS 5/13-202 (West 2006). Nothing in the amended class action complaint addresses why plaintiff did not plead individual count IV within the applicable statute of limitations. Plaintiff failed to "plead in the complaint that the cause of action remained undiscovered." *Namur*, 294 Ill. App. 3d at 1014. Thus, there is no basis for application of the discovery rule. Indeed, by her original complaint, plaintiff has shown that she was aware of BCH5830's ownership interest by June 2006 at the latest, within the statute

of limitations. This is further demonstrated by plaintiff's Request to Admit, which asked defendants to admit BCH5830 was an owner of the subject matter property. Moreover, the trial court was correct to dismiss with prejudice because there is no way for plaintiff to amend her pleading to make it timely. See *Devyn Corp. v. City of Bloomington*, 2015 IL App (4th) 140819,¶89 ("To be entitled to an order granting leave to amend, a party must meet all four *Loyola* factors," including timeliness (citing *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992))). In addition, this count concerns an allegation of a security deposit when the lease shows that there was no security deposit. The trial court's determination that the prepaid money was prepaid rent was proper here. Accordingly, we affirm the trial court's March 7, 2008, order that dismissed individual count IV with prejudice.

¶82 C. Discovery: Order Entered April 20, 2009

¶83 The next order that plaintiff appeals is the trial court order from April 20, 2009, granting defendants' motion to stay class discovery. The trial court ordered that "[a]ll class discovery is hereby stayed pending completion of discovery on the purported class representative, Paulina Addo's, individual claims."

¶84 Control of the discovery process is vested in the discretion of the circuit court. *Wilson v. Norfolk & West Ry. Co.*, 109 Ill. App. 3d 79, 84 (1982). This discretion should be exercised by keeping in mind the goal of promotion of the ascertainment of truth. *In re Marriage of Falstad*, 152 Ill. App. 3d 648, 653 (1987). A trial court's discovery order is reviewed only for an abuse of discretion. *Montes v. Mai*, 398 Ill. App. 3d 424, 430 (2010); *Wisniewski v. Kownacki*, 221 Ill. 2d 453, 457 (2006). An abuse of discretion exists if the

ruling prevents the ascertainment of truth or substantially affects a crucial issue in the case. *United Nuclear Corp. v. Energy Conversion Devices, Inc.*, 110 Ill. App. 3d 88, 105 (1982).

¶85 The purpose of discovery is to facilitate disclosure of any matter relevant to the pending cause of action. *Balciunas v. Duff*, 94 Ill. 2d 176, 188 (1983). In *Adkins Energy, LLC v. Delta–T Corp.*, 347 Ill. App. 3d 373, 282 (2004), the reviewing court found that the trial court did not abuse its discretion when it stayed discovery until ruling on the defendant's motion to dismiss. The court reasoned that it was not an "abuse of discretion for the trial court to stay discovery until it ruled on the motion to dismiss, because if a cause of action had not been stated, discovery would have been unnecessary." *Adkins Energy*, 347 Ill. App. 3d at 381.

¶86 In the case at bar, we cannot find that the trial court abused its discretion by staying class discovery. At the time of the April 20, 2009, order, one of the class action counts had already been dismissed because plaintiff could not maintain an individual claim for that count, a dismissal we affirm on appeal. Thus, the trial court did not abuse its discretion by staying class discovery in order to first assess if plaintiff would be able to serve as a class representative on the remainder of the class claims. Indeed, while class discovery was stayed, discovery of plaintiff's individual claims was not, and defendants twice deposed plaintiff and exchanged written discovery. As in *Adkins*, the trial court's decision to stay discovery that was based on the chance that further discovery could be unnecessary, based on the court's ruling on another matter. Had the proceedings later revealed that plaintiff could maintain the individual claims under the class action counts, class discovery could be reopened. The order therefore did not prevent the ascertainment of the truth and we affirm the April 20, 2009, order.

¶87 D. Motion for Summary Judgment: Order Entered on September 28, 2011

¶88 Next, plaintiff challenges the trial court's September 28, 2011, order granting partial summary judgment in defendants' favor. The trial court granted summary judgment to defendants as to class action count II for purported Class A and for plaintiff in particular. Class action count II alleges that defendants failed to pay interest on the prepaid rent. Class action count II was an alternative pleading, if the court determined that the leases required prepaid rent rather than a security deposit. Finally, the trial court granted summary judgment to defendants as to liability on their counterclaim.

¶89 Previously, in its February 5, 2009, order, the trial court found that plaintiff paid prepaid rent rather than a security deposit, and plaintiff does not challenge this finding on appeal. Thus, on September 28, 2011, the trial court granted summary judgment for individual counts I through III, V through VII, and XII, all of which required plaintiff to prove mishandling of a security deposit. Plaintiff only contests summary judgment as to class action count II and defendants' counterclaim. Therefore, we do not address individual counts I through III, V through VII, and XII. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued [in the appellant's brief] are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.").

¶90 1. Standard of Review

¶91 "[S]ummary judgment is a drastic measure [that] should only be allowed 'when the right of the moving party is clear and free from doubt.' " *Mydlach v. DaimlerChrysler Corp.*, 226 Ill. 2d 307, 311, 314 (2007) (quoting *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)). A plaintiff is not required to prove his case at the summary judgment stage. *Jackson v. TLC Associates, Inc.*, 185 Ill. 2d 418, 423 (1998). A trial court may grant summary judgment

"only where 'the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Rich v. Principal Life Insurance Co.*, 226 Ill. 2d 359, 370 (2007) (quoting 735 ILCS 5/2–1005(c) (West 2006)).

¶92 On a motion for summary judgment, the trial court has "a duty to construe the record strictly against the movant and liberally in favor of the nonmoving party." *Jackson*, 185 Ill. 2d at 423–24; *Osborne v. Claydon*, 266 Ill. App. 3d 434, 435 (1994). As a result, summary judgment is not appropriate: (1) if "there is a dispute as to a material fact" (*Jackson*, 185 Ill. 2d at 424); (2) if "reasonable persons could draw divergent inferences from undisputed material facts" (*Jackson*, 185 Ill. 2d at 424); or (3) if "reasonable persons could differ on the weight to be given the relevant factors" of a legal standard (*Calles v. Scripto–Tokai Corp.*, 224 Ill. 2d 247, 269 (2007)). A trial court's grant of summary judgment is subject to *de novo* review. *Rich*, 226 Ill. 2d at 370. As noted, *de novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶93 2. Application

¶94 On appeal, plaintiff argues that the trial court's grant of summary judgment was not appropriate because defendants did not pay interest on the prepaid rent in the form of cash or rent credit, as section 5-12-080(c) of the Landlord Tenant Ordinance requires. Plaintiff also argues that defendants did not pay the interest within 30 days of the end of the first lease, as required by the Landlord Tenant Ordinance.

¶95 Section 5-12-080(c) of the Landlord Tenant Ordinance reads, in pertinent part:

> "A landlord who holds a security deposit or prepaid rent pursuant to this section 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 5-12-081 for the year in which the rental agreement was entered into. 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) (amended Nov. 6, 1991).

¶96 We agree with the trial court that summary judgment was appropriate for class action count II (failure to pay interest on prepaid rent) and defendants' counterclaim (failure to pay rent). Defendants demonstrated compliance with section 5-12-080(c) of the Landlord Tenant Ordinance for the initial lease by providing a ledger that shows defendants credited plaintiff's account with $1.81 in interest on July 1, 2005. The tenancy for the initial lease ended on August 31, 2005. Thus, under the Landlord Tenant Ordinance, defendants were required to credit plaintiff's account by the end of September 2005. The record reflects that they did so, by crediting plaintiff's account with interest, and plaintiff does not argue otherwise. Thus, there is no genuine issue of material fact for the first lease.

¶97 Plaintiff also argues that summary judgment should not have been granted because defendants failed to pay the correct amount of interest on the prepaid rent. Specifically, plaintiff argues that the interest was only applied to the first year of plaintiff's tenancy. Plaintiff argues that because plaintiff signed the initial lease on July 20, 2004, defendants held plaintiff's prepaid rent for over a year. Thus, plaintiff argues the interest rate should have been applied to 14 months instead of 12 months. According to plaintiff, the interest due

to plaintiff after the first year of the tenancy was $2 rather than the $1.81 that defendants credited plaintiff's account.

¶98 This argument is contradicted by the clear language of the Landlord Tenant Ordinance. Section 5-12-080(c) provides that the applicable period starts "from the beginning date of the rental term specified in the rental agreement." Chicago Municipal Code §5-12-080(c) (amended Nov. 6, 1991). Thus, there is also no genuine issue of material fact as to the amount of interest for the initial lease.

¶99 Compliance with section 5-12-080(c) for the revised lease directly relates to defendants' counterclaim. We cannot find that defendants violated section 5-12-080(c) for the revised lease because plaintiff admitted that she did not pay her May 2006 rental obligation. Section 5-12-080(c) specifically provides that the interest owed may be applied to the "rent due." Chicago Municipal Code §5-12-080(c) (amended Nov. 6, 1991). Thus, the amount defendants would ordinarily be required to pay within 30 days of May 2006 is subsumed by plaintiff's debt for the May 2006 rental obligation. Plaintiff cannot be awarded damages for the revised lease because she owes defendants more than the amount in interest. Therefore, there is no genuine issue of material fact for compliance with section 5-12-080(c) for the revised lease.

¶100 Despite the requirement for this court to construe the record strictly against defendants and liberally in favor of plaintiff, summary judgment was warranted. The record is devoid of any genuine issue of material fact as to class action count II and defendants' counterclaim. We affirm the trial court's order from September 28, 2011.

¶101 E. Motion for Class Certification: Order Entered on May 4, 2012

¶102 Next, plaintiff challenges the trial court's May 4, 2012, order denying plaintiff's motion for class certification for the remaining class claim, class action count III. After denying class certification for the only remaining class claim, the trial court transferred the case to the first municipal division.

¶103 1. Statutory Prerequisites

¶104 Section 2–801 of the Code of Civil Procedure lists four prerequisites for a class action:

> "An action may be maintained as a class action in any court of the State and a party may sue or be sued as a representative party of the class only if the court finds:
>
> (1) The class is so numerous that joinder of all members is impracticable.
>
> (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
>
> (3) The representative parties will fairly and adequately protect the interest of the class.
>
> (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2–801 (West 2006).

Our supreme court has held that plaintiffs bear the burden of demonstrating that their suit satisfies the four statutory prerequisites. *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45,

72 (2007); *Avery*, 216 Ill. 2d at 125 ("a class may be certified only if the proponent establishes the four prerequisites set forth in the statute").

¶105 2. Standard of Review

¶106 "The decision regarding class certification is within the discretion of the trial court." *Cruz v. Unilock Chicago, Inc.*, 383 Ill. App. 3d 752, 761 (2008). The appellate court is limited to an assessment of the trial court's exercise of discretion; the appellate court cannot indulge in an independent, *de novo* evaluation of the facts alleged and the facts of record to justify class certification. *Cruz*, 383 Ill. App. 3d at 761. In reviewing a circuit court's denial of class certification, a reviewing court is only to assess the discretion exercised by the trial court and may not instead assess the facts of the case and conclude for itself that a case is well-suited for a class action. *McCabe v. Burgess*, 75 Ill. 2d 457, 465 (1979). The trial court will be reversed only upon a showing of a clear abuse of discretion or the application of impermissible legal criteria. *Schlenz v. Castle*, 84 Ill. 2d 196, 203 (1981). A trial court's discretion in deciding whether to certify a class action is not unlimited and is bounded by and must be exercised within the framework of the civil procedure rule governing class actions. *Avery*, 216 Ill. 2d at 126. Where, as here, the trial court has denied class certification, in order to reverse, the appellate court would have "to find that no other reasonable conclusion could be reached but that a class action would be appropriate." *Health Cost Controls v. Sevilla*, 365 Ill. App. 3d 795, 805 (2006).

¶107 3. Application

¶108 While plaintiff argues on appeal that she has satisfied all four of the prerequisites to class certification, the trial court's denial of class certification was based on its finding that the amended class action complaint failed to sufficiently plead commonality with respect to

class action count III. Plaintiff relies on *P.J.'s Concrete Pumping Service v. Nextel West Corp.*, 345 Ill. App. 3d 992 (2004), to argue that plaintiff did not need to plead facts that establish commonality. There, the appellate court held that the class action statute "makes no reference to any requirement that the facts establishing the class action prerequisites be pleaded." *P.J.'s Concrete Pumping Service*, 345 Ill. App. 3d at 1001. We find plaintiff's argument unpersuasive.

¶109 While the complaint might not need to plead facts that establish class action prerequisites, the factual allegations must be sufficiently broad in scope to encompass a possible class claim. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 453-54 (2004). In this case, plaintiff's class action count III alleges defendants required lease renewal more than 90 days before the lease termination. As noted, the trial court's determination that class certification is inappropriate is only reversible when the trial court has abused its discretion. *Cruz*, 383 Ill. App. 3d at 761. Here, we cannot find that the trial court abused its discretion by finding the complaint insufficiently broad in scope to encompass a class claim.

¶110 In the case at bar, the only documents the trial court had before it were plaintiff's amended class action complaint and her motion for class certification. As we found earlier, class discovery was properly stayed, and plaintiff did not provide the trial court with any additional information in order for the trial court to analyze the issue of commonality. The letter that plaintiff relies on to support her commonality argument for class action count III was not included in her complaint or in her motion for class certification. Thus, we cannot find that the trial court abused its discretion merely by assessing what information it had before it. Plaintiff has the burden of proving the statutory requirements. *Barbara's Sales, Inc.*, 227 Ill. 2d at 72; see also *Weiss*, 208 Ill. 2d at 453 (describing class certifications as "a matter

of proof"). Here, the trial court determined based on the complaint and motions before it that commonality was lacking. We also note that the trial court's determination was ultimately confirmed later at the bench trial, when another trial judge found for defendants on the individual count related to class action count III. We cannot find, as required to reverse, that "no other reasonable conclusion could be reached but that class certification is appropriate." *Health Cost Controls*, 365 Ill. App. 3d at 805.

¶111 Plaintiff additionally relies on *Ross v. Geneva*, 43 Ill. App. 3d 976 (1976) *aff'd*, 71 Ill. 2d 27 (1978), to argue that plaintiff's signing of the renewal lease was not voluntary, and thus does not eliminate the commonality requirement. However, the trial court did not find that commonality was lacking because plaintiff's actions were voluntary. The trial court concluded that plaintiff failed to sufficiently plead commonality. Accordingly, we affirm the trial court's denial of class certification for Class B.

¶112 F. Discovery Order Entered on June 18, 2012, Closing Discovery

¶113 Plaintiff next appeals the trial court order from June 18, 2012, closing all discovery. As with the earlier discovery orders, the June 18, 2012, discovery order is reviewed only for an abuse of discretion. *Montes*, 398 Ill. App. 3d at 430. An abuse of discretion exists if the ruling prevents the ascertainment of truth or substantially affects a crucial issue in the case. *United Nuclear Corp.*, 110 Ill. App. 3d at 105.

¶114 Ordinarily, discovery is closed after the parties have an adequate opportunity to discover facts regarding any matter relevant to the subject matter involved in the pending action. See *Computer Teaching Corp. v. Courseware Applications, Inc.*, 199 Ill. App. 3d 154, 157 (1990) ("Discovery is to be a mechanism for the ascertainment of truth and for the purpose of promoting either a fair settlement or a fair trial."). The objective to be obtained

under the discovery rules is the expeditious and final determination of controversies in accordance with the substantive rights of the parties. *Balciunas*, 94 Ill. 2d at 188.

¶115 On appeal, plaintiff argues that the trial court prevented the ascertainment of the truth by staying discovery and then closing discovery without ever reopening discovery. The trial court stayed discovery on only the class claims on April 20, 2009. Thus, the argument that the trial court prevented the ascertainment of the truth by staying discovery without reopening it would only apply to class discovery. However, we cannot find that the trial court prevented the ascertainment of the truth by staying class discovery without ever reopening it. When the trial court closed all discovery on June 18, 2012, all of the class action counts had been dismissed. Thus, specifically for the class action counts, no additional discovery was necessary.

¶116 We also cannot find that the trial court abused its discretion in closing discovery for the individual claims on June 18, 2012. The trial court closed discovery six years after the original filing of the complaint and five years after the complaint was amended. Plaintiff had five to six years for discovery related to her individual counts, and plaintiff does not identify what further discovery was necessary. Accordingly, the June 18, 2012, order closing all discovery is affirmed.

¶117 II. Bench Trial

¶118 A. Final Trial Order: Entered on February 21, 2014

¶119 Finally, plaintiff appeals the final order that was entered on February 21, 2014, following the bench trial. There, the trial court addressed the remainder of the claims in this case: the individual count encompassed by class action count III (requiring renewal of lease), as well as individual counts VIII (unlawful entry), IX (failure to maintain), X (breach of

implied warranty of habitability), and XI (interruption of tenant occupancy).[3] Defendants' ability to prove up damages for their counterclaim was also at issue at the bench trial.

¶120 1. Standard of Review

¶121 When a challenge is made to a trial court's ruling following a bench trial, the proper standard of review is whether the trial court's judgment is against the manifest weight of the evidence. *Carey v. American Family Brokerage, Inc.*, 391 Ill. App. 3d 273, 277 (2009). "A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent." *In re Parentage of J.W.*, 2013 IL 114817,¶55 (citing *In re A.P.*, 2012 IL 113875,¶17). In other words, under the manifest weight of the evidence standard, a reviewing court will overturn a trial court's findings only " 'when [the] findings appear to be unreasonable, arbitrary, or not based on evidence.' " *In re Kendale H.*, 2013 IL App (1st) 130421,¶28 (quoting *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995)). "Where the determination of the case depends largely upon the facts found in the record, the findings and judgment of the trial court 'will not be disturbed by the reviewing court, if there is *any* evidence in the record to support such findings.' " (Emphasis in original.) *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 599 (2000) (quoting *Schioniger v. County of Cook*, 116 Ill. App. 3d 895, 899 (1983)).

¶122 2. Application

¶123 On appeal, plaintiff first argues that defendant Halim was not a credible witness at trial because he was repeatedly impeached. We do not find this persuasive for several reasons. First, as the trier of fact in this case, the trial judge was in a superior position to

[3] Since plaintiff does not address individual count X in her brief, she has forfeited any argument regarding that count, pursuant to Supreme Court Rule 341 (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued [in the appellant's brief] are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.")).

judge the credibility of the witnesses and determine the weight to be given to their testimony. *Buckner v. Causey*, 311 Ill. App. 3d 139, 144 (1999). Second, plaintiff does not address how Halim's credibility relates to the counts that were decided at the bench trial. Defendant Halim's testimony concerned an alleged human rights violation, where someone took unauthorized photographs of plaintiff. That allegation is not before this court on appeal, so we address it no further.

¶124 Regarding the individual count encompassed by class action count III (requiring renewal of lease), plaintiff argues on appeal that the trial court erred in its finding for defendants. Section 5-12-130(i) of the Landlord Tenant Ordinance provides:

> "(i) Notice of Renewal of Rental Agreement. No tenant shall be required to renew a rental agreement more than ninety (90) days prior to e termination date of the rental agreement. If the landlord violates this subsection, the tenant shall recover one month's rent or actual damages, whichever is greater." Chicago Municipal Code§5-12-130(i) (amended Nov. 6, 1991).

¶125 Plaintiff argues that the trial court failed to properly apply section 5-12-130(i) of the Landlord Tenant Ordinance to the facts. However, even if another trier of fact could reasonably find otherwise, this court on appeal will not reverse absent a finding that the trial court's conclusion is against the manifest weight of the evidence. Here, there is plenty of evidence to support the trial court's finding. The defendants' general counsel Alan Didesch testified that the accounts receivable ledger for plaintiff showed that a money order in the amount of $431 was deposited on July 28, 2005. The general counsel testified that the money order indicated that the money was for plaintiff's last month's rent, which was required with her renewal lease. Therefore, the trier of fact's determination that plaintiff signed the renewal

lease within the 90 days of the initial lease termination is not against the manifest weight of the evidence.

¶126 Plaintiff next argues that the trial court's findings regarding individual count VIII for unlawful entry were against the manifest weight of the evidence. Specifically, plaintiff points out that defendants Halim and Aliloska testified at trial that they did not have records of sending notice to plaintiff before entering her apartment. However, plaintiff testified that she never observed defendants inside her apartment. Furthermore, even if she had, she testified that she requested maintenance that would require defendants to enter her apartment. Therefore, we cannot find the trial court's finding on individual count VIII was against the manifest weight of the evidence.

¶127 Next, plaintiff argues that the trial court's findings for individual count IX (failure to maintain) and individual count XI (unlawful interruption of tenancy) were against the manifest weight of the evidence. Plaintiff argues that she credibly testified as to these counts, while defendants and their witnesses did not credibly testify as to these counts. As noted, the trial court was in a superior position to judge the credibility of the witnesses and determine the weight to be given to their testimony. *Buckner*, 311 Ill. App. 3d at 144. Thus, we are not persuaded by arguments of witness credibility. Moreover, plaintiff testified that prior to March 2005, the stove was replaced, the sink was repaired, and the carpet was cleaned. We cannot find that the trial court, acting as trier of fact, made findings that were against the manifest weight of the evidence for counts IX and XI.

¶128 CONCLUSION

¶129 For the reasons stated above, we affirm each of the eight trial court orders that plaintiff appeals.

¶130 Affirmed.