

No. 1-13-1370

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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PHILIP J. MORRIS and LINDA M. MAZUR, ) Appeal from the Circuit Court  
) of Cook County.  
)  
Plaintiff-Appellee, )  
)  
v. ) No. 10 MI 018278  
)  
LISA AHMED ) Honorable  
) Cynthia Cobbs,  
Defendant-Appellant. ) Judge, Presiding.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

**ORDER**

1. *Held:* The judgment of the trial court was affirmed where an evidentiary hearing was not required to resolve the issues upon remand and where the court did not abuse its discretion when it denied the defendant's motion to add a counterclaim.

2.  
¶

The plaintiffs, Phillip J. Morris and Linda M. Mazur, brought an action for malicious prosecution and breach of contract against their landlord, defendant Lisa Ahmed. Following

a bench trial, the circuit court entered judgment for the plaintiffs in the amount of \$10,183.04, which included, in relevant part, \$2,550 for the defendant's failure to return an \$850 security deposit and \$850 to refund the first month's rent. The defendant appealed that judgment, and we vacated those portions of the trial court's award and remanded the cause with directions to award the plaintiffs \$850 for the security deposit refund and to calculate an award corresponding to the prorated amount of the first month's rent in order to account for the eight days they occupied the apartment during that month. See *Morris v. Ahmed*, 2012 IL App (1st) 110526-U.

¶ 2

On remand, the defendant requested an evidentiary hearing to determine whether the plaintiffs were entitled to any portion of their first month's rent and moved for leave to file a counterclaim. The trial court denied the defendant's requests and, pursuant to our directions, awarded the plaintiffs \$850 for the security deposit refund and \$670 for the prorated first month's rent to which they were entitled. The defendant now appeals, arguing that the trial court erred in denying her an evidentiary hearing and denying her motion for leave to add a counterclaim. For the following reasons, we affirm.

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On November 2, 2010, the plaintiffs filed a *pro se* small-claims complaint against the defendant seeking recovery for malicious prosecution and for breach of the terms of the apartment lease between the parties. The complaint requested total damages of \$6,000, plus costs, which included \$4,441.96 for a malicious prosecution claim, as well as \$1,558.04

damages for a breach-of-contract claim, including reimbursement for their security deposit, moving costs, and the penalty for cancelling their contract for satellite television service. The matter proceeded to a bench trial on December 6, 2010, the facts adduced at which we summarized in our previous order using the evidence in the record (documentary evidence and the bystander's report that was certified by the trial court reflecting the relevant facts). See *Morris*, 2012 IL App (1st) 110526-U, ¶ 4.

¶ 4

On January 21, 2010, the plaintiffs signed a lease for the rental of an apartment in Chicago which was owned by the defendant. *Id.*, ¶ 5. The term of the 16-month lease commenced on February 1, 2010, and was due to expire on June 1, 2011. *Id.* When the plaintiffs executed the lease, they paid the defendant \$1,700, which included the first month's rent for February 2010 and a security deposit, each of which were in the amount of \$850. *Id.*

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According to the bystander's report, the plaintiffs presented testimony that the defendant decided to hang drywall throughout the apartment without notifying them in advance. *Id.*, ¶ 6.

As a result, the apartment was not available for their occupancy on February 1, and they could not move in until February 20. *Id.* Upon moving in, the plaintiffs reported to the defendant that the heat was not working properly in the apartment. *Id.* According to the plaintiffs, they called the city's "311 help line" when the temperature dropped and the apartment became extremely uncomfortable. *Id.*, ¶ 8. The city cited the defendant for code violations, which angered her and allegedly caused her to have Morris arrested for assault.

*Id.*, ¶ 9. Morris was eventually released, and the charge was stricken with leave to reinstate.  
*Id.*

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On May 3, 2010, the defendant left a voicemail message for Mazur, advising that she thought it best for them to move out of the apartment as soon as possible, and she stated that she was releasing the plaintiffs from the lease. *Id.*, ¶ 10. On May 10, 2010, the plaintiffs' attorney sent the defendant a letter, indicating that the plaintiffs had accepted her request that they vacate the property and planned to do so by May 31, 2010. *Id.* The letter further requested a return of the plaintiffs' security deposit and/or a letter listing any itemized deductions within 30 to 45 days. *Id.* However, the plaintiffs never received their security deposit. *Id.*, ¶ 12.

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The defendant acknowledged that she had not returned the plaintiffs' security deposit and claimed that she had not done so because of a note that had been handwritten by Morris and taped near the thermostat in the plaintiffs' apartment, which read, "do not touch and do not raise the temperature pass [sic.] stated temperature." *Id.*, ¶ 12. She also admitted that she had Morris arrested, although she gave conflicting versions of the incident. *Id.*, ¶ 14.

¶ 8

At the conclusion of the trial, the trial court found that the defendant was liable to the plaintiffs on their claims for malicious prosecution and breach of contract, specifically finding that the defendant was not a credible witness. *Id.*, ¶ 14-16. Relevant to this appeal, the court awarded \$2,550 for the defendant's failure to return the \$850 security deposit and

\$850 as a refund of the first month's rent. We vacated the trial court's award of \$2,550, which was triple the actual amount of the security deposit, because it was not justified by the evidence or the law. *Id.*, ¶ 26. However, we remanded the cause with directions that the trial court award the plaintiffs the actual amount of the security deposit--\$850. *Id.* We also observed that the record established that the plaintiffs took possession of and occupied the apartment for the last eight days of the first month of the lease, February 2010, and thus, they were not entitled to the entire first month's rent. *Id.*, ¶ 27. Therefore, we vacated the \$850 award and instructed the trial court to enter an award corresponding to the prorated amount of rent to which the plaintiffs were entitled. *Id.*, ¶ 27.

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On February 14, 2013, the trial court denied the defendant's request for an evidentiary hearing to determine whether the apartment was uninhabitable until February 20 as the plaintiffs claimed. The court also denied the defendant's oral motion for leave to file a counterclaim, which allegedly sought damages related to the habitability of the apartment. Pursuant to our order, the trial court awarded the plaintiffs \$850 to refund their security deposit and \$670, which the court calculated as the prorated amount of rent paid in February 2010.

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On March 18, 2013, the defendant filed a motion for reconsideration, arguing that the trial court erred in awarding the plaintiffs the prorated rent without an evidentiary hearing on the matter of the habitability of the premises. The defendant further argued that the trial court

erred in refusing to allow her counterclaim. The defendant's motion for reconsideration, which is in the record, contains only the bystander report of the December 6, 2010, trial. On April 1, 2013, the trial court denied the defendant's motion for reconsideration, and this appeal followed.

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At the outset, we note that the plaintiffs did not file a brief. However, when an appellee fails to file a brief, reversal is not automatic. See *Capitol Mortgage Corp. v. Talandis Const. Corp.*, 63 Ill.2d 128, 131 (1976). The court is still capable of addressing the merits of the appeal when the record is simple and the claimed error can be easily decided without the aid of the appellee's brief. See *id.* at 133. Here, we are capable of addressing the issues raised in the defendant's appeal without the benefit of an appellee brief.

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On appeal, the defendant first argues that we erred in our previous order by creating triable issues of fact, including an issue as to whether the plaintiffs were entitled to a full refund of the security deposit and a prorated portion of the first month's rent. She contends that, upon remand, the trial court should have held an evidentiary hearing on these issues. The defendant's argument entirely lacks merit. Our earlier order clearly shows that, at the trial, the plaintiffs proved their right to a full refund of their security deposit and that they were entitled to a prorated portion of the rent paid for February 2010, based on the undisputed evidence that they could not move into the apartment until February 20. Contrary to the defendant's contentions, our order did not create "new" issues of fact which required an

evidentiary hearing as those issues were subjects of the December 6, 2010, trial. Rather, our order simply directed the court to correct the amount of the awards it entered for the plaintiffs.

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Regarding the defendant's argument that the trial court erred in refusing her leave to file a counterclaim, we note that the the record fails to contain any copy of the proposed counterclaim or any report of proceeding related to her motion for leave to add the counterclaim. We can only speculate using the defendant's appellate brief that her counterclaim relates somehow to her argument that the plaintiffs were not entitled to the security deposit or prorated rent. It is well established that in order to support a claim of error on appeal, the appellant has the burden of producing a sufficiently complete record. *Foutch v. O'Bryant*, 99 Ill.2d 389, 391-92, 76 Ill. Dec. 823, 459 N.E.2d 958 (1984). Absent a record, the order entered by the trial court is presumed to be in conformity with the law and have sufficient factual basis. *Id.* at 392. Therefore, in light of the fact that there is no record of the proposed counterclaim or the hearings at which the court denied leave to add the counterclaim, we presume the trial court did not abuse its discretion when it denied the motion and that its decision had sufficient legal and factual basis. See *Hayes Mechanical, Inc. v. First Industries, L.P.*, 351 Ill. App. 3d 1, 7 (2004) (stating it is within trial court's discretion whether to grant motion for leave to amend the pleadings and the factors which it should consider when making its decision).

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For the reasons stated, we affirm the judgment of the circuit court of Cook County.

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Affirmed.

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