2016 IL App (1st) 151368-U

SECOND DIVISION
October 18, 2016

No. 1-15-1368



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| DEECHA DRAW and DYYANNA DRAW, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiffs-Appellants, | ) | Cook County |
| | ) | |
| v. | ) | No. 14 M1 139538 |
| | ) | |
| THOMAS R. SHEA and CHICAGO TITLE LAND TRUST CO. 7272, | ) | Honorable |
| | ) | Daniel Duffy, |
| Defendants-Appellees. | ) | Judge Presiding. |

JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court properly entered judgment in favor of the landlord-defendant.

¶ 2 Plaintiffs filed this action against their former landlord, Thomas Shea, alleging he failed to return their entire security deposit as required by section 5-12-080 of the Chicago Residential Landlord and Tenant Ordinance (the RLTO) (Chicago Municipal Code §5-12-080 (amended May 14, 1997)). The cause proceeded to a bench trial where, after hearing the parties' testimony and considering the evidence, the trial court entered a judgment in favor of the landlord, Shea. Plaintiffs appeal arguing the trial court erred in finding Shea complied with the RLTO in

withholding a portion of plaintiffs' "security deposit" ($350) and returning the deposit's balance more than 45 days after plaintiffs vacated the apartment. For the following reasons, we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 In April 2012, plaintiffs Dyyanna and Deecha Draw entered into a written residential lease agreement with defendant, Thomas Shea, to lease an apartment located at 831-833 West Windsor in Chicago, Illinois. Section four of the agreement entitled "Security Deposit" provided that "no security deposit [was] requested or received as part of this agreement." However, plaintiffs as lessees were required to "prepay the first and last monthly rent payments" in the amount of $1,245. Section four also provided that the lessees "will be charged a $350 cleaning cost if the apartment is not suitably cleaned for the next tenant—this is to include all fixtures and appliances in kitchen and bathrooms."

¶ 5 The initial lease term ran from May 1, 2012 through April 30, 2013. The parties extended the lease through April 30, 2014. Although the lease term was to end April 30, 2014, after a walkthrough inspection, plaintiffs vacated the apartment and returned the keys to Shea on April 24, 2014. On June 15, 2014, 53 days later, Shea sent a money transfer to plaintiffs in the amount of $986.74, consisting of a return the prepaid rent and interest after withholding $350 pursuant to section four of the Lease.

¶ 6 Plaintiffs did not accept Shea's money transfer and thereafter filed this action against Shea alleging: he violated section 5-12-080(d) of the RLTO in failing to return the entire amount they prepaid as a security deposit, with interest, within 45 days after they vacated the apartment; and he violated section 5-12-080(d) (2) of the RLTO by improperly withholding $350 because he did not provide plaintiffs an itemized receipt detailing the amount or reason the money was

withheld.

¶ 7 In relevant part, the RLTO provides:

"(c) A landlord who holds a security deposit or prepaid rent pursuant to this section for more than six months shall pay interest to the tenant accruing from the beginning date of the rental term specified in the rental agreement at the rate determined in accordance with Section 5-12-081 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.

(d) The landlord shall, within 45 days after the date that the tenant vacates the dwelling unit or within seven days after the date that the tenant provides notice of termination of the rental agreement pursuant to Section 5-12-110(g), return to the tenant the security deposit or any balance thereof and the required interest thereon; provided, however, that the landlord, or successor landlord, may deduct from such security deposit or interest due thereon for the following:

(1) Any unpaid rent which has not been validly withheld or deducted pursuant to state or federal law or local ordinance; and

(2) A reasonable amount necessary to repair any damage caused to the premises by the tenant or any person under the tenant's control or on the premises with the tenant's consent, reasonable wear and tear excluded. In case of such damage, the landlord shall deliver or mail to the last known address of the tenant within 30 days an itemized statement of the damages allegedly caused to the premises and the estimated or actual cost for repairing or replacing each item on that statement, attaching copies of the paid receipts for the repair or replacement. If estimated cost is given, the landlord shall furnish

> the tenant with copies of paid receipts or a certification of actual costs of repairs of damage if the work was performed by the landlord's employees within 30 days from the date the statement showing estimated cost was furnished to the tenant."
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> ***
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> (f) If the landlord or landlord's agent fails to comply with any provision of Section 5-12-080(a)-(e), the tenant shall be awarded damages in an amount equal to two times the security deposit plus interest at a rate determined in accordance with Section 5-12-081." (Chicago Municipal Code §5-12-080(c), (d), (f) (amended May 14, 1997)).

¶ 8 The case proceeded to a bench trial where Shea acted *pro se*.

¶ 9 At trial, plaintiff Deecha Draw testified that on the day she moved out of the apartment, Shea picked up the keys and commented that the apartment was "move-in ready" and that there was "no problem." She did not recall "damage or dirtiness" left in the apartment because "if there were an issue, he would have said [something about] it." She does not recall Shea mentioning the $350 flat fee cleaning charge during the walkthrough. She rejected Shea's partial return of the security deposit because it was not the amount they agreed on and she expected the entirety of the deposit to be returned.

¶ 10 Defendant Shea testified that after inspecting the apartment he spoke with one of the plaintiffs, probably Deecha, and "indicated that a charge was agreed in the lease of $350 [that] would be deducted to cover any work that was required" because the apartment "wasn't in terrific shape" and that it was clear that we are going to use some or all of that [$350]" to get the apartment into shape. Like many of their dealings, "it wasn't formalized. I didn't come in and say $30 for a plumbing washer and $45 for a plumber's elbow." He made a deduction to account for the $350 cleaning cost, applied "an overly generous interest" and routed payment of the

deposit's balance to plaintiffs. "He did not recall sending plaintiffs an itemized account of "repairs and maintenance costs associated with their apartment" and admits that he sent the refund at "just about the limit of 45 days from the termination of the lease." He calculated the refund amount at "25 and a half months of interest at 3-and-a-half percent per year" and $350 was deducted "as a cleaning/maintenance charge."

¶ 11 Shea testified that he typically spends the $350 cleaning fee on "labor" costs, such as, "getting down and scrubbing the heck out of a stove or removing rust on a bathtub." He has a "handyman who helps out at the building, and we sit in my truck and he bids the job." He admits that he "paid some money to this gentleman" who "[p]robably spent some money on parts. It may well have exceeded $350. I do recall also kind of bitterly that the tenant insisted I give a credit on first month's rent when he moved because of the soiled conditions. I know a couple of bedrooms I recall that there were those mini blinds that needed to be replaced."

¶ 12 After considering the evidence and testimony, the trial court found that Shea properly withheld the $350 cleaning fee from the return of plaintiffs' security deposit. The trial court relied on the parties' rental agreements which "expressly" included the provision that "the Lessee will be charged a $350 cleaning cost if the apartment is not suitably cleaned for the next tenant—this is to include all fixtures and appliances in kitchen and bathrooms." The trial court found this express lease provision did not constitute a waiver of any tenant right provided under the RLTO. The trial court determined that "both sides" credibly testified "to their memory in the Court's estimation of the events at issue."

¶ 13 Thereafter, plaintiffs timely filed this appeal. No appellee brief was filed. On February 10, 2016, we entered an order taking the matter solely on plaintiffs' appeal brief and we will decide this appeal under the principles of *First Capitol Mortg. Corp. v. Talandis Const. Corp.*,

63 Ill. 2d 128, 131-33 (1976).

¶ 14 ANALYSIS

¶ 15 Plaintiffs argue on appeal that the trial court erred in finding Shea did not violate the RLTO, when it was undisputed that defendant failed to return the $1,245 "security deposit" within 45-days after plaintiffs vacated the apartment as required by section 5-12-080(d), and for improperly withholding $350 from the deposit for "cleaning." We disagree. The record is clear that the lease agreement between the parties did not provide for a security deposit, no security deposit was given or received and that the monies deposited by plaintiffs at the initiation of the lease was the "prepayment of the last month of occupancy."

¶ 16 Section four of the undisputed Lease provides:

> "4. **Security Deposit.** This agreement *specifically excludes any security deposit requirement*. There *is no security deposit requested or received* as a part of this agreement. Prior to taking possession of the apartment the *lessee shall prepay* the first and last monthly rent payments[.] Lessor acknowledges receipt of Twelve Hundred Forth-Five ($1245.00) as *prepayment of the last month of lessee occupancy*. Please note that the Lessee will be charged a $350 cleaning cost if the apartment is not suitably cleaned for the next tenant – this is to include all fixtures and appliances in kitchen and bathrooms." (Emphasis added.)

¶ 17 The lease is specific and clear: no security deposit was requested or received and the $1,245 that plaintiffs paid defendant at the beginning of the lease term was prepayment of the last month of rent due under the lease.

¶ 18 Plaintiffs contend that, pursuant to section 5-12-080(d) of the RLTO, they were entitled to the return of the entire $1,245 prepayment, referring to it as a "security deposit," and

therefore, Shea was not permitted to withhold $350 for "cleaning" and was required to refund the deposit within 45-days after they vacated the apartment. Indeed, the trial court also used the term "security deposit" when making its finding. However, neither the plaintiffs nor the trial court can convert the contractual prepayment provision into a security deposit especially where the lease is uncontested and forms the basis for plaintiffs' claim. The trial court specifically referenced the lease and section four in finding the $350 cleaning cost was properly charged and that same section clearly and unambiguously negates any payment or receipt of a security deposit.

¶ 19 The question before us requires this court to construe provisions of the RLTO. Our primary objection in construing a municipal ordinance is to ascertain and give effect to the intent of the legislative body. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 11012, ¶ 56. The plain and ordinary meaning of an ordinance's terms, as written, is the most reliable indication of its intent. *People v. Hammond*, 2011 IL 110044, ¶ 53. Our interpretation of an ordinance is a question of law that we review *de novo*. *In re Commitment of Fields*, 2014 IL 115542, ¶ 32.

¶ 20 Section 5-12-080 provides in pertinent part that:

> "(c) A landlord who holds a security deposit or prepaid rent pursuant to this section for more than six months shall pay interest to the tenant accruing from the beginning date of the rental term specified in the rental agreement at the rate determined in accordance with Section 5-12-081 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.
>
> (d) The landlord shall, within 45 days after the date that the tenant vacates the dwelling unit or within seven days after the date that the tenant provides notice of

> termination of the rental agreement pursuant to Section 5-12-110(g), return to the tenant the security deposit or any balance thereof and the required interest thereon; provided, however, that the landlord, or successor landlord, may deduct from such security deposit or interest due thereon ***" (Chicago Municipal Code §5-12-080(c), (d) (amended May 14, 1997)).

¶ 21 Section 5-12-080 of the RLTO does not define "security deposit." *Steenes v. MAC Property Management, LLC,* 2014 IL App (1st) 120719, ¶ 19. This court has defined "security deposit" as "money a tenant deposits with a landlord as security for the tenant's full and faithful performance of the lease terms" and "remains the tenant's property which the landlord holds in 'trust' for the tenant's benefit subject to the tenant fulfilling its obligations under the lease." *Starr v. Gay*, 354 Ill. App. 3d 610, 613 (2004). "Rent" is defined as "any consideration, including any payment, bonus, benefits or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a dwelling unit." Chicago Municipal Code § 5-12-080(f) (amended May 14, 1997)).

¶ 22 Applying those definitions to section four of the lease, we conclude that plaintiffs' prepayment of $1,245 did not constitute a security deposit as contemplated by the RLTO. The plaintiffs expressly agreed in the lease that they were paying the last month's rent in advance and they were not making any claim of retained ownership in those funds if they fully fulfilled their obligations under the lease and, as a result, the prepaid rent was not a security deposit as defined above. As such, the requirement of section 5-12-080(d) to refund a security deposit within 45 days is inapplicable.

¶ 23 Section 5-12-080(c) obligated Shea to pay interest on the $1,245 prepaid rent. Plaintiffs do not complain that the interest rate or the method of calculating the interest amount is

improper. Nor is there any argument or challenge to the accuracy of using $1,245 as the contested figure that should have been refunded, with interest. That stated, on June 15, 2014, after plaintiffs vacated the apartment, Shea tendered $986.74 as the balance of prepaid rent to be returned to plaintiffs after calculation of interest due and deduction of the $350 cleaning charge. Shea testified as to his calculations, which plaintiffs do not dispute. Our independent calculations verify that, accepting Shea's use of 3% annual interest for 25.5 months and deducting the $350 cleaning fee contained in the lease, the tender of $986.74 was consistent with Shea's lease obligations and the requirements of RLTO. We also note that plaintiffs, in their appellant's brief, do not argue that they were entitled to interest and funds pursuant to section 5-12-080(c) of the RLTO, therefore, plaintiffs have waived their ability to claim entitlement to the funds on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing").

¶ 24 Left unresolved by the trial court, however, was the disposition of the tendered $986.74 that plaintiffs refused. The circuit court did not direct Shea to return the $986.74, the judgment in favor of Shea did not address the return of the balance due to plaintiffs and the record on appeal does not show that the tender was accomplished. We see nothing that would indicate that plaintiffs should be denied the tendered $986.74 and failing to order Shea to return the undisputed balance due would result in a windfall to Shea. Because the circuit court should have ordered the return of $986.74 to plaintiffs, pursuant to our authority under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) we order defendant Shea to tender $986.74 to plaintiffs.

¶ 25 In sum, we find that under the specific circumstances presented, plaintiffs are not entitled to the damages claimed under section 5-12-080 of the RLTO. Based on the language of the ordinance, plaintiffs were not entitled to repayment of the $1,245 because under their lease

agreement no security deposit was requested or received. Although the trial court came to the same conclusion, but for a different reason, we affirm the trial court's judgment as warranted by the record (*In re Marriage of Gary,* 384 Ill. App. 3d 979, 987 (2008)) and further order the defendant to tender $986.74 to plaintiffs.

¶ 26 CONCLUSION

¶ 27 Based on the foregoing reasons, we affirm the judgment of the circuit court and further order the defendant to tender $986.74 to plaintiffs.

¶ 28 Affirmed; further order entered.