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FILED
Apr 21 2009, 9:31 am
CLERK
of the supreme court, court of appeals and tax court

APPELLANT PRO SE:

ROGER CURTSINGER
Milroy, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ROGER CURTSINGER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 32A05-0811-CV-677
	)	
DON ROBY,	)	
	)	
Appellee-Plaintiff	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable Mark Smith, Judge
Cause No. 32D04-0808-SC-565

April 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Roger Curtsinger appeals the judgment in favor of his landlord, Don Roby. Curtsinger argues the trial court erred in its calculation of the rent owed and in its determination Roby did not have to return his security deposit. We affirm.

FACTS AND PROCEDURAL HISTORY

Curtsinger leased a property from Roby for $819.00 per month. The lease was to run from September 11, 2007 to August 30, 2008. Curtsinger paid $2,941.00 up front. An invoice breaks this figure into four categories: $1,791.00 for "rent pay down," $150.00 for a "pet deposit," $700.00 for a "security deposit," and $300.00 for "pet damage." (Defendant's Ex. A.)

Curtsinger paid $425.00 in July and moved out on July 28, 2008. Roby sued for the rest of the July and August rent. Curtsinger counterclaimed for return of his security deposit.

At trial, the parties disputed the purpose of the $1,791.00 "rent pay down." Curtsinger argued this figure represented the first and last months' rent. Roby argued the money had been applied to reduce each month's rent to $819.00. The parties also disputed whether the first month's rent had been prorated to reflect that the lease began on September 11. Curtsinger believed he had paid a full month's rent in September, and he asserted that was the reason he had made a partial payment in July.

The trial court awarded $975.00 for the remaining rent due for July and for twenty-two days in August,[1] $99.00 in court costs, and post-judgment interest. The trial

[1] Roby was able to re-let the premises on August 22.

court ruled against Curtsinger on his counterclaim, finding there was no evidence Curtsinger gave Roby written notice of his forwarding address.

DISCUSSION AND DECISION

As a preliminary matter, we note Roby has not filed a brief. We do not undertake the burden of developing arguments for the appellee. *Conseco Finance Servicing Corp. v. Kimberly Mobile Home Park, Inc.*, 780 N.E.2d 852, 854 (Ind. Ct. App. 2002).

> Applying a less stringent standard of review, we may reverse the trial court when the appellant establishes prima facie error. "Prima facie" is defined as "at first sight, on first appearance, or on the face of it." Still, we are obligated to correctly apply the law to the facts in the record in order to determine whether reversal is required.

Id. (citations omitted).

1. Security Deposit

Curtsinger's counterclaim appears to be based on Ind. Code § 32-31-3-12.[2] That statute provides, in relevant part:

> (a) Upon termination of a rental agreement, a landlord shall return to the tenant the security deposit minus any amount applied to:
>
> (1) the payment of accrued rent;
>
> (2) the amount of damages that the landlord has suffered or will reasonably suffer by reason of the tenant's noncompliance with law or the rental agreement; and
>
> (3) unpaid utility or sewer charges that the tenant is obligated to pay under the rental agreement;
>
> all as itemized by the landlord with the amount due in a written notice that is delivered to the tenant not more than forty-five (45) days after termination of the rental agreement and delivery of possession. The landlord is not liable under this chapter until the tenant supplies the landlord in writing with a mailing address to which to deliver the notice and amount prescribed by this subsection. Unless otherwise agreed, a tenant is not entitled to apply a security deposit to rent.

[2] Curtsinger has not filed an appendix, and we do not have a copy of the counterclaim.

> (b) If a landlord fails to comply with subsection (a), a tenant may recover all of the security deposit due the tenant and reasonable attorney's fees.
> (c) This section does not preclude the landlord or tenant from recovering other damages to which either is entitled.

Curtsinger argues the trial court erred by finding there was no evidence he had provided notice of his forwarding address, noting the following exchange at trial:

> COURT: When Mr. Curtsinger moved out was a notice of a forwarding address provided?
> ROBY: Yes, sir. I don't know how but I have one, yes.

(Tr. at 7.) Roby did not testify that he received *written* notice of Curtsinger's forwarding address, nor does the record demonstrate *when* he received notice or that he received it from Curtsinger. The forty-five days in which a landlord has to provide an itemized list of damages does not begin to run until the tenant provides a forwarding address. *Lae v. Householder*, 789 N.E.2d 481, 484 (Ind. 2003). There is nothing in the record demonstrating that the forty-five days had run. *See id*. at 485 (effect of the statute is to permit tenant to trigger prompt refund of the deposit). Therefore, Curtsinger has not demonstrated *prima facie* error.

2. Calculation of Damages

Curtsinger argues he owes only $241.00 for July rent[3] and $99.00 in court costs. The record does not reflect how he arrived at $241.00. His own trial exhibit demonstrates he paid $425.00 for July. (*See* Defendant's Ex. B.) Therefore, he still owed $394.00 for July.[4]

[3] He appears to have abandoned his position that he was entitled to pay less in July because he had overpaid for September 2007.
[4] $819.00 – $425.00 = $394.00

The court determined Curtsinger owed $975.00 for rent. Presumably, the trial court awarded $394.00 for July and $581.00 for August, which corresponds to the correct prorated amount for twenty-two days.[5] This amount is within the scope of the evidence. *See Adsit Co., Inc. v. Gustin*, 874 N.E.2d 1018, 1025 (Ind. Ct. App. 2007) (we reverse an award of damages only when it is not within the scope of the evidence). The trial court chose to credit Roby's testimony that the "rent pay down" was partially applied to each month, rather than to pay for the entire first and last month. We will not reweigh the evidence to conclude that Curtsinger owes nothing for the last month.[6] *See id*. (we do not reweigh evidence or judge witness credibility when reviewing award of damages). Therefore, Curtsinger has not demonstrated *prima facie* error in the trial court's calculations.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.

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[5] $819.00 ÷ 31 × 22 = $581.23

[6] We note Curtsinger's argument is not consistent with the amount of the "rent pay down." If the "rent pay down" was for the first and last month, he should have paid $819.00 for August 2008 and $546.00 (i.e., $819.00 ÷ 30 × 20) for September 2007, for a total of $1,365.00. Even without prorating, the figure would be only $1,638.00, but he paid $1,791.00.