2018 IL App (1st) 170878-U
No. 1-17-0878
December 3, 2018

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

CHRISTINA WHITE and SCOTT WHITE,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiffs-Appellees,	)	
	)	No. 16 M1 100857
v.	)	
	)	The Honorable
MICHAEL KOCMOND,	)	Patricia Spratt,
	)	Judge Presiding.
Defendant-Appellant.	)	

JUSTICE WALKER delivered the judgment of the court.
Justice Pierce and Justice Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: Where a plaintiff moves for a directed finding at the close of the plaintiff's case-in-chief, it is plain error for the court to permit such a motion and conclude the trial at this stage without allowing the defendant to put on its case-in-chief because only a defendant can move for such a finding. Where a landlord fails to provide two days' notice before accessing a tenant's apartment, but the tenant consents to access, the landlord does not violate the Chicago Residential Landlord Tenant Ordinance that requires a landlord provide two days' notice before accessing a tenant's apartment.

¶ 2 Plaintiffs, Christina White and Scott White (Whites), filed a five-count complaint against defendant, Michael Kocmond (Kocmond), their former landlord, alleging Kocmond violated

the Chicago Residential Landlord Tenant Ordinance (RLTO). The Whites contended that under count I, Kocmond improperly handled the security deposit, under Counts II, III, and IV, Kocmond unlawfully accessed the apartment when he permitted Steve Burke (Burke), a real estate broker, to enter and show the apartment to potential buyers on three separate occasions without providing the Whites two days' notice as required by the RLTO, and finally, Count V alleged Burke failed to properly secure the apartment on several occasions after showing the apartment to potential buyers, that led to the Whites' jewelry items being stolen from the apartment. Kocmond filed a counterclaim for nonpayment of rent. The trial court granted the Whites summary judgment on Count I. At trial for the remaining four counts, the Whites moved for a directed finding at the conclusion of their case-in-chief that the court granted. The court then found for the Whites on Counts II, III, and IV and awarded them $36,510.00 in attorney fees. The court found for Kocmond on Count V. Finally, the court also found for Kocmond on his counterclaim for nonpayment of rent because the Whites' admitted to failing to pay, but the court did not award Kocmond his attorney fees.

¶ 3 We find that it was plain error for the trial court to permit the Whites, as plaintiffs in the case, to move for a directed finding or judgment at the close of their case-in-chief and to conclude the trial at this stage without permitting Kocmond, as the defendant, to put on his case-in-chief because only a defendant can move for a directed finding. We also find that Kocmond did not violate the RLTO because the Whites consented to Kocmond's request to enter the apartment on less than two days' notice. Since we find for Kocmond on Counts II, III, and IV, we are reducing the $11,250.00 damage awarded to the Whites by $6,750.00, for a final award of damages in the amount of $4,500.00. Furthermore, we affirm Kocmond's

counterclaim for rent pursuant to Whites' admission. Additionally, we find Kocmond was correctly not awarded his attorney fees because landlords are not entitled to attorney fees on the claim of nonpayment of rent. Moreover, we find that the trial court improperly awarded the Whites attorney fees on Count V because that claim was unrelated to the RLTO claims and, therefore, we reduce the attorney fees of $36,510.00 to $30,510.00. Accordingly, we reduce the total judgment from $48,238.60 to $35,488.60.

¶ 4 I. Background

¶ 5 A. Rental Agreement

¶ 6 On July 2, 2014, the Whites entered into a rental agreement with Kocmond, for an apartment unit located at 1411 W. Ardmore Avenue, Chicago, Illinois. Under terms of the agreement, the lease was to begin on July 15, 2014, and end on June 30, 2015, at a monthly rent of $2,250.00. The rental agreement also included a "Right to Access to Show Apartment to Prospective Tenants and Purchasers" (Right to Access) provision which provided that:

> "Lessor shall have the right to show the Apartment to all prospective [t]enants and purchasers, and any of Lessor's other invitees, in accordance with local statutes and/or ordinances. Tenant shall be liable for any damages caused to Lessor for failure to cooperate under this provision. Tenant shall not interfere with Lessor's efforts to lease the Apartment or sell the property, and [t]enant shall be liable for any damages caused by breach of this provision."

¶ 7 B. Complaint

¶ 8 On January 15, 2016, the Whites filed a five count complaint against Kocmond, with the first four counts alleging violations of the RLTO, and a negligence claim under the fifth

count. Count I alleged Kocmond improperly handled the Whites' security deposit in violation of the RLTO. Counts II, III, and IV all alleged Kocmond violated the RLTO when he permitted Burke, employed by RE/MAX Surburban (RE/MAX), to enter and show the Whites' apartment to potential buyers on three separate occasions -- June 21, 2015, June 26, 2015 and July 20, 2015 -- without providing the Whites' two days' notice as required by the RLTO. Finally, Count V alleged Burke failed to properly secure the apartment on several occasions when he entered to show the apartment to potential buyers, that led to the Whites' jewelry items worth approximately $2,000.00 being stolen.

¶ 9 C. Counterclaim

¶ 10 On May 17, 2016, Kocmond filed a counterclaim alleging the Whites also violated the RLTO for failing to pay rent for the month of September 2015. Kocmond asserted that the parties' July 2, 2014 rental agreement expired [on June 30, 2015], but the parties continued on a month to month tenancy, until the Whites vacated the apartment in September 17, 2015. Kocmond, who was still in possession of the Whites' security deposit in the amount of $2,250.00, mailed the Whites a check for $975.00 as a refund for the days left remaining in September. Kocmond asserted that although he mailed the Whites the $975.00 check, he did so as a courtesy to the Whites. Kocmond contended that as a result of the Whites' failure to pay September's rent, he suffered damages in the amount of $975.00 that he requested should be set off against any damages awarded in the Whites' favor. He also requested the court grant his attorneys' fees on the counterclaim.

¶ 11 D. Whites' Affirmative Defenses to Counterclaim

¶ 12 On June 8, 2016, the Whites filed three affirmative defenses to Kocmond's counterclaims. The first affirmative defense asserted the Whites never cashed the $975 check, and therefore, Kocmond's counterclaim was moot. The second affirmative defense contended that because Kocmond mailed the $975.00 check as a "courtesy," the check was a unilateral gift and Kocmond had no legal basis to sue. Finally, the third affirmative defense contended that because Kocmond withheld money from the security deposit to satisfy the unpaid rent for the days the Whites occupied the unit in September, and returned $975.00 for the remaining days, Kocmond was not entitled to any sort of set off against any damages the Whites would recover.

¶ 13 E. Whites' Motion for Partial Summary Judgment

¶ 14 On October 17, 2016, the Whites filed a partial motion for summary judgment on Count I of their complaint that involved Kocmond's handling of the Whites' security deposit. The Whites contended Kocmond violated RLTO (i) section 5-12-080(b)(1) by failing to provide a signed security deposit receipt, and (ii) section 5-12-080(c) by failing to pay interest on their security deposit within 30 days after the end of each 12-month rental period.

¶ 15 On October 27, 2016, the circuit court granted, without objection, the Whites' partial motion for summary judgment on Count I.

¶ 16 F. Trial Proceedings

¶ 17 At trial, during Scott White's (Scott) testimony, the Whites presented printouts of text messages from Burke to Scott regarding the three entries. The first text message received on June 21, 2015, stated, "Good morning, Scott. Please confirm that a 3:00 o'clock showing for

today's okay. Happy Father's Day, Steve Burke." Scott responded by saying, "It's okay. We're out in the burbs and won't be back until tomorrow." The second text message was received on June 26, 2015, at 3:47 p.m and said, "Hi, Scott. The agent will be there between 11:30 and noon. Thanks, Steve." According to the printouts of the text messages, Scott never responded, but he testified that he took the text to mean Burke would be there the next day. The third text message was received on July 20, 2015, and said, "Hi, Scott. We scheduled – we have a scheduled showing for tomorrow between 5:30 and 6:00 o'clock. Please confirm. Thanks, Steve Burke, RE/MAX." Scott responded by saying, "That is okay. The dog will be there." Christina White (Christina) also testified that during the Whites' stay in the apartment, Kocmond conducted 40 to 50 showings.

¶ 18 The Whites also presented a RE/MAX Listing Activity Report indicating a showing of the apartment on June 21, 2015, June 26, 2015, and July 20, 2015. The Whites further testified that sometime in August of 2015, Kocmond called to say he sold the property. In response, the Whites emailed Kocmond stating, "please accept this as our notice to vacate your townhouse at 1411 W Ardmore [Avenue], Chicago. We plan on moving on or around Friday, September 4th. The Ardmore unit will then be cleaned and vacant no later than Monday, September 7th."

¶ 19 At the close of the Whites' case-in-chief, their counsel advised the court, "I'm going to move for a directed verdict or judgment notwithstanding." The Whites argued it did not matter that there was consent to Burke entering their apartment with less than two days' notice because the RLTO does not have a tenant's consent as an exception to the two days'

notice requirement. Additionally, the Whites argued the RLTO prohibits a tenant from waiving their rights, and their consent was null and void.

¶ 20 At the conclusion of the Whites' argument, Kocmond's counsel responded, "[i]t's going to be a cross-motion for directed finding on Counts II, III, [and] IV." Kocmond's counsel argued for a directed finding on the three counts because the RLTO does not apply to verbal agreements, and a landlord and tenant can mutually agree for the landlord to enter the tenant's apartment on less than two days' notice.

¶ 21 The parties also stipulated that the Whites failed to pay $975.00 in rent for the month of September and that Kocmond was due that amount on his counterclaim.

¶ 22 G. Circuit Court's Trial Findings

¶ 23 The circuit court, in addressing whether the Whites could consent to the entries, found Kocmond violated the RLTO because he included in the rental agreement the "Right to Access" provision. The court further found the RLTO prohibits tenants from waiving their rights in a rental agreement. Although Kocmond was a prevailing plaintiff on the counterclaim, the court found Kocmond terminated the rental agreement and was therefore not entitled to his attorney fees pursuant to the RLTO.

¶ 24 On January 24, 2017, the circuit court entered judgment as follows: (i) judgment previously entered in favor of Plaintiffs and against defendant on Count I of Plaintiffs' complaint in the amount of $4,500.00 plus Plaintiffs' attorney fees and costs; (ii) Plaintiffs' Counts II, III, and IV in favor of Plaintiffs and against Defendant in the amount of $2,250.00 per count, totaling $6,750.00, plus Plaintiffs' attorney fees and costs; (iii) Plaintiffs' Count V found in favor of Defendant; (iv) on Defendants' counterclaim, the court found in favor of

Defendant per admission. The court also noted, the Whites "returned check #2830 in the amount of $975.00 to defendant's counsel in open court."

¶ 25 H. Attorney Fees

¶ 26 On January 26, 2017, the Whites filed their petition for attorney fees requesting $35,530.00. The petition provided that J. Andrew Brabender IV (Brabender), co-counsel in the case and managing member of Brabender & Chiang, LLC, William M. Tasch (Tasch), and Rishi Jain (Jain), managing partner and associate of Illinois Advocates, LLC respectively, were the primary attorneys on the matter. The petition also provided, certain tasks on the case were assigned to Cassandara Voissem (Voissem), a law clerk with Illinois Advocates, and that Illinois Advocates also utilized the services of a paralegal on some issues. The petition further provided that (i) Brabender requested a total of $2,040.00 in fees with billable rates of $100.00 per hour for work done by the paralegal, and $300.00 per hour for work completed by an attorney and (ii) Illinois Advocates requested a total of $33,490.00, with billable rates of $100.00 per hour for work done by the paralegal, and $300.00 per hour for work completed by an attorney before December 31, 2016, which rose to $320.00 per hour after January 1, 2017.

¶ 27 The Whites supported their petition for attorneys' fees with two affidavits from Brabender and Tasch. In his affidavit, Brabender averred that he had been a practicing attorney in Illinois since May of 2009 and 90% of his practice concerns RLTO matters. Tasch averred, (i) he has been a practicing attorney in Illinois since 2010, and supervises 12 full time attorneys, (ii) Voissem was a law clerk with Illinois Advocates prior to becoming a

licensed attorney in 2016, and (iii) Jain had been an associate with Illinois Advocates since 2013.

¶ 28 On February 16, 2017, Kocmond filed his response to the Whites' petition for attorney fees and argued the Whites were not entitled to fees regarding (i) Count V because the Whites were not successful on that Count, and (ii) Counts II, III, and IV because clients are not entitled to recover their attorney fees for a defendant's alleged abuse of access. Accordingly, Kocmond contended the Whites were only entitled to fees regarding Count I because it was the only Count they succeeded on, and therefore, $ $35,530.00 in attorney fees was excessive. Kocmond also argued the fees were unreasonable because the issues in the case were not difficult for the amount of time it took for the Whites' counsels to handle the issues. Kocmond supported this assertion by listing the numbers of hours spent on the case which he insisted were excessive. The list included 2.5 hours to draft discovery requests, over 13 hours to answer defendant's discovery requests, 3.25 hours to prepare a request to admit that contained 14 requests, 4.75 hours to draft a response to a motion to quash a subpoena, 2.75 hours preparing a second request to admit facts, 14 hours preparing for a motion for summary judgment, and over 17 hours to prepare for trial. Furthermore, Kocmond argued an hourly rate of $300.00 to $320.00 was excessive in light of the complexity of the case. Finally, Kocmond argued it was not fair or equitable that the fees in the case exceeded judgment by 300% and requested the court only grant the Whites $3,000.00 in their attorney fees.

¶ 29 On March 2, 2017, the Whites filed a reply in support of their petition of attorney fees. The Whites alleged that a majority of the fees resulted from discovery battles in anticipation

of trial. The Whites asserted Kocmond filed an unnecessary motion for sanctions, and attempted to block the Whites' discovery requests for bank records by filing a motion to quash. Accordingly, the Whites argued Kocmond could not claim this was a simple case because his actions made the case complex. Furthermore, on March 13, 2017, the Whites filed a supplemental petition for attorney fees, and argued they incurred additional fees and expenses related to litigation over the attorney fee's petition. Accordingly, the Whites' requested an additional award for their attorney fees in the amount of $2,480.00.

¶ 30 I. Circuit Court's Findings on Attorney Fees

¶ 31 On March 27, 2017, the circuit court found the Whites' attorneys' fees in the amount of $36,510.00 were reasonable and approved $478.60 in costs incurred by the Whites. The court found a rate of $300.00 per hour was a reasonable fee. The court noted, pursuant to the RLTO, attorney fees are not limited by the award in damages recovered. Finally, the court noted the negligence claim arose from the same facts as the RLTO claims and because the attorneys spent time working on the claims together, the Whites were entitled to attorney fees on all the claims, including the negligence claim. Accordingly, the court added these fees and costs to the previously awarded damages of $11,250.00 and entered a judgment in favor of the Whites in the total amount of $48,238.60.

¶ 32 On April 6, 2017, Kocmond filed his notice of appeal requesting (i) the reversal of the circuit court's March 27, 2017 judgment and award of attorneys' fees, and (ii) the reversal of the circuit court's January 24, 2017 judgment in favor of the Whites on Counts II, III, IV, and the denial of Kocmond's request for his attorneys' fees on his counterclaim.

¶ 33 II. Analysis

¶ 34 A. Plaintiffs' Motion for a Direct Finding was Improper

¶ 35 The threshold question we must address is Kocmond's contention that the circuit court erred as a matter of law when it granted the Whites' motion for a directed verdict at the close of the Whites' case-in-chief. Section 2-1110 of the Illinois Code of Civil Procedure (Code) does not allow a plaintiff to bring a motion for directed finding. 735 ILCS 5/2-1110 (West 2018). The Whites contend that Kocmond has waived this argument because he did not object to the Whites' motion at trial, and instead submitted a responsive argument and introduced his own motion for a directed verdict. An order disposing of a motion for directed verdict is reviewed *de novo*. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225 (2010).

¶ 36 Our supreme court has held that generally, a trial objection is necessary to preserve an issue for review. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, the Supreme Court also recognizes an exception to the rule, generally known as the plain error doctrine. *Gillespie v. Chrysler Motors Corp.*, 135 Ill. 2d 363, 375 (1990). The plain error doctrine, which finds greater application in criminal cases, may also be invoked in civil cases with the presence of certain conditions. *Id*. The plain error doctrine in civil cases may be applied where a party fails to object to an error "if prejudicial arguments are made without objection of counsel or interference of the trial court to the extent that the parties litigant cannot receive a fair trial and the judicial process stand without deterioration." *Id*. (citing *Belfield v. Coop*, 8 Ill. 2d 293, 313 (1956)). This court has noted application of the plain error doctrine in civil cases should be "exceedingly rare" and only be applied "to situations where the act

complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process." *Baumrucker v. Express Cab Dispatch, Inc.*, 2017 IL App (1st) 161278, ¶ 55. The question therefore becomes whether the case at bar is an "exceedingly rare" civil case that requires application of the plain error doctrine. *Id*. We find that it is.

¶ 37 We find it was plain error for the court to entertain plaintiff's motion for directed finding at the close of their case-in-chief because section 2-1110 of the Code only permits defendants to make such a motion. 735 ILCS 5/2-1110 (West 2018)(providing that "[i]n all cases tried without a jury, *defendant may*, at the close of plaintiff's case, move for a finding or judgment in his or her favor."). Our supreme court has held that when a defendant moves for a finding or judgment in his or her favor, a court must engage in a two-prong analysis. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003) (citing *Kokinis v. Kotrich*, 81 Ill. 2d 151, 155 (1980)). First, the court must determine, as a matter of law, whether the plaintiff has presented a *prima facie* case, and if the plaintiff fails to meet this burden, the court should grant the motion and enter judgment in the defendant's favor. *Id*. However, where the plaintiff presents a *prima facie* case, the court must "consider the totality of the evidence presented, including any evidence which is favorable to the defendant" and "must weigh all the evidence, determine the credibility of the witnesses, and draw reasonable inferences therefrom" to determine, whether sufficient evidence remains to establish the plaintiff's *prima facie* case. *Id*. at 275-76.

¶ 38 Here, as noted, the court entered judgment on the improperly permitted motion by the Whites and concluded the trial without allowing Kocmond to present his case-in-chief. It was

plain error for the court to enter judgment on the motion and conclude the trial because the purpose of the motion is to determine if the plaintiff has made a *prima facie* case and if so, allow the trial to proceed. *Cryns*, 203 Ill. 2d at 275. Concluding the case at this stage was significant error because, it not only deprived Kocmond of a fair trial, it denied him a trial altogether. *Baumrucker*, 2017 IL App 161278, ¶ 55. This deprivation substantially impaired the integrity of the judicial process because instead of the court determining if the Whites established a *prima facie* case, the court entered a judgment against Kocmond without ever providing Kocmond the opportunity to present his case-in-chief. *Id*. Accordingly, we hold that it was plain error for the circuit court to permit the Whites, who were plaintiffs in the case, to move for a finding or judgment at the close of their case-in-chief and to conclude the trial without permitting Kocmond, as the defendant, to put on his case-in-chief. *Gillespie*, 135 Ill. 2d at 375.

¶ 39 B. Unlawful Entries

¶ 40 Next, Kocmond argues the court erred when it denied his motion for a directed finding on Counts II, III, and IV concerning Burke's entries into the Whites' apartment without providing two days' notice. Kocmond maintains the Whites failed to establish a *prima facie* case that Kocmond violated the RLTO. A determination of whether a party has failed to present a *prima facie* case is a question of law which is reviewed *de novo* on appeal. *Cryns*, 203 Ill. 2d at 275.

¶ 41 In denying Kocmond's motion for a directed finding, the court found Kocmond included in the rental agreement a "Right to Access" provision and he violated the RLTO which

prohibits tenants from waiving their rights in a rental agreement. As noted above, the section provided:

> "Lessor shall have the right to show the Apartment to all prospective [t]enants and purchasers, and any of Lessor's other invitees, in accordance with local statutes and/or ordinances. Tenant shall be liable for any damages caused to Lessor for failure to cooperate under this provision. Tenant shall not interfere with Lessor's efforts to lease the Apartment or sell the property, and [t]enant shall be liable for any damages caused by breach of this provision."

¶ 42 Section 5-12-140(a) of the RLTO provides, "except as otherwise specifically provided by this chapter, no rental agreement may provide that the landlord or tenant: [a]grees to waive or forego rights, remedies or obligations provided under this chapter." Chi., Ill. Mun. Code § 5-12-140(a). We find the plain language of the "Right to Access" section of the rental agreement does not violate section 5-12-140(a) of the RLTO because it provides the landlord shall have the right to show the apartment "in accordance with local statutes and/or ordinances," including the RLTO. Accordingly, we find the language in the "Right to Access" provision is in harmony with section 5-12-140(a) of the RLTO. See *VG Marina Mgmt. Corp. v. Wiener*, 378 Ill. App. 3d 887, 892 (2008) (holding that a section in a rental agreement that provided "plaintiff may recover attorney fees incurred in enforcing defendant's obligations under the lease agreement only 'as provided by applicable laws and court rules'" did not violate a section of the RLTO that provided "a rental agreement may not provide a tenant agrees to pay attorney fees in connection with a lawsuit"). Therefore, we hold the Whites did not waive any of their RLTO rights based on the "Right to Access"

provision of the rental agreement and the "Right to Access" provision did not violate the RLTO.

¶ 43 Having found the Whites did not waive any of their access rights, we must next determine if Burke's three entries without two days' notice were unlawful. Section 5-12-050 of the RLTO provides, in part, that:

> "[t]he landlord shall not abuse the right of access or use it to harass the tenant. Except in cases where access is authorized by subsection (f) or (h) of this section, the landlord shall give the tenant notice of the landlord's intent to enter of no less than two days." Chi., Ill. Mun. Code § 5-12-050.

¶ 44 We note that while section 5-12-050 of the RLTO does prohibit a landlord from entering a tenant's apartment on less than two days' notice, it does not prohibit a landlord from seeking consent from the tenant to enter the apartment without providing the required two days' notice. Here, the evidence at trial established that Burke sent a text message to the Whites requesting access to the apartment on three different occasions. Based on the text message exchanges and the RE/MAX Listing Activity Report, we find Kocmond did not violate section 5-12-050 of the RLTO. Accordingly, we hold because the Whites consented to the entries on June 21, 2015 and July 20, 2015, without being given two days' notice, Kocmond did not violate the RLTO for these two entries. In addition, Scott testified he did not object to the entry on June 26th, 2015. Therefore, we reverse the judgment in favor of the Whites on Counts II, III and IV and enter judgment in favor of Kocmond on these Counts.

¶ 45 As noted above, pursuant to section 5-12-060 of the RLTO, the circuit court entered judgment in favor of the Whites on counts II, III, IV, and awarded damages in the amount of

$2,250.00 per count. (The amount the Whites paid in monthly rent.) Chi., Ill. Mun. Code § 5-5-12-060 (providing "tenant may recover an amount equal to not more than one month's rent or twice the damage sustained him, whichever is greater."). However, since we have reversed the judgment entered on Counts II, III and IV, we will reduce the $11,250.00 damages award by $6,750.00, for a final award of damages to the Whites in the amount of $4,500.00.

¶ 46 C. Landlord Attorney Fees Rent Counterclaim

¶ 47 Next, Kocmond argues the circuit court erred when it refused to award him attorney fees for his successful counterclaim for unpaid rent for the month of September. The court found Kocmond was not entitled to his attorney fees because he terminated the lease pursuant to section 5-12-130(a) of the RLTO. The Whites argue Kocmond is not entitled to recover his attorney fees because the RLTO does not provide for the recovery of attorney fees for unpaid rent claims. Whether an award of attorney fees was proper under the RLTO is reviewed *de novo*. *Shoreline Towers Condominium Association v. Gassman*, 404 Ill. App. 3d 1013, 1024 (2010) (matters of statutory interpretation are reviewed *de novo*.) Our review of a final fee award is reviewed for abuse of discretion. *Pitts v. Holt*, 304 Ill. App. 3d 871, 873 (1999). The trial court order awarded no attorney fees on the counterclaim.

¶ 48 Section 5-12-130(a) of the RLTO provides:

> "(a)Failure to Pay Rent. If all or any portion of rent is unpaid when due and the tenant fails to pay the unpaid rent within five days after written notice by the landlord of his intention to terminate the rental agreement if rent is not so paid, the landlord may terminate the rental agreement. Nothing in this subsection shall affect a landlord's obligation to provide notice of termination of tenancy in

> subsidized housing as required under federal law or regulations. A landlord may also maintain an action for rent and/or damages without terminating the rental agreement." Chi., Ill. Mun. Code § 5-12-130(a).

Section 5-12-180 of the RLTO also provides, in pertinent part, "except in cases of forcible entry and detainer actions, the prevailing plaintiff in any action arising out of a landlord's or tenant's application of the rights or remedies made available in this ordinance shall be entitled to all court costs and reasonable attorney's fees." Chi., Ill. Mun. Code § 5-12-180.

¶ 49 Here, after receiving a call from Kocmond informing them the property was sold, the Whites agreed to vacate. The Whites agreed that rent was owed for the month of September. The trial court accepted the admission and found in favor of Kocmond. We affirm the trial court's finding as to Kocmond's counterclaim. The Whites' returned the original $975.00 check to Kocmond in open court. We also find when Kocmond filed his counterclaim for nonpayment of rent, he filed it pursuant to section 9-201of the Eviction Act, formerly known as the Forcible Entry and Detainer Act. 735 ILCS 5/9-201 (West 2018)(providing that "[t]he owner of lands, his or her executors or administrators, may sue for and recover rent therefor, or a fair and reasonable satisfaction for the use and occupation thereof, by a civil action . . . [w]hen rent is due and in arrears on a lease for life or lives."). Therefore, pursuant to section 5-12-180 of the RLTO which provides for the prevailing plaintiff in any action arising out of a landlord's or tenant's application of RLTO to recover reasonable attorney fees except in forcible entry and detainer actions, we hold Kocmond is not entitled to recover his attorney fees because his counterclaim was a forcible entry and detainer action. Chi., Ill. Mun. Code § 5-12-180.

¶ 50 D. Excessive Amount of Attorney Fees

¶ 51 Finally, Kocmond argues the circuit court's award of $36,510.00 in attorney fees for the Whites was excessive and an abuse of the court's discretion. Kocmond maintains this was an "extraordinarily simple case that required no depositions, no substantive motion practice, a trial that lasted only three hours" and did not warrant such an award in attorney fees. The Whites argue the award was reasonable because based on the record, there was substantive motion practice with both parties filing affirmative pleadings and responses. There were contests over discovery, a three hour trial, and a full briefing and argument on the petition for attorney fees.

¶ 52 As previously noted, this court has held the determination of the amount of attorney fees awarded rests in the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *Pitts,* 304 Ill. App. 3d at 873. The amount recovered by plaintiff in damages does not limit the amount to be recovered in attorney fees. *Id.* at 874. This court has also held that the reasonableness of attorney fees is determined based on a variety of factors, including the skill and standing of the attorney employed, the nature of the case, the novelty and difficulty of the issues involved, the degree of responsibility required, the usual and customary charge for the same or similar services in the community, the reasonable connection between the fees charged and the litigation. *Plambeck v. Greystone Mgmt. & Columbia Nat. Tr. Co.,* 281 Ill. App. 3d 260, 273(1996). In assessing the reasonableness of attorney fees, if a plaintiff does not prevail on all of his claims, hours spent on the unsuccessful claims may be excluded in calculating an award of attorney fees. *Shadid v. Sims*, 2015 IL App (1st) 141973, ¶ 12 citing *Becovic v. City of Chicago,* 296 Ill. App. 3d 236,

242 (1998). However, "[w]here a plaintiff's claims of relief involve a common core of facts or are based on related legal theories, such that much of his attorney's time is devoted generally to the litigation as a whole, a fee award should not be reduced simply because all requested relief was not obtained." *Shadid*, 2015 IL App 141973, ¶ 12.

¶ 53 Here, we find the court correctly noted that pursuant to the RLTO, attorneys fees are not limited by the award in damages recovered. *Pitts* 304 Ill. App. 3d at 874. Additionally, we find the court did not abuse its discretion when it held that fees of $300.00 per hour were reasonable in this case. We further find that while the Whites did not succeed on all of their claims, they are still entitled to attorney fees on some claims because much of the attorneys' time was devoted generally to the litigation as a whole. *Id.*

¶ 54 Nonetheless, the negligence claim under Count V was not based on a "common core of facts or related legal theories" that gave rise to the RLTO claims. *Shadid*, 2015 IL App 141973, ¶ 12. Accordingly, we reduce the $36,510.00 awarded in attorney fees by $6,000.00 (20 hours). We hold the Whites are entitled to $4,500.00 in damages and $30,510.00 in attorney fees as well as $478.60 in court costs. Therefore, the Whites shall recover damages, attorney fees, and court costs in the amount of $35,488.60.

¶ 55 III. Conclusion

¶ 56 For the foregoing reasons, we affirm the judgment in favor of the Whites as to Count I, and we affirm the judgment in favor of Kochmond on Count V. We also affirm the judgment in favor of Kocmond as to his the counterclaim. We reverse the judgment as to Counts II, III, and IV, and we enter judgment in favor of Kocmond on Counts II, III, and IV.

¶ 57 Affirmed in part and reversed in part.