2015 IL App (2d) 140646-U
No. 2-14-0646
Order filed February 17, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ARCADA BLDG, LLC, Plaintiff-Appellant, v. DATA NET SYSTEMS, LLC, and ONLINE HOLDINGS, LLC, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Kane County. No. 12-L-612 Honorable Keith F. Brown, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: In this action to collect rent pursuant to the Forcible Entry and Detainer Act, the trial court did not err in granting defendants-tenants partial summary judgment. Although plaintiff-landlord claimed that defendants had represented that they abandoned the premises, plaintiff impermissibly changed the locks and granted defendants only limited access, at best, to the premises before expiration of the statutory five-day notice period. Affirmed and remanded.

¶ 2 After defendants, Data Net Systems, LLC, and Online Holdings, LLC, allegedly vacated the premises before the expiration of their commercial lease, plaintiff, Arcada BLDG, LLC, sued defendants to recover rent. The trial court granted defendants partial summary judgment (counts I, II, and V) and found, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), that

there was no just reason to delay enforcement or appeal of its order. Plaintiff appeals, arguing that material factual questions concerning defendants' abandonment of the premises and the changing of the locks precluded summary judgment. We affirm and remand.

¶ 3 I. BACKGROUND

¶ 4 On November 27, 2012, plaintiff sued defendants, seeking to recover rent that accrued under a commercial lease for the balance of the lease term. In a five-count complaint, plaintiff alleged that it owned property (consisting of a theater and multiple floors that non-theater tenants could occupy) at 12 South Riverside Avenue in St. Charles and that, on December 3, 2010, it entered into a commercial lease with defendants. Under the lease, defendants leased certain space in the building for 30 months, commencing on February 1, 2011, and ending on July 31, 2013; a subsequent amendment extended the term to August 15, 2013.

¶ 5 Plaintiff further alleged that defendants failed to pay the rent in October and November 2012 and that, on or about October 1, 2012, defendants abandoned the premises by moving their business entirely out of plaintiff's building. According to plaintiff, when defendants abandoned the premises, they also left behind items of personal property, including computers, telephones, cubicles, and other office furniture.

¶ 6 In count I, plaintiff alleged that defendants were in default, and it sought rent and related expenses for the period October and November 2012. In count II, plaintiff sought rent and related expenses for the period December 1, 2012, through August 15, 2013, arguing that defendants' alleged abandonment of the premises terminated their right of occupancy, but not their obligations under the lease. Counts III and IV, which are not at issue in this appeal, alleged damage to the premises and sought application of the security deposit. Finally, in count V,

which is at issue on appeal, plaintiff alleged distraint for rent and sought to seize the personal property in distress for rent.[1]

¶ 7 Defendants denied that they abandoned the property and admitted that rent was due. They also raised two affirmative defenses. First, defendants alleged that, on October 1, 2012, Michael Vitale, their agent, contacted plaintiff concerning the personal property on the premises and that plaintiff agreed to allow defendants to access their personal property. On October 3, 2012, however, plaintiff changed the locks on the premises and deprived defendants of access to the premises in violation of the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2012)); accordingly, defendants owed no monies to plaintiff. Second, defendants alleged constructive eviction, asserting that plaintiff failed to resolve issues with the building elevator[2] and rodents.

¶ 8 In its reply, plaintiff alleged that it did not change the locks on the premises until October 5, 2012, and that it did not deprive defendants of access to the premises. Rather, it secured the property due to defendants' abandonment and the personal property they had left behind. It also denied the assertions concerning the elevator and the rodent infestation.

¶ 9 On November 12, 2013, defendants moved for partial summary judgment (counts I, II, and V). Defendants noted that they stopped paying rent on October 1, 2012, and that, thereafter, plaintiff served them with a statutory "5-Day Notice to Quit," dated October 5, 2012. 735 ILCS 5/9-209 (West 2012) (demand for rent; action for possession). The notice demanded $4,500 in rent for October 2012 and noted that defendants breached the lease by failing to pay rent. It stated: "Although you have abandoned and vacated the Premises, you are still responsible for

[1] Plaintiff separately filed a distress warrant.

[2] The premises are accessed via an elevator and two stairways.

payment of all Rent due for the remaining term of the Lease." The notice further stated that, unless payment was made, defendants' right of possession would be terminated five days after service of the notice.

¶ 10 Defendants further alleged in their motion that, on October 3, 2012, prior to expiration of the five-day notice, plaintiff had the locks to the premises changed, thereby prohibiting further entry from defendants. Defendants alleged that plaintiff did not give them advance notice of the lock change and asserted that some of their personal property remained on the premises. Defendants argued that there were no material factual disputes that plaintiff issued the notice, changed the locks prior to the expiration of the notice period, and that personal property remained on the premises (on the day the locks were changed and thereafter). They further argued that no facts established an abandonment of the premises; they asserted that, in fact, the testimony and pleadings reflected that defendants intended to retain possession until at least the expiration of the five-day notice period. They noted that, once a defendant is wrongfully evicted, it is no longer obligated to pay rent; accordingly, the counts seeking rent were meritless.

¶ 11 Plaintiff's argument in opposition to summary judgment was that material factual issues existed concerning who terminated the lease. It noted that there were disputed versions of defendants' intent and motive when they left the premises and plaintiff's intent and motive when it changed the locks.

¶ 12 Michael Vitale, president and a manager of Data Net Systems and CEO of both defendants, testified at his deposition that he stopped paying rent in October 2012. In the summer and early fall of 2012, Vitale spoke with Scott Price, sole member of Arcada, about a "punch list" of repairs that defendants desired to be made to the premises and building, including repainting of certain offices, hot water issues, and malfunctioning bathroom faucets. Also,

Vitale alleged that he saw a rat in the doorway of the theater that was in the building and that, on a couple of occasions, he saw mice. On September 27, 2012, Vitale moved file boxes and garbage out of the building. Also on that date, Vitale entered into an agreement with Regus Management Group to purchase office services at 100 Illinois Street in St. Charles (for apparently less than one quarter the rent for the subject premises), which is where his offices are today. "I needed to leave the premises at Arcada, and I went and purchased some services from Reg[u]s." Regus had "available facilities for me to move into."

¶ 13 On October 1, 2012, Vitale wrote an email to Price, stating that he wanted to discuss the "accumulation of issues that I was tolerating in the building." Vitale testified that, during their October 1, 2012, conversation, he told Price that he "was going to be leaving the premises; that I was frustrated with tolerating the elevator issue, the lack of response on the rat issue. And I – I needed to run my business, so I needed to remove myself as well as my employees from the premises." Vitale did not inform Price that he had already moved some of his property from the premises. He testified that he further told Price that he still had property on the premises. When asked if he told Price that he needed time to remove the property, Vitale testified that he did not discuss that with him on October 1, 2012. Vitale testified that he planned to return to retrieve the property.

¶ 14 Vitale further testified that, although he did not expect Price to leave the premises unlocked, he was permanently locked out of the premises on October 3, 2012. In an October 4, 2012, letter, Vitale informed Price that "Personnel will no longer be working from the facility" because the premises had become "unsafe" and "intolerable." He specified that there had been numerous service and safety-related issues with the elevator that had not been addressed, along with recent issues with rats. "Your lack of response to the problem has forced me to remove my

staff from the building." When asked if he meant that his business had moved out of the building, Vitale explained that it meant that his employees could no longer work from the premises. When asked again if he planned to move out of the building, Vitale replied "I planned to remove my staff from the building." Vitale's letter also stated that, as of October 3, 2012, Price had changed the locks on the premises such that Vitale no longer had access to it: "You have therefore taken possession of the leased premises. Based on that fact I consider the lease terminated. It is my expectation that you will be contacting me to advise on when we will be able to enter the premises to remove our remaining belongings."

¶ 15 Scott Price, sole member of Arcada, testified at his deposition that defendants left a "significant" amount of personal property on the premises, though he believed its value (according to two "office equipment people" who informally appraised it) was "very little." Addressing the timing of the changing of the locks, Price testified that it might have been on October 5, 2012, the date the five-day notice was sent, although he was uncertain.

¶ 16 Addressing his October 1, 2012, conversation with Vitale, Price testified (contrary to Vitale's testimony) that Vitale told him he "wanted out of the space" and that "he was leaving the building and was not going to continue his lease and not going to make any further payments; and that it was up to me whether I wanted any of this stuff he left. I could let him know whether to leave it or wanted him to take whatever we wanted him to take out." Price stated that he told Vitale that he would have to sue him if he was not going to pay the rent. There was no discussion concerning the locks.

¶ 17 When asked why Price asked Vitale, via e-mail on October 30, 2012, if he wanted to come and retrieve his belongings, if Vitale had previously allegedly told Price on October 1, 2012, that he did not want any of it, Price testified, "I think what I was getting at there is the

main thing there was – besides furniture and computers, there was marketing materials, T-shirts, promotional T-shirts, and stuff like that. And obviously, that stuff had no value to anybody other than him. So I thought that is what I was asking about." Vitale allegedly responded that he disagreed with Price's recitation of the facts and stated that he wanted to retrieve the items.

¶ 18 Price had Todd Crabbe, his maintenance worker, change the locks, he explained, to secure the premises, which is common practice for the company and in the industry when a tenant moves out. If Vitale had called after October 4, 2012, and stated that he wanted to stay in place a while longer *and was going to pay rent*, Price would not have had the locks changed or would have given Vitale new keys. Addressing the rodent allegations, Price testified that he investigated the issue and learned that chipmunks had been observed by the theater employees; he had them trapped and removed.

¶ 19 Price's affidavit states that Vitale informed him on October 1, 2012, that he was leaving the premises, not going to continue the lease or return to the premises, and not going to pay further rent. Price also averred that Vitale informed him that he had removed all of the belongings from the premises that he wanted and that it was up to Price to decide what to do with the remaining items. As a result of this conversation, Price concluded that Vitale had vacated the premises without any intent to return. Thus, he requested, on or about October 4, 2012, that Crabbe change the locks on the doors to the premises. Price further stated that he did not intend to lock out defendants, but to secure the premises. He averred that he instructed Crabbe to allow Vitale access if he asked for entry to the premises *to retrieve his belongings*. Price's affidavit also states that, on October 5, 2012, he delivered a five-day notice to Vitale, the purpose of which was to inform him that the lease was not terminated and that, if he wished to return, he had to pay rent within five days. (The notice states that "[a]lthough you have abandoned and

vacated the Premises, you are still responsible for payment of all the Rent due for the remaining term of the Lease." It further states that only full payment of the rent due will waive the landlord's right to *termination of possession,* unless the landlord agrees in writing to accept partial payment.) Price further averred that, on October 11, 2012, he received a letter from Vitale (dated October 4, 2012), in which Vitale stated that he had removed his staff from the building. The letter also claimed that the locks had been changed on October 3, 2012; Price stated that they had not been changed on that date. Also, Price averred that Vitale's letter claimed (contrary to their October 1, 2012, conversation) that Vitale wanted to retrieve his property from the premises. Price stated that, on October 12, 2012, he instructed his attorney to deliver to defendants' attorney a letter inviting them to remove their belongings.[3] He invited them again (via email) on October 31, 2012. Defendants never demanded access to the premises.

¶ 20 In his affidavit, Todd Crabbe averred that he handled daily maintenance at the subject building and learned from other tenants on September 29, 2012, that the building dumpster was full and that defendants appeared to be moving out of the premises. After he visited the property, he contacted Price. On or about October 1, 2012, Price confirmed to Crabbe that

[3] Plaintiff's October 12, 2012, letter disputes Vitale's assertions. Plaintiff asserted that Vitale abandoned the premises, but that this abandonment did not terminate the lease. It also disputed the assertions concerning the conditions of the premises and that the locks were changed on October 3, 2012 (instead, plaintiff asserted that they were changed two days later, on October 5, 2012, in order to secure the premises). Finally, the letter states that Vitale had notified plaintiff on October 1, 2012, that he had already removed all of the belongings that he wanted to remove and, thus, plaintiff treated it as abandoned property; however, it invited Vitale to arrange a time to retrieve the property.

defendants had moved out of the premises and that Vitale had informed him that he had removed all the belongings he wanted to take with him. On October 4, 2012, Price asked Crabbe to change the locks on the premises to secure them, as was standard procedure. Price also instructed Crabbe to allow Vitale to access the premises *to retrieve his remaining items* if he asked. Crabbe changed the locks on October 5, 2012. Vitale never asked him to access the premises or for new keys.

¶ 21 On March 28, 2014, the trial court granted defendants partial summary judgment (counts I, II, and V), finding that defendants owed no rent. The court found that, under the lease, plaintiff may have had the right to terminate the tenancy without notice for default in payment of rent. However, instead, plaintiff chose to give the statutory five-day notice and, therefore, was required to follow the statute. See *Avdich v. Kleinert*, 69 Ill. 2d 1, 9 (1977) ("Having given such a notice, [the] plaintiff thereby waived his right to declare the lease terminated until the five-day period had expired without payment of rent. It therefore follows that [the] plaintiff was not entitled to possession of the premises and could not maintain an action under the Forcible Entry and Detainer Act to recover possession prior to that time."). The trial court further found that there was no material factual question precluding summary judgment that plaintiff admitted that defendants were not given advance notice of the changing of the locks, the locks were changed prior to the expiration of the five-day period, and defendants' personal property remained in the premises at the time the locks were changed. The court found irrelevant plaintiff's conclusions from an alleged conversation, its intent, or what anyone may have observed. "Plaintiff changed the locks before [d]efendant[s] had the opportunity to comply with the statutory notice which was served upon them which in essence[ ] discharged [ ] [d]efendant[s'] obligation to pay rent."

¶ 22 On June 4, 2014, the trial court issues a finding that, pursuant to Rule 304(a), there was no just reason to delay enforcement or appeal of its order granting partial summary judgment (on counts I, II, and V). Plaintiff appeals.

¶ 23 II. ANALYSIS

¶ 24 Plaintiff argues that the trial court erred in granting defendants partial summary judgment. It urges that defendants voluntarily abandoned the premises on October 1, 2012, and, thus, the Forcible Entry and Detainer Act does not apply here, as there was no forcible entry. Plaintiff argues that it was entitled to re-enter the premises and that the five-day notice was "superfluous" at best. Plaintiff also contends that, even if defendants still maintained possession, there was evidence that, despite the changing of the locks, plaintiff did not intend to deprive defendants of occupancy should they have chosen to return. It argues that the changing of the locks was merely meant to secure the premises. For the following reasons, we find plaintiff's arguments unavailing.

¶ 25 Summary judgment is appropriate when the pleadings, depositions, admissions and affidavits, viewed in a light most favorable to the nonmovant, fail to establish a genuine issue of material fact, thereby entitling the moving party to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012); *Progressive Universal Insurance Co. of Illinois. v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 127-28 (2005). If disputes as to material facts exist or if reasonable minds may differ with respect to the inferences drawn from the evidence, summary judgment may not be granted. *Associated Underwriters of America Agency, Inc. v. McCarthy*, 356 Ill. App. 3d 1010, 1016-17 (2005).

> "Although parties opposing summary judgment are not required to prove their case at the summary judgment stage, they must provide the factual basis which would arguably

> entitle them to judgment. [Citation.] On a defendant's motion for summary judgment, plaintiff has an affirmative duty to bring forth all facts and evidence of a cognizable cause of action. [Citation.] Summary judgment is appropriate where purported issues of material fact are not further supported by evidentiary facts or affidavits. [Citation.]" *Carter v. Dunlop*, 138 Ill. App. 3d 58, 69 (1985).

We review *de novo* the grant of summary judgment. *Cook v. AAA Life Insurance Co.*, 2014 IL App (1st) 123700, ¶ 24.

¶ 26 "The common law permitted an individual who was rightfully entitled to enter upon land to do so with force and arms and retain possession by force." *Heritage Pullman Bank v. American National Bank & Trust Co. of Chicago*, 164 Ill. App. 3d 680, 686 (1987). However, the Forcible Entry and Detainer Act put an end to the practice of self-help and provides the sole means for settling a dispute over possession rights to real property. *Id.*; *Yale Tavern, Inc. v. Cosmopolitan National Bank*, 259 Ill. App. 3d 965, 971 (1994). "The statute prohibits any actual or constructive self-help through force, including changing locks or locking someone out of his [or her] land." *Yale Tavern*, 259 Ill. App. 3d at 971. Because the act is in derogation of the common law, courts must strictly comply with the procedure outlined in the statute. *First National Bank of Evergreen Park v. Chrysler Realty Corp.*, 168 Ill. App. 3d 784, 791 (1988).

¶ 27 Section 101 of the statute provides, "No person shall make an entry into lands or tenements except in cases where entry is allowed by law, and in such cases he or she shall not enter with force, but in a peaceable manner." 735 ILCS 5/9-101 (West 2012). "The distinct purpose of the forcible entry and detainer proceeding is to determine only who should be in rightful possession." *Miller v. Daley*, 131 Ill. App. 3d 959, 961 (1985).

¶ 28 This case presents the confluence of two separate lines of case law. First, there is longstanding case law holding that *the giving of the five-day statutory notice* acts as a waiver of a contractual right of forfeiture (without notice) and, as relevant here, *constitutes an act in recognition of the tenancy*. See, *e.g.*, *Avdich v. Kleinert*, 69 Ill. 2d 1, 7-8 (1977) (the defendant had five days from the date of the notice to pay rent to avoid termination of lease; the plaintiff waived his right to declare the lease terminated until the five-day period expired without payment of rent; thus, the plaintiff could not recover possession of premises until expiration of period); *Hopkins v. Levandowski*, 250 Ill. 372, 376 (1911) ("if the defendant in error gave a five days' notice, he thereby recognized the tenancy of plaintiff in error, and waived his right to forfeiture until the expiration of the time stated in the notice").

¶ 29 Separately, other case law holds that a forcible entry occurs when entry is against the will of the person in *actual* possession. *Perry v. Evanston Young Men's Christian Ass'n*, 92 Ill. App. 3d 820, 825 (1981). In *Perry*, two former residents of the defendant's building sued the defendant, alleging forcible entry. The defendant, via letter (a contractually-negotiated notice, not the statutory five-day notice at issue here), informed the first plaintiff that he would be evicted three days later. The plaintiff vacated the premises to avoid a breach of the peace; also, he anticipated that the defendant would act as it did during a prior encounter and "plug" the door to his room to effect an eviction. As to the second plaintiff, the defendant gave him a one-day notice of eviction and, on the eviction day, confronted the plaintiff and warned that, if he did not leave, the defendant would place an object in the lock of his door so that he could not gain access to his room. The plaintiff vacated the room. The trial court granted the plaintiffs summary judgment on the statutory violation allegations, finding that the act of plugging and the threat thereof constituted forcible entry under the statute.

¶ 30 On appeal, the reviewing court reversed. *Id.* at 828. It first addressed whether the threat to enter (or "plug" the plaintiffs' doors) without an overt act in furtherance of that threat constituted a forcible entry. It noted that, generally, an action under the "statute may not be maintained where an individual's possession is terminated prior to the alleged wrongful entry, by lawful surrender or transfer, *by voluntary abandonment*[,] or by eviction which has ripened into a peaceful possession on the part of the intruder." (Emphasis added.) *Id.* at 825. Thus, it noted, a prerequisite to recovery is an invasion of a party's actual possession of the premises at the time of the alleged entry. *Id.* As to the first plaintiff, the *Perry* court held that, no actual or implied force or intimidation was used to gain entry to his room and he was no longer in possession at the time of the alleged entry; thus, the defendants did not enter against the plaintiff's will, and their actions did not constitute a forcible entry. *Id.* at 826. As to the second plaintiff, whom the defendant had confronted and threatened to plug his door, the court noted that no case law had held that a threat without demonstrable force or other overt act was sufficient to constitute forcible entry; rather, the court framed the second plaintiff's argument as one alleging a constructive eviction, which it defined as requiring conduct or acts on the landlord's part and not solely words. *Id.* at 827. It also noted that "[w]here a landlord tells the tenant to leave and the tenant replies that it is all right and removes his possessions, there is no eviction but only a voluntary surrender." *Id.* The *Perry* court concluded that there was no forcible entry as to the second plaintiff. *Id.* The defendants took no actions in furtherance of their statement or use force to remove the plaintiff, and they did not enter his room until after he vacated the premises. *Id.* In light of the fact that the plaintiff did not have a continued right of possession and was no longer in possession when the defendants allegedly entered his room, their entry was not

forcible. *Id.* Accordingly the court held that the trial court erred in finding the defendants' actions constituted a forcible entry. *Id.*

¶ 31 Here, plaintiff argues that, like the defendants in *Perry*, it did not commit a forcible entry because defendants had already vacated/abandoned the premises. It urges that the trial court did not address whether defendants had vacated the premises and (erroneously) found instead that plaintiff committed a forcible entry because it changed the locks before expiration of the five-day notice period. Plaintiff contends that there was a genuine issue of material fact as to whether defendant abandoned the premises prior to plaintiff's changing of the locks and, thus, summary judgment should have been denied. It asserts that a reasonable trier of fact could have concluded from the evidence that defendants *abandoned* their lease and personal property on October 1, 2012, and that, by changing the locks *after* their abandonment, plaintiff did not deprive defendants of the beneficial enjoyment of their lease.

¶ 32 We find plaintiff's arguments unavailing. It is undisputed that defendants moved property out of the premises on September 27, 2012, and entered into an online office agreement with Regus on that date. However, the evidence concerning the October 1, 2012, conversation between Vitale and Price is disputed. Vitale's version of the conversation is that he told Price only that he was going to be leaving the premises and that he still had property there. Price, however, claimed that Vitale told him that he was leaving the building, not going to continue his lease, and not going to make more payments. Further, according to Price, Vitale allegedly told Price that Price could do what he wanted with the property defendants left behind, implying that defendants had completely moved out of the premises. Price further stated that he did not intend to lock out defendants, but to secure the premises and instructed Crabbe to allow Vitale access if he asked for entry to the premises to retrieve his belongings. Finally, the date the locks were

changed is disputed, but it is undisputed that they were changed prior to the expiration of the five-day notice, which was given on October 5, 2012. Plaintiff's five-day notice to defendants explicitly contains both an assertion that the lease had been abandoned and the premises vacated, along with an acknowledgement of defendants' continuing tenancy. It states: "Although you have *abandoned and vacated* the Premises, you are still responsible for payment of all Rent due for the remaining term of the Lease." The notice further states that, unless payment was made, *defendants' right of possession would be terminated* five days after service of the notice.

¶ 33 Viewing the evidence in the light most favorable to plaintiff, the nonmovant, we conclude first that a rational factfinder could have credited Price's version of the October 1, 2012, conversation: that Vitale informed Price that defendants were leaving the premises, not going to continue their lease, and that Price could do what it wanted with the property left behind. Second, however, at best for plaintiff, the testimony concerning the changing of the locks reflects that Price offered defendants only *temporary* access to the premises, *i.e.*, to retrieve their belongings. Further, he testified that "if Vitale would have paid the rent for October, we would have given him the – the new keys." Similarly, in his affidavit, Price stated that, if Vitale had requested, he would have been allowed to access the premises *to retrieve the remaining personal belongings*.[4] Thus, viewing this evidence in plaintiff's favor, we cannot conclude anything other than that defendants were locked out of the premises when plaintiff changed the locks, where plaintiff repeatedly offered them only limited or temporary access (*i.e.*, to retrieve

[4] Plaintiff's October 12, 2012, letter to defendants makes a similar assertion. It asserts that plaintiff was treating the premises as abandoned property and further states: "Happily, however, the property remains at the Premises, and assuming a satisfactory time can be arranged, Mr. Vitale will have an opportunity to retrieve his belongings."

their remaining personal property). See *Yale Tavern*, 259 Ill. App. 3d at 971 ("The statute prohibits any actual or constructive self-help through force, including changing locks or locking someone out of his [or her] land."). Price's testimony reveals that defendants could have moved back in only if they had paid up their rent. The statutory notice grants them five days to do so without plaintiff's resort to self-help. In other words, given the facts here surrounding plaintiff's utilization of the five-day notice, plaintiff cannot arguably sustain its claim. *Carter*, 138 Ill. App. 3d at 69.

¶ 34 Plaintiff would have this court parse the abandonment issue (the evidence concerning which is disputed and must be viewed in its favor) from the five-day notice and locks issue (which does not reasonably support its claims). It contends that a reasonable trier of fact could find from the evidence that defendants had abandoned their lease and personal property by October 1, 2012, and that plaintiff, by changing the locks, did not deprive defendants of the beneficial enjoyment of their lease. Plaintiff also asserts that the trial court erroneously found that defendants' wrongful acts consisted of withholding rent while remaining in possession; it urges that the wrongful act was their abandonment of the lease without cause and, thus, this case is like *Perry*. Finally, it asserts that the giving of the notice was superfluous. We disagree. This case is unlike *Perry* because the statutory five-day notice was not at issue there; rather, the notice given in that case was pursuant to the parties' contracts. Here, the statutory notice was given, and, pursuant to case law such as *Advich* and *Hopkins*, the only reasonable inference from this act is that, notwithstanding any assertions that defendants abandoned the premises, plaintiff believed that defendants *retained an interest* in the premises; that is, they had some continuing possessory right to it. Because plaintiff changed the locks before the notice period had expired, it could not arguably sustain its claim for rent. *Carter*, 138 Ill. App. 3d at 69.

¶ 35 In summary, the trial court did not err in granting defendants partial summary judgment.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, the judgment of the circuit court of Kane County is affirmed and the cause is remanded.

¶ 38 Affirmed and remanded.