MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

IN THE

Court of Appeals of Indiana

Ashley Moothery,

Appellant-Defendant

v.

Renewing Management Inc., Managing Agent for the Owner of Chapel Hill Townhomes,

Appellee-Plaintiff

March 18, 2024

Court of Appeals Case No.
23A-EV-670

Appeal from the Marion County Wayne Township
Small Claims Court

The Honorable Gerald B. Coleman, Judge

Trial Court Cause No.
49K08-2210-EV-4656

Memorandum Decision by Judge Tavitas

Judges Mathias and Weissmann concur.

Tavitas, Judge.

Case Summary

[1] Ashley Moothery, pro se, appeals the small claims court's judgment for Renewing Management Inc., Managing Agent for the Owner of Chapel Hill Townhomes ("Chapel Hill"). Moothery argues that the small claims court's judgment is clearly erroneous because: (1) Chapel Hill failed to give Moothery ten days notice before filing the eviction proceedings; (2) Moothery was not in breach of her lease; and (3) Chapel Hill failed to provide Moothery with a timely itemized damages statement. We conclude that Moothery has failed to demonstrate clear error. Accordingly, we affirm.

Issues

[2] Moothery raises numerous issues, but we address the following:

I. Whether Chapel Hill was required to give Moothery ten days notice before filing the eviction proceedings.

II. Whether the small claims court properly found that Moothery was in breach of her lease.

III. Whether the small claims court properly found that Chapel Hill provided a timely itemized damages statement to Moothery.

Facts

[3] In June 2020, Moothery entered into a one-year lease agreement with Chapel Hill for an apartment in Indianapolis. Pursuant to the lease, Moothery was required to pay $995 per month in rent and a security deposit of $250. After the end of the one-year term, Moothery's lease continued on a month-to-month basis.[1]

[4] In July 2022, Moothery attempted to pay her rent, but the payment was returned for non-sufficient funds ("NSF"). Chapel Hill filed an eviction proceeding against Moothery but later dismissed the action without prejudice after Moothery made a partial payment. On October 19, 2022, however, Chapel Hill filed another eviction proceeding against Moothery. Moothery filed a counterclaim against Chapel Hill for "punitive damages and harassment." Appellee's App. Vol. II p. 34.

[5] The small claims court held an eviction hearing on November 3, 2022. Chapel Hill presented evidence that Moothery owed $930 in past due rent and fees.

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[1] The Lease provided:

> **Month-to-Month Fee.** If a notice to vacate for the Apartment has not been received on or before 30 days from the end of the Initial term, Resident will enter a Holdover Period ("Holdover Period"). Monthly rent payments shall increase to the current market rent in addition to a $75.00 fee per month (Month-to-Month Fee) during the first full month of the Holdover Period. All other terms and conditions of this Lease shall remain in full force and effect as set forth herein. At any point in time during such Holdover Period, Chapel Hill Townhomes LLC can increase the rental rate with a 30-day written notice provided to Resident.

Appellee's App. Vol. II p. 5.

The small claims court found that Chapel Hill was entitled to possession of the apartment on November 30, 2022, and set the matter for a damages hearing.

[6] The small claims court held the damages hearing on March 9, 2023. At the damages hearing, Terry Warten, an employee of Chapel Hill, testified that Moothery owed $2,510 for past due rent and fees and damages to the apartment, plus $750 in attorney fees for a total of $3,260. Moothery claimed that she had not received an itemized damages statement from Chapel Hill, but Warten testified that the itemization was mailed to Moothery in early December 2022. Moothery also disputed charges for a toilet repair and painting, and the small claims court removed those charges. The trial court entered judgment against Moothery in the amount of $2,275, plus $750 in attorney fees, for a total judgment amount of $3,025. Moothery now appeals.

Discussion and Decision

[7] Moothery appeals the small claims court's judgment in favor of Chapel Hill. Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). We review facts from a bench trial under the clearly erroneous standard with due deference paid to the trial court's opportunity to assess witness credibility. *Branham v. Varble*, 952 N.E.2d 744, 746 (Ind. 2011). We review questions of law de novo. *Id.* "This deferential standard of review is particularly important in small claims actions, where trials are informal, 'with the sole objective of dispensing

speedy justice' between parties according to the rules of substantive law." *Id.* (quoting *Morton v. Ivacic*, 898 N.E.2d 1196 (Ind. 2008)).

[8] We note that Moothery proceeds pro se in this appeal, and we, therefore, reiterate that "a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented." *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). "This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Picket Fence Prop. Co. v. Davis*, 109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018) (citing *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016)), *trans. denied*. Although we prefer to decide cases on their merits, arguments are waived where an appellant's noncompliance with the rules of appellate procedure is so substantial that it impedes our appellate consideration of the errors. *Id.*

[9] Indiana Appellate Rule 46(A)(8)(a) requires that the argument section of a brief "contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ." *Id*. We will not consider an assertion on appeal when there is no cogent argument supported by authority and there are no references to the record as required by the rules. *Id.* "We will not step in the shoes of the advocate and fashion arguments on his behalf, nor will we address arguments

that are too poorly developed or improperly expressed to be understood." *Miller v. Patel*, 212 N.E.3d 639, 657 (Ind. 2023) (internal quotations omitted).

[10] Although Moothery seems to raise a due process violation and bias of the trial court according to her Statement of the Issues, Moothery cites no authority in support of those issues and makes no cogent analysis of those issues in her Argument. Moothery has, accordingly, waived those issues. We will address only the issues that Moothery has sufficiently developed.

I. Ten-Day Notice

[11] Moothery first argues Chapel Hill failed to give her ten days notice before filing the eviction proceedings. Although Moothery cites no authority for this requirement, we presume that Moothery is relying upon Indiana Code Section 32-31-1-6, which provides:

> If a tenant refuses or neglects to pay rent when due, a landlord may terminate the lease with not less than ten (10) days notice to the tenant unless:
>
> (1) the parties otherwise agreed; or
>
> (2) the tenant pays the rent in full before the notice period expires.

Further, Indiana Code Section 32-31-1-8 provides that "[n]otice is not required to terminate a lease in the following situations . . . (5) The express terms of the contract require the tenant to pay the rent in advance, and the tenant refuses or neglects to pay the rent in advance."

[12] The Lease here provided that the monthly rent was "due and payable **in advance** on the first (1st) day of each calendar month." Appellee's App. Vol. II p. 4 (emphasis added). The Lease also provided: "Upon the occurrence of an Event of Default, Owner may immediately, and **without notice**: (1) terminate this Lease . . . ." *Id.* at 6 (emphasis added). The parties, thus, agreed that notice was not required and also agreed that rent was due "in advance." Accordingly, the ten-day notice requirement is inapplicable, and Moothery's argument fails.

II. Breach of Lease

[13] Next, Moothery argues that the small claims court erred by finding that she breached the lease. Moothery admitted that she got behind in paying her rent in July 2022. Moothery, however, argues that she only owed $348 on September 7, 2022, that a church donated $350, which was deposited on September 16, 2022, and that she was then current on her rent.

[14] The ledger submitted by Chapel Hill, however, demonstrates that, in addition to failing to pay her July 2022 rent, Moothery failed to pay the water/sewage/trash fee in July 2022. She also accumulated late fees, a "NSD Fee Return" for a bounced check, and carry over fees allowed by the lease. Appellee's App. Vol. II p. 37. Moothery's calculations fail to account for these additional fees. According to Chapel Hill, by the time of the eviction hearing on November 3, 2022, Moothery owed $930. Given the evidence presented,

the small claims court's determination that Moothery breached the lease and award of possession of the apartment to Chapel Hill is not clearly erroneous.

III. Damages Itemization

[15] Finally, Moothery contends that Chapel Hill failed to provide her with an itemized list of damages within forty-five days. We presume that Moothery is referring to Indiana Code Section 32-31-3-14, which provides, in part:

> Not more than forty-five (45) days after the termination of occupancy, a landlord shall mail to a tenant an itemized list of damages claimed for which the security deposit may be used under section 13 of this chapter. The list must set forth:
>
> (1) the estimated cost of repair for each damaged item; and
>
> (2) the amounts and lease on which the landlord intends to assess the tenant.

[16] Further, Indiana Code Section 32-31-3-12(a) provides:

> 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.

If a landlord fails to comply with Indiana Code Section 32-31-3-12(a), "a tenant may recover all of the security deposit due the tenant and reasonable attorney's fees." Ind. Code § 32-31-3-12(b).

[17] Chapel Hill's employee, Warten, testified that the itemized damages statement, which was dated December 2, 2022, was sent to Moothery, who had vacated the apartment on November 30, 2022. Warten testified that the statement would have been mailed "on or about the date" that the statement was generated, which was well within the forty-five-day requirement. Tr. Vol. II p. 64. Moothery's claim that she did not receive the statement is merely a request that we reweigh the evidence, which we cannot do. Accordingly, the small claims court's judgment is not clearly erroneous.

Conclusion

[18] The small claims court's judgment in favor of Chapel Hill is not clearly erroneous. Accordingly, we affirm.

[19] Affirmed.

Mathias, J., and Weissmann, J., concur.

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