UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0827, 0828

September Term, 2016

CECIL TURNER

v.

HAVRE DE GRACE ASSOCIATES T/A
GRAW APARTMENTS

Eyler, Deborah S.,
Nazarian,
Friedman,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: May 18, 2017

In the District Court of Maryland, sitting in Harford County, The Graw Apartments, the appellee ("The Graw"), filed separate complaints against Cecil Turner, the appellant, for breach of lease and tenant holding over.[1] After Turner demanded a jury trial in both cases, they were transferred to the Circuit Court for Harford County. In each case the circuit court entered an order striking Turner's jury trial demand. Turner noted an appeal from that order in each case. The appeals have been consolidated in this Court.

Turner asks whether the circuit court erred as a matter of law in striking his jury trial demands.[2] We answer that question in the affirmative and shall reverse the judgments.

[1] The Graw also filed a complaint against Turner for failure to pay rent, but that action was voluntarily dismissed.

[2] Turner framed his questions presented as follows:

1. Did the Circuit Court err in holding that the value of Mr. Turner's right to possess his unit is less than the jurisdictional amount of $15,000, when Mr. Turner's tenancy is federally subsidized and carries a material breach and/or good cause requirement for eviction?
2. Did the Circuit Court err in striking the jury trial demand when it was not a legal certainty that the amount in controversy was less than $15,000?

In the breach of lease case, Turner also asked:

3. Did the Circuit Court abuse its discretion in remanding this action to the District Court before 30 days had expired [the time period in which the circuit court had discretion to revisit the judgment]?

(Continued…)

FACTS AND PROCEEDINGS

The Graw is a federally-subsidized, project-based Section 8 multi-housing facility located at 100 Revolution Street, in Havre de Grace. In May of 2013, Turner signed a "Model Lease for Subsidized Programs"—a standard-form lease issued by the United States Department of Housing and Urban Development ("HUD")—with The Graw ("the Lease") to rent unit 301.[3]

The Lease provides for an initial one-year term to begin in July of 2013 with automatic renewal each year thereafter, as follows:

> The initial term of this Agreement shall begin on 7/1/2013 and end on 6/30/2014. After the initial term ends, the Agreement will continue for successive terms of one YEAR each unless automatically terminated as permitted by paragraph 23 of this Agreement.

(Emphasis in original.) Paragraph 23, subsection (c) of the Lease, titled "Termination of Tenancy," lists ten grounds on which The Graw may terminate the Lease, including for "the Tenant's material noncompliance with the terms of this Agreement" and for "other good cause[.]" Paragraph 23, subsection (b) provides that "[a]ny termination of this

(…continued)
We do not reach the third question because our reversal of the circuit court's orders striking Turner's jury trial demands renders it moot.

[3] The Lease lists the unit as number 301. All other documents in the record identify the unit as number 310, however. There is no explanation for this discrepancy in the record.

Agreement by [The Graw] must be carried out in accordance with HUD regulations, state and local law, and the terms of this Agreement."

Turner moved into his unit in July 2013, and the Lease renewed on July 1, 2014. In August of that year, Turner signed a "Policy on Bed Bug Treatment and Re-infestations" ("bed bug policy") provided by The Graw. The bed bug policy states that a tenant's "[f]ailure to report bed bugs promptly or to cooperate in their treatment" will be "considered a breach of the lease agreement and is cause for lease termination." On July 1, 2015, the Lease renewed again.

Four months later, on November 5, 2015, Turner received a letter from Cynthia Spencer, The Graw's operations manager, alleging that he had violated the bed bug policy and stating that The Graw was terminating the Lease as of December 31, 2015.[4] The letter stated as grounds for termination that Turner was in "material noncompliance" with the terms of the Lease because he had failed to report a bed bug infestation in his unit to the property manager and had further failed "to properly prepare the premises for treatment" of the infestation on five separate occasions.

On November 24, 2015, Ko Alexander, a paralegal with the Legal Aid Bureau ("LAB"), sent a notice of representation by the LAB to Spencer on Turner's behalf and requested a "grievance hearing" with The Graw regarding Turner's alleged violations of

[4] The letter actually stated, incorrectly, that the Lease had continued on a "month-to-month" basis after the initial term expired on June 30, 2014, and, therefore, The Graw was not "renewing" the Lease "as of Thursday, December 31, 2015."

the Lease. On December 15, 2015, a hearing was held via telephone conference between Turner; Alexander; Spencer; Jacqualynn Page, The Graw's property manager; and Alan Schwartz, an attorney representing The Graw ("the December 15 hearing"). The substance and outcome of the December 15 hearing is in dispute. Three days later, on December 18, 2015, Spencer sent Turner another letter without copying it to Alexander or the LAB. That letter purported to memorialize a verbal agreement reached by the parties at the December 15 hearing, in which Turner allegedly promised to "fully vacate the premises on or before January 31, 2016[.]" The letter informed Turner that if he signed it and returned it to The Graw's office on or before December 28, 2015, The Graw would not pursue an eviction action against him on January 1, 2016. Turner signed the letter on December 28, 2015. He did not vacate his unit on January 31, 2016, however.

On March 4, 2016, The Graw filed two cases against Turner in the District Court of Maryland, sitting in Harford County, one for breach of lease and one for tenant holding over. In its complaint for breach of lease, The Graw alleged that Turner had violated the bed bug policy and other provisions of the Lease "regarding maintenance of the unit by the tenant[,]" and that those violations warranted termination and repossession of the premises under paragraph 23(c)(1) of the Lease. It alleged in the alternative that Turner had breached the agreement to vacate memorialized in the December 18, 2015 letter by failing to vacate the unit on January 31, 2016. In its complaint for tenant holding over, which was filed on a standard form issued by the District Court, The Graw alleged that Turner "occupied the premises as periodic Tenant or unlawfully [was

holding] the premises after the expiration of the lease" and was "refus[ing] to vacate the premises and to deliver possession of the premises" to The Graw.

On March 18, 2016, Turner filed a timely Demand for a Jury Trial in both cases pursuant to Md. Code (1974, 2015 Repl. Vol.), section 8-601 of the Real Property Article ("RP"), and Md. Code, (1974, 2013 Repl. Vol.), section 4-402(e) of the Courts and Judicial Proceedings Article ("CJP").[5] Thereafter, both cases were transferred to the Circuit Court for Harford County.[6]

On April 8, 2016, The Graw filed a Motion to Strike Turner's jury trial demand in both cases, alleging that the amount in controversy did not exceed $15,000, as required by CJP section 4-401(e). Specifically, The Graw alleged that Turner had signed an agreement to vacate the unit by January 31, 2016, which extinguished his right to occupy the premises beyond that date; that Turner's agreement to vacate constituted "consent to the termination of his tenancy" before the filing of the complaints; and therefore, there was no longer *any* amount in controversy. In the alternative, The Graw alleged that it had the right to terminate the Lease at the end of each term for any of the reasons expressly provided for in the Lease. Thus, the amount in controversy was at most the four months

[5] On March 22, 2016, Turner filed an Amended Demand for a Jury Trial in the tenant holding over action after discovering he had filed the original jury trial demand under the wrong case number. This amended jury trial demand still was timely.

[6] Specifically, the Breach of Lease action was transferred to the circuit court on March 23, 2016; the Tenant Holding Over action followed on March 28, 2016.

remaining on the Lease before the expiration of the current term on June 30, 2016, and that amount was less than $15,000.

On April 21, 2016, Turner filed oppositions to both Motions to Strike. He asserted that he "never agreed to voluntarily relinquish his right to possession"; that the December 18, 2015 letter merely was a "proposed agreement" on which The Graw had wrongfully "procured [his] signature" by "bypassing" his legal counsel; and that the "agreement" did not represent a "meeting of the minds[.]" Turner stated that the Lease was an "indefinite lease that [could] only be set aside for . . . material breach or other good cause":

> [T]he lease between these parties began on July 1, 2013 and ended on June 30, 2014 and is renewed in successive one YEAR increments. Further . . . this tenancy involves a subsidized rental unit and as such, [The Graw] cannot terminate the lease or fail to renew the lease unless a material violation or good cause is established in a breach of lease action.

Turner asserted that The Graw had not yet established before the court a valid basis to terminate the Lease, and the value of his tenancy "easily exceed[ed]" $15,000 when properly measured by his remaining "lifetime[.]"

Meanwhile, on April 21 and 22, 2016, Turner also filed Motions to Dismiss the tenant holding over and breach of lease actions, respectively. The Graw filed oppositions to both motions on May 6, 2016.

In an order entered on June 6, 2016, the circuit court granted The Graw's Motion to Strike Turner's jury trial demand in the breach of lease action and remanded the case to the District Court. That same day, the circuit court entered another order denying Turner's Motion to Dismiss the breach of lease complaint, on the ground that the circuit

court no longer had jurisdiction over the matter by virtue of the June 6, 2016 order striking Turner's jury trial demand and remanding the case to the District Court. On June 7, 2016, the circuit court entered identical orders in the tenant holding over action.[7] Both cases were transferred back to the District Court.[8] On June 29, 2016, Turner noted these timely appeals.

Additional facts will be included as necessary throughout the discussion.

DISCUSSION

Turner contends the circuit court erred by striking his demand for a jury trial in both cases. He maintains that breach of lease and tenant holding over actions are proceedings under Title 8 of the Real Property Article, for which there is a right to a jury trial under RP section 8-601 when the amount in controversy exceeds the $15,000 jurisdictional threshold under CJP section 4-402(e). Relying primarily on this Court's decision in *Kirk v. Hilltop Apartments, LP*, 225 Md. App. 34 (2015), he argues that, in landlord-tenant actions involving project-based federally subsidized housing, the tenant has an indefinite right to possession of the unit; the value of that right is the correct measure of the amount in controversy; the value of the tenant's indefinite right to possession is determined by the fair market rent of the unit over the tenant's remaining

[7] The June 6 and 7, 2016 orders were entered by the circuit court without holding hearings, as neither party requested a hearing.

[8] Specifically, the breach of lease case was transferred to the District Court on June 6, 2016; the tenant holding over case was transferred on June 10, 2016.

lifespan; and, in this case, that amount readily surpasses $15,000. The existence and enforceability of the alleged agreement to vacate in the December 18, 2015 letter are matters "to be determined at trial" and therefore that alleged agreement is "not relevant to [Turner's] claim that the value of his right to continued occupancy of the premises exceeds $15,000."

The Graw counters that the signed December 18, 2015 letter, which it maintains was an agreement between the parties that Turner would vacate the unit on January 31, 2016, distinguishes this case from *Kirk*. It argues that, unlike the tenant in *Kirk*, Turner had agreed to vacate the premises before the complaints were filed, and therefore the amounts in controversy when the actions were commenced were zero. It further argues, apparently in the alternative, that under *Carroll v. Housing Opportunities Commission*, 306 Md. 515 (1986), the amount in controversy in each case is limited to the value of the Lease up to the point in the lease term that the landlord is given the opportunity, at a hearing, to show that there was a basis for eviction under Paragraph 23(c); and in this situation that would be the rental value from December 2015 to the dates of the District Court trials, which is well below $15,000.

Whether there is a right to a jury trial is a question of law that we consider *de novo*. *Davis v. Slater*, 383 Md. 599, 604 (2004). We agree with Turner that *Kirk* controls this case and, under the *Kirk* holding, the amounts in controversy in both the breach of lease and tenant holding over actions exceeded the jurisdictional threshold for a jury trial.

Under RP section 8-601, "[a]ny party to an action brought in the District Court under [RP Title 8] in which the amount in controversy meets the requirements for a trial by jury may . . . demand a trial by jury." And under CJP section 4-402(e), a party may demand a jury trial in a civil action in which the amount in controversy exceeds $15,000. In a landlord-tenant action, the amount in controversy is met "where 'either' the claim for 'money damages' or 'the value of the right to possession' of the leased premises is over $15,000." *Kirk*, 225 Md. App. at 36 (quoting *Bringe v. Collins*, 274 Md. 338, 347 (1975)). "[A] claim that the amount in controversy exceeds [the jurisdictional limit] establishes the claimant's right to a jury trial unless it clearly appears that the claim is actually for less than that amount." *Carroll*, 306 Md. at 522.

In *Kirk*, we held that in a landlord-tenant action based on a lease of a unit in a "federally subsidized 'project based'" housing development, 225 Md. App. at 37, the value of the tenant's right to possession is "determined by multiplying the annual fair market rental payment by [the tenant's] remaining estimated life expectancy[.]" *Id.* at 48. In that case, Kirk signed a HUD-issued "'Model Lease for Subsidized Programs[,]'" form number "HUD-90015-a-12/2007[,]" with Hilltop Apartments, a project-based Section 8 housing development in District Heights. *Id.* at 37 n.2. Paragraph 2 of the lease provided:

> The initial term of this Agreement shall begin on January 1, 2012 and end on December 31, 2012. After the initial term ends, the Agreement will continue for successive terms of one year each unless automatically terminated as permitted by paragraph 23 of this Agreement.

Id. at 45. Paragraph 23 of the lease, titled "'Termination of Tenancy[,]'" stated that '[a]ny termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement.'" *Id.* at 45. Paragraph 23 also "listed ten specific reasons for which the lease could be terminated, including the tenant's 'material noncompliance with the terms' of the lease agreement" and "other good cause." *Id.* at 45–46.

Hilltop later sent Kirk a letter notifying her that it was terminating the lease before the expiration of the current term on the ground that she had "'materially breached'" the lease. *Id*. at 39. After Kirk refused to vacate her unit, Hilltop filed a breach of lease action in the District Court of Maryland, sitting in Prince George's County. Kirk filed a demand for a jury trial, and the case was transferred to the Circuit Court for Prince George's County. After the circuit court struck Kirk's jury trial demand on the ground that the amount in controversy did not exceed $15,000, she appealed to this Court.

We concluded that because Kirk's lease, by its terms, "had no expiration date, but instead, would automatically renew for 'successive one year terms,' unless good cause for ending the lease could be shown[,]" Kirk had "what amounted to a continuing right to possession of the premises for an indefinite period of time." *Id.* at 46. Accordingly, the value of Kirk's "continuing right to possession"—her monthly fair market rent of $1,412 multiplied by her remaining lifespan—far exceeded $15,000. We distinguished Kirk's lease from the one at issue in *Carter v. Maryland Management Co.*, 377 Md. 596 (2003), where the Court of Appeals had rejected the concept of an "'indefinite tenancy'" for

tenants receiving federal subsidies through tenant-based voucher programs, as opposed to project-based housing programs:

> [I]n *Carter*, the Court of Appeals relied upon changes to the subsidized housing regulations that were enacted in the late 1990s and concluded that, while the federal regulations 'continue to require an initial lease of one year . . . , *gone are the provisions requiring automatic renewal*.' 377 Md. at 612 (emphasis added). That observation, while perhaps applicable to the *tenant-based voucher* program at issue in *Carter*, is not relevant to the *project-based* housing program here, as Kirk's lease—on a standard form issued by HUD four years after *Carter* was decided—does, in fact, expressly provide for automatic renewal of the lease term.

Id. at 46 (emphasis in original).

We return to the case at bar. The Lease here is identical to the lease in the *Kirk* case. Both consist of HUD's "Model Lease for Subsidized Programs," form number "HUD-90015-a-12/2007" that includes the provision for "successive" yearly terms that renew automatically unless terminated for "good cause." The Graw, like Hilltop, is a Section 8 *project-based* housing program. Accordingly, absent proof of a material violation of the Lease or other good cause to terminate it, the value of Turner's indefinite right to possession is calculated by multiplying his monthly fair market rent by his remaining life expectancy. It is undisputed that the fair market value of Turner's unit multiplied by his remaining life expectancy exceeds $15,000.

Contrary to The Graw's argument, whether Turner did in fact agree in writing to vacate the unit by January 31, 2016, does not affect the amount in controversy. The validity and enforceability of the December 18, 2015 letter is in dispute, as was made clear in Turner's opposition and, therefore, is an issue for the trier of fact. It is irrelevant

to the question whether the amount in controversy satisfies the jurisdictional limit. That question asks what value to either party is at stake in the case; in short, what Turner stands to win if he prevails. And the answer to that is Turner stands to win (actually, to keep) the full value of his indefinite Lease which far exceeds $15,000.

The same reasoning applies to The Graw's argument that, under *Carroll*, the amount in controversy is the fair market rent for Turner's unit from December 2015 until the trial date in each District Court case. Whether Turner materially breached the Lease is in dispute. In *Carroll*, the Court of Appeals explained that a tenant of a "federally funded public housing complex[,]" *id.* at 517, "has a right to remain in [the rented premises] indefinitely until the [landlord] can establish good cause for eviction." *Id.* at 525. The Court held, however that the amount in controversy in a tenant holding over action involving federally subsidized housing is computed by multiplying "the fair market rent for comparable housing in the area" by "the tenant's remaining lifespan, or at least over a period of years." *Id.* at 525, 527. Thus, even if the landlord eventually is able to prove a valid basis for terminating the tenancy, the amount in controversy at the outset of the litigation is the fair market value multiplied by the tenant's remaining lifespan.

The circuit court erred as a matter of law in striking Turner's jury trial demands in both cases.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY REVERSED. CASES REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE APPELLEE.