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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000964-MR

WILDCAT PROPERTY MANAGEMENT, LLC — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 05-CI-05238

LINDSAY FRANZEN; CARL FRANZEN;
STEPHANIE REUSS; TOM REUSS;
AND MARY MARTHA MCGEEHAN — APPELLEES

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: CLAYTON, LAMBERT, D., AND LAMBERT, J., JUDGES.

CLAYTON, JUDGE: In this residential landlord-tenant action, Wildcat Property Management, LLC (hereinafter "Wildcat Property") appeals from the Fayette Circuit Court's November 1, 2011 findings of fact, conclusions of law and order; June 10, 2014 final order and judgment; and, February 15, 2012 order denying the

motion to reconsider. Wildcat Property challenges the Fayette Circuit Court's holdings that the Lease was void and, therefore, the Uniform Residential Landlord Tenant Act did not apply. After careful consideration, we vacate the trial court's denial of Wildcat Property's summary judgment, vacate the trial court's grant of the Tenants' partial summary judgment, and remand for proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Wildcat Property originally initiated this civil action in 2005 seeking damages for unpaid rent from four college students and their fathers who were guarantors (hereinafter collectively the "Tenants"). The Tenants rented a house from Wildcat Property in Lexington, Kentucky, pursuant to a written lease agreement (hereinafter the "Lease"). On April 18, 2005, the Tenants executed and signed the Lease with Wildcat Property, which stated that they were to rent a house from August 15, 2005, to August 14, 2006. The monthly rent was $1,450.00. Tenants took possession of the house on August 15, 2005, and completed the "Move In/Move Out Condition" checklist several days later. The Tenants occupied the house until they were judicially evicted on December 7, 2005.

The Tenants involved in the appeal are Lindsay Franzen, Stephanie Reuss, and Mary Martha McGeehan, plus Lindsay's and Stephanie's fathers, Carl Franzen and Tom Reuss. McGeehan did not file a brief in this appeal. The fathers individually guaranteed their daughters' obligations under the Lease for $4,200.00. A fourth tenant, Jenna Stevens, and her father, Doug Graff, another personal

guarantor under the Lease, have settled with Wildcat Property and been dismissed from the case.

In August and September 2005, the Tenants reported certain items for repair and also requested fulfillment of other promises like the addition of the exterior hot tub. Some requested repairs were on the checklist and others were made in both verbal and written requests including written requests for repairs on August 21, 2005, and September 26, 2005. The record is unclear about the repairs Wildcat Property performed after the various requests from the Tenants. Wildcat Property avers that it made the repairs, and the Tenants contend that the repairs were not made. Nonetheless, Wildcat Property proclaims that none of the requested repairs came close to raising a "habitability" issue.

It is undisputed that the Tenants lived in the house from mid-August to mid-December 2005 and did not pay any rent for the months of August, September, October, November, and December 2005. In addition, the Tenants asked on multiple occasions, beginning on August 21, 2005, for Wildcat Property to reduce their rent by twenty-five per cent. The primary reason for this request seems to be that one of the Tenants, Stevens, moved out of the house in late August 2005. The parties disagree as to the reason for her departure.

The Tenants offered one payment of partial rent in the amount of $2,159.00 in early October 2005 but Wildcat Property rejected the payment because it was not the full rent payment of $5,075.00. At that time, Wildcat Property informed the Tenants that if they did not pay the past-due rent within

seven days, the Landlord would institute a forcible detainer action and civil action for damages against them.

When the Tenants failed to pay the rent, Wildcat Property filed both the forcible detainer action and the lawsuit for unpaid rent and other damages. The hearing on the forcible detainer petition was held in Fayette District Court and granted in December 2005. At the forcible detainer hearing, the Tenants made no allegations of the house being uninhabitable or that the Landlord did not maintain or repair the house. The Tenants were evicted.

In the civil suit, Wildcat Property sought damages for rental payments through February 2006, damages for March and April since it had to rent the house for less than the Tenants had contracted, plus the electric and water bills accrued after the Tenants vacated. Additionally, Wildcat Property also claimed a performance fee of $700.00 (Section 16 of the Lease); a security deposit of $700.00 (Section 2 of the Lease); late fees of $50.00 per month for the failure to pay the rent by the first day of the month and then $10.00 per day for each day after the fifth of the month (Section 15 of the Lease); and the electric and water bills during the Tenants' occupancy (Section 26 of the Lease).

The parties then engaged in lengthy and protracted settlement negotiations in an attempt to resolve the Tenants' liability to Wildcat Property in the breach of lease suit. The negotiations were unsuccessful, and ultimately the Franzens filed a motion to dismiss for lack of prosecution, which was granted by

the Fayette Circuit Court. This decision was appealed to our Court. We reversed and remanded the case for further proceedings.

In January 2010, Wildcat Property made a motion for summary judgment, and the Tenants filed cross-motions for summary judgment or partial summary judgment. Depositions were held and following the depositions, Wildcat Property filed an amended summary judgment motion. In essence, Wildcat Property argued that the Tenants failed to pay rent, were evicted for failure to pay rent and, consequently, breached their Lease and were liable to Wildcat Property for damages.

Notably, during this time period, the Tenants never raised the issue of "habitability." It was not until 2010, almost five years after their eviction and the institution of this suit, that the Tenants claimed the house was not habitable. Lindsay Franzen raised the issue in her response to Wildcat Property's April 21, 2010 motion for summary judgment.

In 2010, responding to the law suit, the Tenants claim that the premises were dirty and in disrepair. Further, they allege that Wildcat Property promised that certain improvements and repairs would be made to the house including repairs to the front porch, sidewalk, kitchen, and other living areas. According to the Tenants, the Landlord stated that the interior of the property would be completely renovated including adding the amenity of an exterior hot tub.

Apparently, after the signing of the Lease, two bedrooms and a bathroom were added to the first floor of the house, but the hot tub was not. (Unrelated to this appeal is Wildcat Property's assertion that it would add a second floor to the house.) In the motion proffered by Tenant Franzen, she moved for summary judgment in favor of the Tenants or, in the alternative, partial summary judgment, which would limit Wildcat Property's claims for damages to the occupancy period of mid-August to early-December.

On August 27, 2010, Judge Kimberly Bunnell heard oral arguments on the pending motions. Following the hearing, but before entering written orders, the judge recused, and the case was reassigned to Judge James D. Ishmael. On November 1, 2011, Judge Ishmael entered written orders that held the Lease was void and, therefore, the Uniform Residential Landlord and Tenant Act, Kentucky Revised Statutes (KRS) 383.500 – 383.715 (hereinafter "URLTA"), did not apply to the parties' dispute. The order denied Wildcat Property's motion for summary judgment and granted partial summary judgment to the Tenants.

In the order, the trial court held that the property tendered by Wildcat Property was not in the condition represented in the Lease or by its oral representations. Further, the trial court found that certain conditions on the property affected the health and safety of the Tenants. In sum, the trial court held that the Lease was void and that URLTA, particularly KRS 383.625, did not apply to the parties' dispute. Finally, it concluded that the Tenants were only liable to

Wildcat Property in quantum meruit for reasonable rent during the time period they actually lived in the house.

Thereafter, the case was transferred to the master commissioner for a determination of a reasonable rent. After a hearing, the master commissioner found that the reasonable rent due was $5,250.00 for the period of occupancy of August 24, 2005, to December 14, 2005. This ruling was challenged by the Tenants. But on June 10, 2014, the trial court entered its final judgment awarding Wildcat Property total damages of $5,250.00. (The trial court awarded damages severally in the amount of $1,312.50 against each Tenant.)

Wildcat Property now appeals the November 1, 2011 findings of fact, conclusions of law and order, as determined by the previous judge at the August 27, 2010 hearing and drafted by the current judge; the June 10, 2014 final order; and the February 15, 2012 order denying Wildcat Property's motion to reconsider.

Counsel for both the Greater Lexington Apartment Association (GLAA) and also the Louisville Apartment Association (TLAA), collectively referred to as "the Associations," asked this Court for permission to file an amicus curiae brief. The Associations are nonprofit Kentucky corporations organized to promote professionalism and advocate for the owners of rental units in Kentucky. That motion was granted, and the amicus curiae brief was filed.

STANDARD OF REVIEW

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits,

if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Kentucky Rules of Civil Procedure (CR) 56.03. Moreover, summary judgment is appropriately granted "where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991) (citing *Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985)).

When considering a motion for summary judgment, the trial court must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Id*. However, "a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Id*. at 482.

Therefore, "[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. … [Further], [t]here is no requirement that the appellate court defer to the trial court since factual findings are not at issue." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996) (citations omitted). With this standard in mind, we turn to the case at bar.

DISCUSSION

Wildcat Property maintains that the trial court erred as a matter of law in denying Wildcat Property's various motions including the amended motion for summary judgment and in granting the Tenants' partial summary judgment. First, they highlight that the trial court incorrectly determined that the Lease was void and unenforceable based on the trial court's belief that the house was uninhabitable in contravention to the Lease and the Landlord's oral representations. According to Wildcat Property, this finding by the trial court suggests that under Kentucky law there is an implied warranty of habitability. Further, Wildcat Property contends that there is no warranty or representation of habitability in the Lease.

Additionally, Wildcat Property argues that the trial court erred in deciding that URLTA provision KRS 383.625 was inapplicable. The Lexington-Fayette Urban County Council adopted URLTA to govern residential landlord-tenant relationships even if certain conditions exist when a tenant takes possession of property. Nothing in URLTA creates an exception to its application to landlord-tenant relationships including the existence of certain conditions upon possession of property. *See* KRS 383.535. Instead, Wildcat Property maintains that the Tenants' remedy is set forth in URLTA. Finally, Wildcat Property argues that the trial court erred in granting a partial summary judgment because it resolved a factual dispute concerning the habitability of the house. According to Wildcat Property, it is improper to grant summary judgment when a factual dispute exists.

In response, the Tenants opine that the trial court's decision was not based on an implied warranty of habitability but rather on the trial court's finding

that the property was uninhabitable in contravention of the Lease and oral representations. As such, the trial court's order, according to the Tenants, does not rely on an implied warranty of habitability but comports with well-settled contract law and URLTA. They articulate that URLTA is not the Tenants' exclusive remedy but that common-law contract principles also apply. Finally, the Tenants counter that the trial court's findings that the premises were uninhabitable was not against the weight of evidence and, therefore, did not improperly resolve a factual dispute by summary judgment.

The Associations in the amicus curiae brief state that URLTA provides a comprehensive statutory scheme, supplemented by common law, that provides clarity to both landlords and tenants regarding their rights, remedies, and obligations. Here, the Associations argue that if the trial court's ruling stands, it will improperly resurrect the historically rejected notion of an implied warranty of habitability and, in addition, ignore the clear requirements of URLTA.

In addition, the Associations highlight that URLTA provides express provisions about habitability and lists tenants' remedies when a landlord fails to provide habitable premises. Finally, the Associations articulate that this case is significant because if it is upheld it will decimate the precedent, procedures, and remedies used in Kentucky and have unintended consequences for the rental housing industry.

ANALYSIS

We begin our analysis by addressing the implied warranty of habitability.

Implied Warranty of Habitability

Although the Tenants assert that the trial court's ruling does not invoke the implied warranty of habitability, we can ascertain no other basis for the trial court's ruling. Its finding that the property was uninhabitable suggests a duty on the part of the Landlord with respect to the property outside of the provisions of URLTA.

We begin our review by noting that in Kentucky, the general rule is that a tenant takes the premises as he finds them. *See Miles v. Shauntee,* 664 S.W.2d 512, 517 (Ky. 1983). Furthermore, it is well established in Kentucky jurisprudence that no implied warranty of habitability exists in landlord-tenant arrangements. Rather, a tenant must look to the terms of the rental agreement or any applicable statutes for relief. *Id*. at 518. The only exceptions to the lack of an implied warranty that the *Miles* Court acknowledged involved the condition of common areas and actions that constitute a constructive eviction by a landlord. *Id*.

The Tenants argue that the trial court did not determine that there was an implied warranty of habitability but instead maintained that the trial court's

decision relied on the legal conclusion that there was a duty on the part of the Landlord with respect to the habitability of the property. We find this reasoning to be specious, since this reasoning is circular and basically suggests that the Landlord has a "warranty of habitability."

The trial court's order stated:

> Because the court finds the Property to have been uninhabitable in contravention of the Lease and oral representations, the Lease was void and unenforceable as to any Defendants and/or guarantor as of August 15, 2005.

But the only representation in the Lease regarding "habitability" is focused on a tenant's responsibility. Section 21 of the Lease provides:

> MOVE-IN INSPECTION. Tenant has made, or will make prior to occupancy, an inspection of the premises to be leased, and agrees that the property is in a fit and habitable condition except for such damages or malfunction as have been listed in a separate move-in inspection listing which he has signed and delivered to the Manager, and the failure to describe any such damage on the move-in inspection list shall constitute conclusive evidence that Tenant takes the property in good and satisfactory condition without existing damage . . . .

Hence, Wildcat Property contends that when the Tenants moved into the house, pursuant to the Lease, they were agreeing that the house was in good and satisfactory condition except for the items on the Move-in checklist. (This checklist will be discussed later.)

Returning to the trial court's order, since the Tenants' move into the house negates any question of habitability under the Lease, the only reason that the

trial court had to decide the Lease was void was oral representations made prior to the execution of the Lease. But a purview of the record shows no evidence was provided by the Tenants as to any oral representation of habitability or breaches thereof. Indeed, the Tenants made no "habitability" claim until almost five years after the Lease was signed.

Moreover, even if a representation of "habitability" had been made by the Landlord, reliance on this oral representation is barred by the "Entire Agreement" provision of the Lease. The final terms of the Lease, which are placed immediately before the signature page, state:

> This Lease shall not be affected by any agreements or representations not specifically contained in writing herein. No modification or addition to the terms of this Lease shall be binding on either of the parties unless made with good and valuable consideration, and in writing signed by each of the parties.

This section of the Lease renders the Tenants' reliance on oral representations for voiding the Lease null since the language of the Lease clearly says it "shall not be affected by any agreements or representations not specifically contained in writing herein." Therefore, relying on the express language of the Lease, once it was signed, any oral representations were meaningless in terms of voiding or modifying the contract.

So, we conclude that, based on both the irrelevance of any pre-signing oral representations concerning habitability on the Lease and also the actual language of the Lease, the trial court erred when it held that the property was

uninhabitable in contravention of the Lease and oral representations and, thus, void and unenforceable. Our decision is bolstered by the lack of any implied warranty of habitability under Kentucky law.

Therefore, since no implied warranty of habitability exists in Kentucky, a tenant must look to the rental agreement or statutory provisions for remedies when a rental unit is defective or requires repair. *See Miles*, 664 S.W.2d at 518. In fact, without an express covenant to repair, the landlord has no obligation to repair. *Id.*

To summarize, as we have already noted, the Lease itself does not provide a warranty of habitability and, therefore, the Tenants must look to the codes, ordinance, or regulations for any remedies. *Id*. Further, to the extent that URLTA imposes a duty on landlords to make repairs to leased premises, the landlord's liability for breach of that duty does not extend beyond that authorized at common law for breach of a contractual duty to repair. *Miller v. Cundiff*, 245 S.W.3d 786, 789 (Ky. App. 2007). This result preserves the effectiveness of the URLTA's enforcement provisions and also incorporates common-law principles.

Since Lexington-Fayette County adopted URLTA and that the house is located in Lexington, we look to URLTA to ascertain the statutory remedies.

URLTA

URLTA is codified in Kentucky at KRS 383.500 – 383.715. It clarifies the legal duties of landlords and tenants entering into residential lease

agreements. Unlike other jurisdictions which have enacted the URLTA on a state-wide basis, Kentucky merely authorizes individual counties and cities to adopt the provisions of the URLTA. KRS 383.500. Thus, a particular city, county, or urban county government must choose to adopt the URLTA and approve it in its entirety. *Id*. Nineteen communities in Kentucky have adopted URLTA including Lexington-Fayette County. *See Breaking Down Barriers to Justice: Surveying the Practical Application of Kentucky's Landlord-Tenant Laws and Calling for Basic Reform,* 39 N. Ky. L. Rev. 23, 43 (2012). And in jurisdictions where adopted, URLTA, although supplemented by the common law, is the exclusive remedy.

The *Miles* Court addressed the constitutionality of the URLTA and held it unconstitutional because it was special legislation in contravention of Sections 59 and 60 of Kentucky's Constitution. Since then, however, the Kentucky Legislature in 1984 reenacted URLTA in a form that satisfied constitutional requirements.

Initially, URLTA in KRS 383.590 describes the standard for delivery of the premises at the beginning of the lease. A landlord shall deliver the premises to the tenant in compliance with the rental agreement and KRS 383.595. URLTA then sets forth the following express requirements for landlords concerning the conditions of leased premises:

> a) Comply with the requirements of applicable building and housing codes materially affecting health and safety;
>
> (b) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

> (c) Keep all common areas of the premises in a clean and safe condition;
>
> (d) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him; and
>
> (e) Supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1 except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

KRS 383.595(1)(a-e). These URLTA provisions express a working definition of "habitability" under the statutory directives.

One argument proffered by the Tenants is that because a Certificate of Occupancy (hereinafter "CO") was not issued for the property, the validity of the Lease was questionable. They argue that the failure to obtain the certificate is a condition precedent, that is, a fact or event that must take place before there is a right to perform in contract law terminology. But as articulated by Wildcat Property, the validity of the Lease was not conditioned upon the existence of a CO. Second, under Section 58 of the Lexington building codes, compliance with the building codes was "conditioned on final approval by the Lexington-Fayette Urban County Government (LFUCG) Division of Building Inspection." The record discloses that the LFUCG Building Inspector did, in fact, give final building

approval. Additionally, because it was a "remodel" and not a new building, a CO was not necessary.

If the conditions in KRS 383.595 are not met, URLTA provides remedies for tenants. *See* KRS 383.625, KRS 383.630, KRS 383.635, KRS 383.640, and KRS 383.645. A review of these remedies outlines the actions that a tenant may legally take if a landlord fails in his responsibility under URLTA. First, if the landlord does not timely deliver the leased premises or the premises do not comply with the rental agreement or KRS 383.595, tenants are permitted to terminate the rental agreement upon five days' written notice and sue for possession of property and damages incurred. KRS 383.630. Here, the Tenants moved in and stayed for four months without paying rent, terminating the rental agreement, and following the provisos of KRS 383.630.

Continuing with our review of URLTA, if the landlord delivers possession but does not comply with the requirements under KRS 383.595, tenants have the additional options:

1. Under KRS 383.625, a tenant may provide notice of noncompliance and terminate the lease if the landlord fails to remedy the noncompliance.
2. Under KRS 383.635, a tenant may repair a violation, if after notice to the landlord, he or she does not fix the violation, and after doing so, withhold up to one-half the amount of the rent.

3. Under KRS 383.640, a tenant may procure alternative essential services, sue for damages for diminution in market value, or obtain alternative housing and withhold rent if the landlord willfully fails to supply heat, running water, hot water, electric, gas, or other essential services.
4. Under KRS 383.645, a landlord may bring an action under KRS 383.695(4) for damages against a person who is wrongfully in possession. Nonetheless, the statute also permits a tenant to file a counterclaim against the landlord for any amounts due to the tenant based on the landlord's violation of KRS 383.595.

Besides setting out the remedies, the URLTA statutes also provide the procedure for tenants to make a claim. In this case, the Tenants clearly did not follow the requisite procedures to obtain the remedies. They never gave thirty-days notice to terminate the Lease (KRS 383.625(1)); never attempted to make repairs themselves and deduct the cost from the rent (KRS 383.635); and, never attempted to procure substitute housing (KRS 383.640(1)(c)). Specifically referencing KRS 383.640, the Tenants were not allowed to use this option since Wildcat Property apparently provided essential services. While the Tenants proffer that at one time hot water was an issue, no evidence was given that throughout the four-month occupancy there was no hot water. Given that the Tenants remained in the house until they were evicted, a lack of hot water or any other essential service for four months seems unlikely.

The Tenants maintain that they attempted to comply with KRS 383.625 when they gave Wildcat Property a written notice to repair the property on September 26, 2005. Although the delivery of the notice is disputed by Wildcat Property, the Tenants did not follow through with the statutory requirements under URLTA since they did not vacate the premises until their eviction in December 2005.

Here, the impact of the trial court's ruling is to create a process that is unreasonable. First, under the trial court's reasoning, the signing of a lease would no longer create a viable contract since a tenant could state, after the signing of a lease, that the premises are not "habitable" and void the lease. Even more troubling, tenants, in this scenario, could actually void the lease at the end of the tenancy.

Second, the trial court's reasoning completely nullifies the procedures set forth in URLTA. As noted in KRS 383.505, the purpose and policy of URLTA are to make uniform laws with respect to landlord-tenant relationships and to encourage landlords and tenants to maintain and improve the quality of housing. To ignore its applicability upends the uniformity, reliability, and applicability of the substantive and procedural URLTA requirements concerning maintenance and habitability issues.

To recap, the Lease signed by the Tenants in April 2005 subsumes all oral representations regarding the rental of the house. Pursuant to the terms of the Lease, the Tenants not only moved into the premises on August 15, 2005, they did

so without complaint. Subsequently, they completed a "Move-in/Move-out Checklist." Their comments on the checklist do not indicate any issues under KRS 383.595 or KRS 383.640. In other words, the Tenants did not complain about a lack of habitability or essential services. The Tenants moved into the house and remained until the eviction.

Continuing with the summary, the Tenants allege that they made numerous oral and written reports of needed repairs to the house. Nonetheless, the record is either devoid of evidence or inconclusive as to whether these repairs were made. Further, and most significant, there is no dispute about the fact that they continued to live in the house without paying any rent. While it appears that the Tenants requested that Wildcat Property lower the rent, given the Lease agreement with their signatures they were contractually obligated to pay $1,450 per month. Moreover, the fact that one Tenant moved out has no impact on the amount of the agreed rent under the Lease. Additionally, the Tenants never proceeded under URLTA.

Therefore, the trial court judge erred in denying Wildcat Property's motion for summary judgment and in granting the Tenants' motion for partial summary judgment. The Lease was valid and signed in a jurisdiction that has adopted URLTA. If the Tenants had issues with habitability or failure of maintenance, remedies exist under URLTA, which they did not use. Thus, we

hold that the trial court's ruling that the Lease was void and unenforceable is in error as a matter of law. And we vacate the decisions of the trial court judge and remand for a determination of Wildcat Properties' damages under URLTA.

Summary Judgment Improperly Resolved a Factual Dispute

Lastly, we address the issue of whether the grant of the partial summary judgment improperly resolved a factual dispute. Wildcat Property alleges that the trial court's factual finding that the house was "uninhabitable" was against the weight of the evidence and improperly resolved by the grant of partial summary judgment. Having decided that the trial court erred in denying Wildcat Property's summary judgment motion and in granting the Tenants' motion for partial summary judgment, it is not necessary for us to address this final claim of error. In the case at hand, we believe that it is dispositive, as a matter of law, that the Tenants had a valid Lease and when problems occurred, did not follow the requisites of URLTA, which was applicable.

However, we observe that summary judgment is precluded if there is a genuine issue of a material fact. In the case at bar, the record certainly is inconclusive as to whether, had the Tenants' claim of "inhabitability" been legally sound, the weight of the evidence supported the conclusion that the premises were inhabitable.

CONCLUSION

In Kentucky, there is no "implied warranty of habitability" and, hence, the Lease and URLTA govern the rights and remedies of Wildcat Property

and the Tenants. URLTA provides the requirements that landlords must meet to provide a livable premise in the jurisdiction where this dispute occurred. Furthermore, it provides remedies for both landlords and tenants. Here, the Tenants did not follow its procedural or substantive requirements, never delivered a written notice of alleged material noncompliance under KRS 383.595 or alleged uninhabitability in compliance with KRS 383.625. In fact, the Tenants never took any steps to terminate, or even attempt to terminate, the Lease in accordance with URLTA.

If the trial court's ruling were to prevail, tenants could ignore the procedures and policies under URLTA and void rental agreements at any point of tenancy and desecrate the uniform, comprehensive statutory scheme under URLTA that provides clear guidelines for tenants and landlords.

Consequently, the decisions of the Fayette Circuit Court are vacated, and the matter is remanded for a determination of Wildcat Property's damages.

ALL CONCUR.

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