



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-14-00137-CV
No. 07-14-00147-CV

COLLEGE STATION TERRACE PINES APARTMENTS, APPELLANT

V.

DANNY LAIRD, APPELLEE

On Appeal from the County Court at Law No. 1
Brazos County, Texas
Trial Court No. 4995-B and 4999-B; Honorable Amanda Matzke, Presiding

February 9, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

In a forcible entry and detainer proceeding, the justice court awarded Appellant, College Station Terrace Pines Apartments (Terrace Pines), possession of an apartment being occupied by Appellee, Danny Laird. Laird appealed that proceeding to the county court at law where, following a *de novo* bench trial, the trial court awarded Laird possession of the premises, damages, and attorney's fees based on a theory of

wrongful eviction and retaliation by a landlord. Terrace Pines appeals that judgment¹ contending the trial court erred because Laird's complaints came after Terrace Pines's notice to vacate and because Laird admitted that he failed to pay rent as required by his lease agreement. We modify the judgment in cause number 4995-B and affirm that judgment as modified, and we affirm the judgment in cause number 4999-B.

BACKGROUND

Laird resided in the apartment complex operated by Terrace Pines for over seven years with the assistance of a Housing Voucher from the Department of Housing and Urban Development (HUD). The *Apartment Lease Contract* between Terrace Pines and Laird, applicable at the time of this dispute, provides for a one-year term, ending May 31, 2013. The contract also calls for the payment of rent in the amount of \$530. Pursuant to a separate agreement between Terrace Pines and the Brazos Valley Council of Governments (BVCOG), Laird paid \$259 per month, while BVCOG paid the remaining portion of the \$530 per month rent. An addendum to the apartment lease, entitled *Lease Contract Addendum for Units Participating in Government Regulated Affordable Housing*, provides "a property owner may not evict a resident or terminate a tenancy except for good cause." The addendum further provides that a "property owner must provide a resident with at least 30 days written notice before either seeking an eviction or not renewing a Lease Contract" and that if challenged by a resident, a "court

¹ A separate judgment was entered in both cause numbers 4995-B and 4999-B. The judgments are identical in all respects other than the description of the underlying justice court proceeding. A review of the record indicates that the trial court found in favor of Laird in each case, denied the eviction relief sought by Terrace Pines, awarded a total of \$2,500 in attorney's fees (split equally between each judgment), and a civil penalty in the amount of "one month's rent, plus \$500" (which was repeated in each judgment).

may determine if a property owner has good cause to evict, terminate a tenancy or not renew the Lease Contract.”

Laird was not the only resident at Terrace Pines receiving government assistance, as many other tenants also received HUD subsidies. At some point during the term of his lease, Laird began to believe new management at Terrace Pines was responsible for a decline in the maintenance of the apartments. Laird openly complained about the condition of the apartments to Terrace Pines, other residents, and eventually BVCOG. On March 29, 2013, BVCOG notified Terrace Pines that Laird’s rental unit did not meet the HUD Housing Quality Standards because his bathroom toilet “runs continuously.” The notice went on to advise Terrace Pines that if the deficiency was not corrected “BVCOG housing assistance payments will be abated for the owner and/or assistance will be terminated for the tenant.”

During this period, BVCOG advised Laird that it would not renew his housing voucher because (1) he had failed to execute a renewal of his lease and (2) there was still a non-working toilet at the premises. BVCOG later dropped the non-compliant property condition issue and notified Laird that it would reinstate his voucher as soon as he executed a new lease.

On May 6, 2013, Laird received notice that his lease would not be renewed and that Terrace Pines requested possession of the property on July 6, 2013. By letters dated May 10 and May 17, Laird sent letters to Terrace Pines and BVCOG complaining about ongoing issues with respect to maintenance and management of the apartments. On May 15, 2013, Terrace Pines provided Laird a written *Notice of Lease Violation*

alleging that the terms of his lease had been violated on May 8, 2013, when he “behave[d] in a loud, threatening & hostile manner towards management. Disrupting the residents [sic] comfort with your loud behavior. Disrupting our business operations regarding completing work orders, requested by the housing authority, due to not allowing access to your apartment.” The notice advised Laird to “[t]ake the action necessary to correct the foregoing problem immediately.”

When Laird did not execute a new lease, BVCOG ceased supplementing his rent. Despite the fact that BVCOG did not renew his housing voucher, Laird continued to try to pay his portion of the rent. Terrace Pines refused to accept a partial payment of the rent, and on July 11, 2013, it initiated eviction proceedings in the justice court cause number 3013-40157E. On July 31, 2013, a hearing was held and the justice court awarded Terrace Pines possession of the property, costs, and damages. A week later Laird filed his *Notice of Appeal*. The *de novo* appeal was docketed as cause number 4995-B, in the County Court at Law No. One of Brazos County.

While that appeal was pending, Laird continued to pay his portion of the rent into the registry of the justice court. On September 13, 2013, Terrace Pines posted a *Notice to Vacate for Non-Payment of Rent*, demanding possession of the premises on or before midnight the 16th day of September, 2013. When Laird refused to vacate, a second eviction proceeding was filed in the justice court, this time in cause number 3013-40222L. On October 9, 2013, a judgment was entered in this new cause, again awarding Terrace Pines possession of the property, costs, and damages. A second *Notice of Appeal* was filed and the new *de novo* appeal was docketed as cause number 4999-B, in the County Court at Law No. One of Brazos County.

On appeal, the two eviction proceedings were consolidated for purposes of a single *de novo* bench trial. On November 1, 2013, Laird filed his *First Amended Original Answer*, setting forth a general denial and raising the affirmative defense of retaliation based upon the provisions of section 92.331 of the Texas Property Code. See TEX. PROP. CODE ANN. § 92.331 (West 2014).² Laird also sought recovery of court costs, attorney's fees and a civil penalty provided by section 92.333. See TEX. PROP. CODE ANN. § 92.333 (West 2014).³ On December 13, 2013, a hearing was held and on December 30, 2013, the court entered separate judgments finding Laird was not given

² Section 92.331 **Retaliation by Landlord**

- (a) A landlord may not retaliate against a tenant by [filing an eviction proceeding] because the tenant:
 - (1) in good faith exercises or attempts to exercise against a landlord a right or remedy granted to a tenant by lease, municipal ordinance, or federal or state statute;
 - (2) gives a landlord a notice to repair or exercise a remedy under [Chapter 92 of the Texas Property Code - Residential Tenancies];
 - (3) complains to a governmental entity responsible for enforcing building or housing codes, a public utility, or a civic or nonprofit agency, and the tenant:
 - (A) claims a building or housing code violation or utility problem; and
 - (B) believes in good faith that the complaint is valid and that the violation or problem occurred; or,
 - (4) establishes, attempts to establish, or participates in a tenant organization.
- (b) A landlord may not, within six months after the date of the tenant's action under Subsection (a), retaliate against the tenant by:
 - (1) filing an eviction proceeding, except for grounds stated by Section 92.332;
 - (2) depriving the tenant of the use of the premises, except for reasons provided by law;
 - (3) decreasing services to the tenant;
 - (4) increasing the tenant's rent or terminating the tenant's lease; or
 - (5) engaging, in bad faith, in a course of conduct that materially interferes with the tenant's rights under the tenant's lease.

³ Section 92.333 **Tenant Remedies**

In addition to other remedies provided by law, if a landlord retaliates against a tenant under [Subchapter B of Chapter 92 of the Texas Property Code – Retaliation], the tenant may recover from the landlord a civil penalty of one month's rent plus \$500, actual damages, court costs, and reasonable attorney's fees in an action for recovery of property damages, moving costs, actual expenses, civil penalties, or declaratory relief or injunctive relief, less any delinquent rents or other sums for which the tenant is liable to the landlord. If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the dwelling plus \$500.

proper notice to vacate and that good cause did not exist for the nonrenewal of his lease. Consequently, the court found that there was not good cause for the eviction and that Laird had been subject to retaliation. The court then found Laird was entitled to have his lease renewed and, pursuant to section 92.333 of the Texas Property Code, it awarded Laird possession of the premises, a civil penalty in the amount of \$1,030 (the fair market value of one month's rent of \$530, plus \$500), court costs, and attorney's fees of \$2,500 (divided equally between the two separate cause numbers). Because the judgments purport to award a double-recovery of the civil penalty contrary to the pronouncement of the court, we construe the civil penalty provision in cause number 4995-B as having been incorporated into the judgment entered in cause no. 4999-B and we modify the judgment in cause number 4995-B to delete the civil penalty of \$1,030.

ANALYSIS

Terrace Pines contends the judgments of the trial court should be reversed because Laird failed to show either a lack of good cause to evict or that he was retaliated against. In approaching an analysis of the propriety of the trial court's judgment, we must keep in mind the nature of the relief granted and the associated burden of proof. In general, Terrace Pines's single issue can be broken down into two separate components: (1) did the trial court err in determining Laird was entitled to possession of the property, and (2) did the trial court err in awarding Laird monetary relief?

As to the first component, because it was seeking to dispossess Laird from the property, it was Terrace Pines's burden to establish its entitlement to possession (not Laird's burden to show a lack of good cause to evict). In this regard, Terrace Pines

contends that it is entitled to possession because Laird admits that he did not pay or tender the full amount of the rent due.

As to the second component, it was Laird's burden to establish a statutory violation entitling him to recover damages for retaliation. Here, Terrace Pines contends there was no evidence establishing a statutory retaliation cause of action because its notice to vacate predates any of Laird's complaints. We will address these questions separately.

RIGHT TO POSSESSION

Because the lease in question expired by its own terms on May 31, 2013, in order to address the question of whether Terrace Pines was entitled to possession of the leased premises we must first determine whether Laird had an automatic right to renew his lease. Because Laird received a HUD subsidy, his lease was required to include the *Lease Contract Addendum*, which specifically provides a "property owner may not evict a resident *or refuse to renew a Lease Contract except for good cause.*" (emphasis added). Although Terrace Pines indicated that it thought Laird had breached his lease prior to May 31, 2013, that fact was not established to the satisfaction of the trier of fact. In fact, Terrace Pines even implicitly recognized that the lease extended beyond May 31 when it provided notice that the lease would terminate July 6, 2013, and again when it provided a second notice of eviction on September 13, 2013. Therefore, we find the terms of the lease agreement extended beyond May 31, 2013, on a month-to-month hold-over basis.

Terrace Pines next argues that it is entitled to possession of the premises because Laird breached the terms of his lease agreement by failing to pay the rent due. Specifically, it contends that Laird never offered to pay the full amount of the rent due for the months of July, August, September, and October. Resultantly, Terrace Pines argues that good cause existed to terminate Laird's lease. *See, e.g. Ex parte Hous. Auth. of Birmingham Dist.*, 788 So.2d 894, 897-98 (Ala. 2000). *See also Duran v. Hous. Auth. of Denver*, 761 P.2d 180, 186 (Colo. 1988) (housing authority had no obligation to accept a conditional tender of rent). Assuming, *arguendo*, that this argument is true, Terrace Pines fails to consider Laird's affirmative defense and excuse for non-payment, to-wit: his alleged wrongful eviction and retaliation claims. In light of our discussion concerning those issues herein below, we fail to see how the trial court could have abused its discretion in denying Terrace Pines's claim for entitlement to possession of the premises.

WRONGFUL EVICTION AND RETALIATION

Terrace Pines contends that its conduct in seeking to evict Laird did not constitute retaliation "as a matter of law" because "Laird didn't complain about Terrace Pines until after it had told him it wouldn't renew his lease" Accordingly, Terrace Pines contends there is "no evidence" that Laird ever gave it a "notice to repair that would be protected by the Property Code."

In reviewing a legal sufficiency issue, we may sustain the challenge only when (a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla of

evidence, or (d) the evidence conclusively establishes the opposite of the vital fact in question. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003), *cert. denied*, 541 U.S. 1030, 124 S. Ct. 2097, 158 L. Ed. 2d 711 (2004). In determining whether there is legally sufficient evidence to support the finding under review, a reviewing court must view the evidence in a light most favorable to the judgment, indulging every reasonable inference that supports it, but the court may not disregard evidence that allows only one inference. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). The final test for legal sufficiency must always be whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review. *Id.* at 827.

Here, evidence was presented that there were several areas where Laird believed Terrace Pines was deficient in maintaining the apartment complex, including the swimming pool, light poles, gates, and his toilet, and that he made those deficiencies known to the apartment managers prior to any notice of eviction. Laird further testified that when he was unable to get any response from the apartment managers, he contacted BVCOG. On March 29, 2013, based on an inspection of the property, BVCOG gave Terrace Pines notice that Laird's apartment did not meet HUD Housing Quality Standards and a re-inspection of the property was scheduled for April 17, 2013. When the apartment again did not meet inspection standards, on April 19, 2013, BVCOG notified Terrace Pines that its subsidies would not continue until the deficiencies were corrected and the unit passed an inspection. Again on April 30, 2013, Terrace Pines was given notice that Laird's apartment did not meet government standards. Terrace Pines's May 6, 2013 notice of lease termination was not provided

until well after it was aware of Laird's attempt to exercise a right or remedy granted by his lease agreement. Furthermore, Terrace Pines completely ignores the fact that the operative notice to vacate (the subject of the second eviction proceeding) was given on September 13, 2013, almost four months after Laird sent Terrace Pines notice of maintenance deficiencies and almost five months after Laird had complained to BVCOG.

Based on this record, we are convinced that a reasonable and fair-minded finder of fact could determine that Terrace Pines did retaliate against Laird by filing the eviction proceedings at issue. Based on that finding, the trial court did not err by awarding a civil penalty equal to one month's rent plus \$500, court costs, and reasonable attorney's fees. Because we find that the trial court did not err in determining Laird was entitled to possession of the property and by awarding Laird monetary relief, we overrule Terrace Pines's single issue.

CONCLUSION

The judgment of the trial court in cause number 4995-B is modified to delete the civil penalty of \$1,030, and is affirmed as modified. The judgment in cause number 4999-B is affirmed.

Patrick A. Pirtle
Justice