COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-15-00397-CV

JAMES BRAND — APPELLANT

V.

SHAUNTE DEGRATE-GREER — APPELLEE

FROM COUNTY COURT AT LAW NO. 3 OF TARRANT COUNTY
TRIAL COURT NO. 2014-001486-3

MEMORANDUM OPINION[1] ON REHEARING

Appellant James Brand moved for rehearing on this panel's February 9, 2017 memorandum opinion and judgment. *See* Tex. R. App. P. 49.1. We deny the motion but withdraw our prior memorandum opinion and judgment and substitute the following.

[1]*See* Tex. R. App. P. 47.4.

This case involves a landlord-tenant dispute. In eight issues, Brand appeals the judgment rendered by the trial court in the suit brought against him by his former tenant, Appellee Shaunte Degrate-Greer (Degrate-Greer), for breach of contract and for violations of the property code. Because we hold that Brand was legally entitled to withhold $129 of Degrate-Greer's security deposit, we modify the judgment to omit the portion of the damages award based on that withholding. We affirm the judgment as modified.

I. Facts and Procedural Background

Degrate-Greer sued Brand in the justice court for equitable relief and for violations of the property code.[2] She included the following allegations in her petition.

- Under a lease agreement with Brand, she leased the entirety of the property at a specific address in Fort Worth.
- In December 2012, after the only toilet in her leased residence began backing up, Brand refused to make repairs.
- Brand leased a separate structure that was located in the back of the property to a third party, violating both her lease and Fort Worth's code of ordinances.
- Because of this second lease and the fact that the two structures were on the same set of utility meters, Degrate-Greer was forced to pay for

[2]Both Degrate-Greer and her husband John Greer signed the lease. However, John did not join Degrate-Greer as a plaintiff in this suit.

the third party's use of water and electricity. Additionally, she was denied access to the other structure and much of the property.

- Brand refused to make any further repairs to the property.
- Degrate-Greer and her husband John opted to move out of the property, but despite her providing Brand with notice of her new mailing address in writing, Brand failed to return the security deposit.

Based on these allegations, Degrate-Greer asserted causes of action against Brand for: (1) violations of the property code; (2) breach of contract; (3) breach of a landlord's implied warranty of habitability; and (4) retaliation. In response, Brand filed an answer that asserted affirmative defenses and counterclaims for breach of contract.

The justice court rendered a judgment awarding Degrate-Greer $1,700 plus $1,500 in attorney's fees. Brand appealed that judgment to the county court.

The matter was referred to mediation by the county court, but it was canceled at Brand's request. The case then proceeded to a de novo bench trial. The county court, now the trial court, signed a judgment awarding Degrate-Greer $400 for the return of her security deposit, $1,300 for Brand's bad-faith failure to return the deposit, $1,437 for breach of contract arising from Brand's renting the second structure to a third party, and $13,500 in attorney's fees. *See* Tex. Prop. Code Ann. § 92.109(a) (West 2014) ("A landlord who in bad faith retains a security deposit in violation of this subchapter is liable for an amount equal to the

sum of $100, three times the portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees in a suit to recover the deposit.").

Brand filed a motion for new trial that was overruled by operation of law. He also filed a request for findings of fact and conclusions of law, as well as a notice of late filed findings and conclusions. The trial court did not file findings and conclusions. Brand then filed this appeal.

On December 6, 2016, we abated this case for the trial court to make findings and conclusions. The trial court did so, and on January 5, 2017, we reinstated this case on this court's docket.

II. Analysis

A. Standard of Review

We may sustain a legal sufficiency challenge only when (1) the record discloses a complete absence of evidence of a vital fact, (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a mere scintilla, or (4) the evidence establishes conclusively the opposite of a vital fact. *Ford Motor Co. v. Castillo*, 444 S.W.3d 616, 620 (Tex. 2014); *Uniroyal Goodrich Tire Co. v. Martinez*, 977 S.W.2d 328, 334 (Tex. 1998), *cert. denied*, 526 U.S. 1040 (1999). In determining whether there is legally sufficient evidence to support the finding under review, we must consider evidence favorable to the finding if a reasonable factfinder could and disregard evidence contrary to the finding unless a reasonable factfinder could not. *Cent. Ready Mix Concrete Co.*

v. Islas, 228 S.W.3d 649, 651 (Tex. 2007); *City of Keller v. Wilson*, 168 S.W.3d 802, 807, 827 (Tex. 2005).

When reviewing an assertion that the evidence is factually insufficient to support a finding, we set aside the finding only if, after considering and weighing all of the evidence in the record pertinent to that finding, we determine that the credible evidence supporting the finding is so weak, or so contrary to the overwhelming weight of all the evidence, that the answer should be set aside and a new trial ordered. *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986) (op. on reh'g); *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *Garza v. Alviar*, 395 S.W.2d 821, 823 (Tex. 1965).

B. Failure to Return the Security Deposit

In Brand's first issue,[3] he argues that the evidence was legally and factually insufficient to support the award of $400 for the return of Degrate-Greer's security deposit. In his second issue, he challenges the award of

[3]Brand's statement of facts consists primarily of arguments rather than facts, in violation of the rules of appellate procedure. *See* Tex. R. App. P. 38.1(g). His statement of the case and statement regarding oral argument also violated the briefing rules. As a result, we will not address arguments contained in these sections of his brief unless they are repeated in the argument section. Additionally, in the argument section of his brief, Brand failed to cite applicable authority to support a number of his legal contentions. Likewise, we do not consider those arguments. *See* Tex. R. App. P. 38.1(i) (providing that a brief must contain appropriate citations to authorities); *Hall v. Stephenson*, 919 S.W.2d 454, 467 (Tex. App.—Fort Worth 1996, writ denied); *see also Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284–85 (Tex. 1994) (discussing "long-standing rule" that point may be waived due to inadequate briefing).

$1,300 for a bad-faith failure to return the security deposit, arguing that the evidence was legally and factually insufficient to support the award. We consider these issues together.

1. Property Code Requirements for Refunding Security Deposits

Under the property code, a landlord "shall refund a security deposit to the tenant on or before the 30th day after the date the tenant surrenders the premises," provided that the tenant has given the landlord a written statement of their forwarding address for purposes of refunding the security deposit. Tex. Prop. Code Ann. §§ 92.103, 92.107 (West 2014). With limited exceptions, if the landlord retains any part of the security deposit, the landlord must give the tenant a written description and an itemized list of all deductions along with the balance of the deposit. *Id.* § 92.104 (West 2014). Additionally, the lease in this case required Brand to give Degrate-Greer "an itemized written statement of the reasons for, and the dollar amount of, any of the security deposit retained by [Brand], along with a check for any deposit balance" within thirty days after Degrate-Greer had vacated the premises, returned her keys, and provided Brand with a forwarding address.

Further, "[a] landlord who in bad faith retains a security deposit in violation of this subchapter is liable for an amount equal to the sum of $100, three times the portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees in a suit to recover the deposit." *Id.* § 92.109. "A landlord who fails either to return a security deposit or to provide a written description and

itemization of deductions on or before the 30th day after the date the tenant surrenders possession is presumed to have acted in bad faith." *Id.* "In an action brought by a tenant under this subchapter, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable." *Id.*

It is undisputed that Brand, who has been a landlord for approximately forty-five years, never returned the security deposit or mailed Degrate-Greer a written description and itemization of deductions. At trial, Degrate-Greer testified that she mailed notice to Brand of her forwarding address and that when she received no reply, she sent a notice by certified mail, which was signed for by Brand's wife. She mailed this notice on February 25, 2013. Degrate-Greer further testified that when she again received no response from Brand, she sent another certified notice requesting the return of her deposit, which was signed for by Brand on April 12, 2013. The trial court found this evidence to be credible, and, accordingly, held that Brand was presumed to have acted in bad faith in retaining the security deposit. *Hancock v. Hancock*, No. 2-06-00376-CV, 2008 WL 2930586, at *5 (Tex. App.—Fort Worth July 31, 2008, no pet.) (mem. op.) ("As the factfinder, the trial court was the sole judge of the credibility of witnesses and the weight to be given to their testimony and could resolve any inconsistencies in the evidence.") (citations omitted). It therefore became Brand's burden to rebut that presumption.

2. Brand Did Not Prove that Degrate-Greer Caused Property Damage

Brand argues that he was entitled to keep the deposit, and there was accordingly no bad faith in his failure to return the deposit, because the costs to repair damages to the property that were caused by Degrate-Greer exceeded the deposit. However, in their trial testimony, Degrate-Greer and her husband disputed Brand's testimony that they damaged the property, and the trial court believed their testimony over Brand's. *Id.* As stated herein, we will not substitute our judgment for that of the trial court on credibility determinations.

3. Brand Did Not Prove that Degrate-Greer Held Over

Brand argues that he was entitled to keep the security deposit because, by failing to return the keys to the property when she moved out, Degrate-Greer held over into the next month. In direct contrast, Degrate-Greer testified that she and her husband left the keys in the barbecue pit on the property, that they called Brand the day they moved out and told him where the keys could be found, and that Brand had his own key to the property. Again, the trial court believed this testimony over Brand's conflicting testimony.

Brand also argues that Degrate-Greer held over by not providing him with the appropriate thirty days' notice that she was moving out as required by the lease. He argues that the lease required that notices be provided to him at the rental property and that he did not receive any notice at that address informing him of Degrate-Greer's intention to vacate the property. Degrate-Greer, on the

other hand, testified that she and her husband provided notice to Brand that they were vacating the property.

But even ignoring Degrate-Greer's testimony, the lease in this case was for a definite term. It has long been established that "[a] tenancy for a definite term does not require a tenant to give notice in order to terminate the tenancy because such a tenancy simply expires at the end of the contract period." *Carrasco v. Stewart*, 224 S.W.3d 363, 368 (Tex. App.—El Paso 2006, no pet.) (citing *Bockelmann v. Marynick*, 788 S.W.2d 569, 571 (Tex. 1990)). The lease did not contain a provision for automatic renewal if the tenant did not provide notice of termination. The lease therefore ended no later than the date specified in the lease—March 2, 2013. Degrate-Greer testified that she and her family moved out before the last day of the lease, and the trial court found her testimony to be credible.

4. Brand Did Not Prove Damages from Breach of Contract

Brand next contends that Degrate-Greer breached the lease by operating a business on the property, that this breach caused him damage, and that the breach was material. At trial, Brand testified that Degrate-Greer was running a barbershop out of the residence and, at one point, when he was in the rental property, he saw stains on the carpet that he "knew . . . wasn't [sic] going to come out." Degrate-Greer, however, testified that the carpet was not damaged when they moved out. Finally, Brand makes no argument for how the alleged breach, if any, was material, and the trial court was entitled to discredit his

testimony that Degrate-Greer was operating a business on the rental property or that, if she did, it caused him damage.

5. Brand Negated Bad Faith in Withholding $129 of the Deposit

Brand next argues that Degrate-Greer owed him rent because she deducted the cost of repairing a toilet in the unit from her final rent payment when there was no allegation that the leaky toilet affected anyone's health and safety at the property and no allegation that she gave him notice to remedy to the problem before deducting the repair cost from the rent. First, as for the toilet being a health and safety issue, Degrate-Greer testified that the toilet—the only toilet in the residence—was "always stopping up" and "kept not flushing." Second, as to the notice issue, Degrate-Greer testified that Brand refused to fix it after being told of the problem two or three times.

In addition, Degrate-Greer's husband testified that when Brand asked them why they had not paid the full rent for that month, the final month of their lease, they told him about the toilet repair, and Brand expressed no objection to the withholding. When Brand was asked on cross-examination if the first time he objected to the withholding of the rent was in his countersuit, he answered, "I don't recall." The trial court therefore had evidence from which to find that the leaky toilet affected the health and safety of the tenants, evidence that Brand was told of the problem, and evidence that, when the Greer's told him of the withholding of rent for the repairs, Brand did not at that time express an objection to the withholding. *See* Tex. Prop. Code Ann. § 92.006(b)(f) (West 2014 & Supp.

2016) (providing that, notwithstanding the property code sections addressing conditions materially affecting the health or safety of a tenant, a landlord and tenant may agree that the tenant has the duty to pay for the repair of damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the tenant's dwelling, but the landlord still has the duty to repair wastewater stoppages or backups caused by deterioration, breakage, roots, ground conditions, faulty construction, or malfunctioning equipment).

Nevertheless, it was undisputed at trial that prior to paying for the plumbing repairs, Degrate-Greer did not provide prior *written* notice to Brand to repair the toilet in compliance with property code section 92.056(b)(3). *See* Tex. Prop. Code Ann. § 92.056(b)(3) (West Supp. 2016) (providing that before a landlord is liable to a tenant for repairs that the tenant has made, the tenant must have given the landlord written notice to repair or remedy the condition). The lease at issue did not otherwise allow Degrate-Greer to deduct repair costs from the rent without prior written notice. Brand's conclusion that Degrate-Greer did not have the legal right to deduct the cost of the repair from the rent was therefore reasonable. *See id.* § 92.056(e). *Cf. Straus v. Kirby Court Corp.*, 909 S.W.2d 105, 109 (Tex. App.—Houston [14th Dist.] 1995, writ denied) (stating that waiver is an intentional relinquishment of a known right and holding that the landlord's past indulgence in accepting the tenant's rent a few days late did not establish that the landlord had waived its right to terminate the tenant's lease for failure to

timely pay rent). Consequently, he rebutted the presumption of bad faith as to his withholding of $129 of the deposit.

6. Brand Was Not Entitled to Civil Penalty

Finally, Brand argues that he was entitled to keep the deposit and that he rebutted the presumption of bad faith because he was entitled to recover a civil penalty of one month's rent plus $500 from Degrate-Greer under property code section 92.334. *See* Tex. Prop. Code Ann. § 92.334 (West 2014). That section protects landlords from invalid retaliation complaints by tenants under section 92.331 of the property code. *Id.* § 92.331 (West 2014). Under section 92.331, a landlord may not retaliate against a tenant for complaining in good faith to a government entity about a building or housing code violation. *Id.* Under property code section 92.334, however, if a tenant sues for such retaliation, and a government official "visits the premises and determines in writing that a violation of a building or housing code does not exist . . . , there is a rebuttable presumption that the tenant acted in bad faith." *Id.* § 92.334(a). A bad faith filing or prosecution of the suit by the tenant entitles the landlord to recover one month's rent plus $500. *Id.* § 92.334(b).

Brand argues that Degrate-Greer sued him for retaliation based on her reporting of housing code violations, and a city representative found that no violation existed. Thus, Brand argues, he was entitled to recover more than the amount of the security deposit under property code section 92.334, and he therefore acted in good faith in keeping the deposit. This argument puts the cart

before the horse. Brand could not have in good faith kept the deposit under property code section 92.334 because, at the time he failed to return the deposit, Degrate-Greer had not yet sued him for retaliation.

Further, based on the testimony and evidence at trial, the trial court could have concluded that Degrate-Greer acted in good faith in filing the retaliation claim. To show bad faith, Brand relies on Degrate-Greer's allegation that he retaliated against her for reporting the lease of the structure in the backyard. He argues that the evidence shows that a city official investigated and found that the property had been rezoned to allow the second structure to be rented as a residence. This argument is misguided. The record demonstrates that Degrate-Greer based her retaliation allegations on Brand's lack of response to her requesting repairs, her reporting to the city his failure to repair the roof, and her informing him of her intent to move out at the end of the lease term. Brand does not even address these allegations. Accordingly, Brand did not establish at trial that section 92.334 applied and that he was entitled to recover statutory damages from Degrate-Greer.

We sustain Brand's first and second issues as to the retention of $129 of the deposit, and we overrule the remainder of those issues.

C. Breach of the Lease Agreement

In his third issue, Brand asks whether the trial court erred when it awarded Degrate-Greer $1,437 for breach of contract based on his renting the secondary structure on the property to a third party. Brand makes a number of arguments

under this issue; for some he cites no supporting authority, and others are wholly irrelevant to the construction of a lease. We will consider two of these arguments.

1. No Prior Breach by Degrate-Greer

Initially, Brand argues that Degrate-Greer breached the lease first, that he was therefore excused from further performance, and that she therefore cannot maintain a breach of contract claim against him. But Brand makes no argument about how Degrate-Greer committed a *material* breach of the lease. He does not allege any breach that was material other than Degrate-Greer's operation of a business on the premises, and we have rejected his argument on that point. *See Mustang Pipeline Co. v. Driver Pipeline Co.*, 134 S.W.3d 195, 196 (Tex. 2004) (stating that a material breach of a contract excuses the other party's performance). We therefore decline to hold that any breach of the lease by Degrate-Greer excused Brand's performance under the lease.

2. The Evidence Supports the Trial Court's Finding that the Secondary Structure Was Included in the Lease

Second, Brand argues that the lease did not prevent him from renting out the structure in the backyard during Degrate-Greer's tenancy and that there was no other evidence supporting the trial court's finding that the lease to the third party breached the lease with Degrate-Greer.

We apply well-established rules of contract interpretation when construing a lease. *NP Anderson Cotton Exch., L.P. v. Potter*, 230 S.W.3d 457, 463 (Tex.

App.—Fort Worth 2007, no pet.). "[W]hen construing a written contract, our primary concern is to ascertain the true intent of the parties as expressed in the instrument." *Id.* "We may consider the facts and circumstances surrounding a contract, including 'the . . . setting in which the contract was negotiated and other objectively determinable factors that give context to the parties' transaction." *Kachina Pipeline Co., Inc. v. Lillis*, 471 S.W.3d 445, 450 (Tex. 2015) (citation omitted). "If the written instrument is so worded that it can be given a definite or certain legal meaning, then the contract may be construed as a matter of law." *Potter*, 230 S.W.3d at 463. "[A] lease will be most strongly construed against the lessor." *Sirtex Oil Indus., Inc. v. Erigan*, 403 S.W.2d 784, 788 (Tex. 1966).

Here, the trial court found that the property is one parcel of land with two buildings, that Brand never partitioned the property, and that the lease agreement granted to Degrate-Greer possession of both the primary residence and the secondary structure. The trial court concluded that the lease covered the entirety of the land and improvements at 5500 Bong Drive, and that Brand therefore breached the lease when he dispossessed Degrate-Greer of the second structure by renting it to a third party. The trial court further concluded that the breach was material.

The record supports the trial court's findings and conclusions. The lease does not mention the secondary structure or the backyard, either to expressly include them or exclude them. It describes the property to be leased as "the premises located at 5500 Bong Dr.," "together with the . . . furnishings and

appliances" of "3 bedroom/living room/kitchen bathroom/shower." The lease does not say the premises includes *only* three bedrooms, a living room, a kitchen, and a bathroom. The description of the "furnishings and appliances" is handwritten; the evidence at trial was that this description does not include all of the rooms in the house. The lease further states that "[r]ental of the premises also includes central heat & air stove/refrigeration." This is the full extent of the description of the leased property.

The term "premises" is commonly defined as "a building or part of a building with its grounds or other appurtenances," *Gibbs v. ShuttleKing, Inc.*, 162 S.W.3d 603, 613 (Tex. App.—El Paso 2005, pet. denied) (citation and internal quotation marks omitted), or "a tract of land with the buildings thereon." *Spurlock v. Beacon Lloyds Ins. Co.*, 494 S.W.3d 148, 153 (Tex. App.—Eastland 2015, pet. denied) (citation and internal quotation marks omitted). On its face, then, the "premises located at 5500 Bong Dr." includes the house at that address, the grounds, and any appurtenances on the premises that are not otherwise excluded in the lease. It necessarily does not include any building with a separate address.

Degrate-Greer testified that the structure in the backyard did not have a separate address and, at the time the parties signed the lease and moved in, it did not have a separate electricity meter. After Brand rented the separate structure, Degrate-Greer began receiving mail at her house for the other tenant with a separate address (the same street address but with the added description

of “apartment A”). This was the first time she learned that Brand was, at least as of that time, treating the other structure as having a separate address.

Further, Degrate-Greer testified that Brand’s lease of the secondary structure denied her and her family access to the backyard. She stated, “it totally changed everything. [Her] kids were not allowed to play in the backyard anymore . . . [b]ecause [the tenant] had dogs.” The dogs would snap and bite her children’s ankles, and the children were afraid of them.

As previously stated, the term “premises” under its common meaning includes the grounds. The lease does not contain language restricting Degrate-Greer from using the grounds or the secondary structure. Thus, the lease included access to the grounds, including the structure, and Degrate-Greer produced sufficient evidence from which the trial court could find that she was deprived of its use.

At trial, Brand produced some evidence that when he bought the property, it was zoned for single family use and that he subsequently had the property rezoned to multi-family use. The evidence consisted of his own testimony and an excerpt from a report from a City of Fort Worth inspector in which the inspector stated that “per P/D property was rezoned in 2006. The owner bought the property prior to the rezoning date. Will speak with P/D to get email or paper document to attach to case file before closing.” However, the inspector’s report is devoid of any information about whether the structure in the backyard had a

separate address, and the record does not contain any additional documentation attached to the inspector's report or otherwise.

Brand testified that he obtained a legal partition, but from the context of his testimony, it was unclear whether he understood what that term meant, whether the structure had a separate legal address, or whether he meant that he had had the property rezoned. Brand further testified that the structure had a separate mailbox.

As stressed herein, the trial court was entitled to credit Degrate-Greer's testimony and disregard Brand's. *See In re Rhodes*, 293 S.W.3d 342, 344 (Tex. App.—Fort Worth 2009, no pet.) ("As the factfinder, the trial court weighs the evidence and judges a witness's credibility, and the trial court may accept or reject any witness's testimony in whole or in part."). The trial court could have therefore determined from the evidence that the secondary structure did not have a separate address and that the structure was part of "the premises located at 5500 Bong Dr." Accordingly, the trial court could have concluded that Brand breached the lease by renting it to another party. Because Brand does not challenge the existence of or amount of breach of contract damages awarded in his opening brief, we do not consider whether the evidence supported them. S*ee* Tex. R. App. P. 38.3 (stating that the appellant may file a reply brief addressing any matter in the appellee's brief); *In re M.D.H.*, 139 S.W.3d 315, 318 (Tex. App.—Fort Worth 2004, pet. denied) ("A reply brief may not be used to raise new complaints."). We overrule Brand's third issue.

D. Attorney's Fees Award

In Brand's fourth issue, he contends that the trial court erred when it awarded Degrate-Greer attorney's fees in the amount of $13,500. Brand first complains that Degrate-Greer failed to segregate the fees for her breach of contract claim from her property code claims. Although Brand moved for directed verdict on the issue of attorney's fees and objected that Degrate-Greer's attorney had provided "no itemization for [the] hours claimed," he did not object to the attorney's failure to segregate fees. Accordingly, we overrule this part of his fourth issue because this argument has been waived. *See Ihnfeldt v. Reagan*, No. 02-14-00220-CV, 2016 WL 7010922, at *17 (Tex. App.—Fort Worth Dec. 1, 2016, no. pet. h.) ("If no objection is made to the failure to segregate attorney's fees at the time the evidence of attorney's fees is presented or at the time of the charge, the error is waived."); *In re A.M.W.*, 313 S.W.3d 887, 893 (Tex. App.—Dallas 2010, no pet.) ("Generally, the issue [of failure to segregate] is preserved by objection during testimony offered in support of attorney's fees or an objection to the jury question on attorney's fees."); *see also Potter*, 230 S.W.3d at 466 (holding that "by moving for a directed verdict and by objecting to the jury charge based on Potter's failure to segregate her attorneys' fees, NP Anderson alerted the trial court to its complaint" and stating that "at that point, the trial court could have required Potter to offer evidence showing that the fees could not be segregated").

Brand further argues that there was no evidentiary support for the attorney's fees award, other than Degrate-Greer's attorney's testimony. We have reviewed the attorney's testimony. He testified about his experience, his hourly rate, the reasonableness of his fee, the amount of time he spent on the case, and why he had to spend more time on this case than he normally would have spent on a case of this nature. This testimony was sufficient to support the trial court's award of attorney's fees for an ordinary, non-lodestar breach of contract case. *See Ferrant v. Graham Assocs., Inc.*, No. 02-12-00190-CV, 2014 WL 1875825, at *7–10 (Tex. App.—Fort Worth May 8, 2014, no pet.) (mem. op. on reh'g) (stating that the failure of a party to introduce contemporaneous time records into evidence does not make the evidence of attorney's fees legally insufficient in an ordinary, non-lodestar, hourly-fee breach of contract case and holding that the evidence of attorney's fees was sufficient to support the award). Therefore, we overrule Brand's fourth issue.

E. Brand's Claims

In his fifth issue, Brand contends that the trial court erred when it rejected his affirmative claims and requests for sanctions, attorney's fees, and damages in the amount of $2,000.00. In the section of his brief addressing these matters, Brand essentially complains that the trial court credited Degrate-Greer's testimony and did not credit his. We overrule Brand's fifth issue. *See In re Rhodes*, 293 S.W.3d at 344.

F. Brand's Motion for Judgment as a Matter of Law

Brand argues under his sixth issue that the trial court erred by refusing to grant his motion for directed verdict. In his seventh issue, he argues that the trial court erred by denying his motion for new trial. Brand conflates these issues, and the entirety of this section of his brief comprises half a page. To make matters worse, he cites no authority in support of his arguments. We hold that Brand waived these issues by inadequate briefing, and we therefore do not consider them. *See* Tex. R. App. P. 38.1(i) (providing that a brief must contain appropriate citations to authorities); *Fredonia State Bank*, 881 S.W.2d at 284–85.

G. Brand's Request for Findings of Fact and Conclusions of Law

In Brand's eighth issue, he argues that the trial court erred by failing to issue findings of fact and conclusions of law. Because the trial court has now made findings of facts and conclusions of law, we overrule this issue as moot.[4] *See Zwick v. Zwick*, No. 2-08-182-CV, 2009 WL 1564928, at *2 (Tex. App.—Fort

[4]After the trial court made its findings and conclusions, Brand filed in this court a "Motion to Strike Supplemental Findings and Reverse the Trial Court's Judgements Consistent with Appellant's Arguments, and in the Alternative, Leave to Requests Additional Findings by the Court and Supplemental Briefing." In his motion, Brand asked this court to strike the trial courts findings and conclusions on the bases that the trial court had adopted Degrate-Greer's proposed findings and conclusions and that she had not sought permission from this court to submit proposed findings and conclusions to the trial court. He asked this court to strike the trial court's findings and conclusions, and, in the alternative, grant him leave to request additional findings by the trial court and to file supplement briefing "regarding the same." Brand did not specify what additional findings and conclusions he wanted the trial court to make and did not explain to this court why additional briefing was needed. We denied the motion.

Worth June 4, 2009, no pet.) (mem. op.) (holding that trial court's entry of findings of fact and conclusions of law following abatement mooted complaint that such findings and conclusions had not been made).

III. Conclusion

We sustained Brand's first issue as to his failure to return $129 of the $400 security deposit based on Degrate-Greer's withholding of rent. Therefore, we modify the trial court's judgment to award Degrate-Greer $271 for the return of her security deposit and to award $913 for Brand's bad-faith failure to return the deposit. *See* Tex. Prop. Code Ann. § 92.109(a). We leave unchanged the remainder of the trial court's judgment awarding breach of contract damages and attorney's fees. Having overruled Brand's remaining issues, we affirm the remainder of the trial court's judgment.

/s/ Mark T. Pittman
MARK T. PITTMAN
JUSTICE

PANEL: GABRIEL, SUDDERTH, and PITTMAN, JJ.

DELIVERED: May 4, 2017