Circuit Court for Montgomery County
Case No. 459397V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1372

September Term, 2021

GREGORY BENNETT, ET AL

v.

DONALDSON GROUP LLC, ET AL

Shaw,
Ripken,
Harrell, Jr., Glenn T.
(Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: July 28, 2022

This is an appeal from a judgment entered by the Circuit Court for Montgomery County. Appellants, Gregory Bennett, et al, were residents at an apartment complex known as The Enclave, in Silver Spring, and sued Appellees, Enclave Holdings, LLC, et al, the owners, for breach of contract, breach of implied warranty of habitability, and violating the Maryland Consumer Protection Act. Eleven months after initiating the lawsuit, the residents filed a motion requesting class certification. Following a hearing, the court issued a memorandum opinion denying class certification because the residents had not demonstrated predominance, and alternatively, because the motion was untimely.

Separate trials were then scheduled for each of the named plaintiffs. During Mr. Bennett's trial, the court granted a motion in limine and excluded an expert witness who would have testified about the value of his uninhabitable apartment. Ultimately, the jury returned a verdict on the issue of breach of implied warranty of habitability in Mr. Bennett's favor. He was awarded damages from his September 2017 lease in the amount of $1,200 and $800 from his September 2018 lease. Mr. Bennett filed a motion to amend the damages award, which was denied by the court. He noted this timely appeal.

Mr. Bennett presents the following questions, which we have reordered:

1. Whether the trial court erred in conducting an improper merits inquiry into Mr. Bennett's claim in concluding that Mr. Bennett had not satisfied Maryland Rule 2-231(c)(3).
2. Whether the trial court erred in finding Mr. Bennett's motion for class certification was untimely despite being filed by the ordered deadline.
3. Whether the trial court erred in failing to consider Mr. Bennett's motion for an issue class.
4. Whether the trial court erred in excluding Mr. Bennett's expert on damages.
5. Whether the trial court erred in failing to amend the judgment to award Mr. Bennett past rent paid for [an] uninhabitable apartment.

For reasons discussed below, we affirm the judgment of the circuit court.

BACKGROUND

In 2016, Appellees purchased The Enclave, a residential complex in Silver Spring, Maryland, which has approximately 1,100 individual apartments. Sometime thereafter, Appellees failed to perform proper maintenance, including servicing the climate control convectors in each apartment and the central chiller. As a result, The Enclave developed a systemic mold problem. Mr. Bennett resided at The Enclave from July 2016 to November 2018. He signed three separate leases: 1) July 2016 with a prior owner of The Enclave; 2) September 2017 with Appellees; and 3) September 2018 with Appellees. Shortly, after signing his second lease, he noticed mold and moved out.[1]

On December 4, 2018, Mr. Bennett and Ms. Ignacia Joyner, on behalf of other residents, sued the Donaldson Group, LLC and the Donaldson Group Capital Partners, LLC, alleging breach of contract, breach of implied warranty of habitability, and a violation of the Maryland Consumer Protection Act ("MCPA") because the apartments were unsafe and uninhabitable due to heating ventilation and air conditioning unit defects which caused the accumulation of mold throughout the complex. On March 4, 2019, the residents filed an Amended Class Action Complaint, removing the Donaldson Group Capital Partners, LLC as a defendant and adding Enclave Holdings, LLC, Nonconnah Holdings, LLC,

[1] Mr. Bennett signed a third lease despite knowing about the mold issue. He stated that he "just didn't have time and it was just convenient and [he] did like [his] apartment as far as the way [he] had it decorated." He "decided [he'd] try to stay because [he] was still hopeful that the apartment complex" would remediate the issue.

Hampshire Properties, LLC, BVF-II Enclave, LLC, AMAC II Oaks PS, LLC, and Realty Management Services, Inc. as defendants. On October 22, 2019, the residents filed a Second Amended Class Action Complaint, adding Veronica and Richard Terry and other residents as plaintiffs, and removing BVF-II Enclave, LLC and AMAC II Oaks PS, LLC as defendants. On November 21, 2019, the residents filed their Third Amended Class Action Complaint, alleging breach of contract, breach of implied warranty of habitability, and a violation of the MCPA. They also filed a Motion for Class Certification.

The circuit court held a hearing on the motion on January 10, 2020 and on January 21, 2020, the court issued its Memorandum Opinion and Order. The court denied the motion, finding that the residents had not demonstrated predominance and, alternatively, that the motion was untimely. The residents filed a motion for reconsideration, which was denied. On January 28, 2020, Appellees filed a joint motion for separate trials, which was granted. On August 7, 2020, Hampshire Properties, LLC's Motion for Summary Judgment was granted in full; Enclave Holdings, LLC and Nonconnah Holdings, LLC's Motion for Summary Judgment was granted in part; and Donaldson Group, LLC's two Motions for Partial Summary Judgment were granted in full.

Mr. Bennett's jury trial commenced on July 26, 2021. During the trial, the court granted a motion in limine and excluded the testimony of Steven Landsman, Mr. Bennett's expert on damages. The judge held that Landsman's opinions were not proper expert testimony; his testimony would not assist the jurors; there was no factual basis for his opinions; and he was not competent to offer the opinions proffered. Following

deliberations, the jury returned a verdict in Mr. Bennett's favor finding that Appellees had breached the implied warranty of habitability. The jury awarded damages on his September 2017 lease in the amount of $1,200 and on his September 2018 lease in the amount of $800. On August 9, 2021, he moved to amend the judgment, asserting that the damages award should be increased. His motion was denied by the court on September 10, 2021. On September 16, 2021, Mr. Bennett moved for entry of a final judgment, which was granted by the court on November 4, 2021. A notice of appeal was filed November 9, 2021.

STANDARD OF REVIEW

Class Certification

The decision to grant or deny class certification is reviewed under the abuse of discretion standard. *Silver v. Greater Baltimore Med. Ctr., Inc.*, 248 Md. App. 666, 690 (2020). The circuit court's decision will be affirmed unless we conclude "no reasonable person would take the view adopted by the trial court, or [that] the court act[ed] without reference to any guiding rules or principles." *Id.* at 690-91 (citation omitted) (alteration in original). We review de novo whether the lower court applied the correct legal standard in granting or denying class certification. *Id.* at 690. An abuse of discretion occurs when the holding is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Nash v. State*, 439 Md. 53, 67 (2014) (internal quotation marks and citations omitted).

Motion to Amend Judgment

The denial of a motion to alter or amend a judgment is reviewed for an abuse of discretion. *Miller v. Mathias*, 428 Md. 419, 438 (2012). However, trial courts do not have the discretion to apply inappropriate legal standards. *Id.* "The relevance of an asserted legal error, of substantive law, procedural requirements, or fact-finding unsupported by substantial evidence, lies in whether there has been such an abuse." *Id.* (internal quotation marks and citation omitted).

Exclusion of Expert Witness

"[T]rial courts have 'wide latitude in deciding whether to qualify a witness as an expert or to admit or exclude particular expert testimony,'. . . ." *Basso v. Campos*, 233 Md. App. 461, 477 (2017) (internal quotation marks and citations omitted) (alteration in original). "In exercising the wide discretion vested in the trial courts concerning the admissibility of expert testimony, a critical test is 'whether the expert's opinion will aid the trier of fact.'" *Bryant v. State*, 393 Md. 196, 203–04 (2006) (internal quotation marks and citations omitted). A lower court's decision to admit or exclude expert testimony is reviewed under the abuse of discretion standard. *Rochkind v. Stevenson*, 454 Md. 277, 285 (2017). We may reverse if the trial court's ruling is based on an error of law or serious mistake, or if it was a clear abuse of discretion. *Id.*

DISCUSSION

I. The court did not abuse its discretion in denying class certification.

A. Mr. Bennett did not satisfy Md. Rule 2-231(c)(3) requirements.

As recognized by this Court in *Cutler v. Wal-Mart Stores, Inc.*, 175 Md. App. 177, 188 (2007), "a class action is a procedural device, created by the judiciary's adoption of a court rule to facilitate management of multiple similar claims." Under Md. Rule 2-231, a class action is permissible if all of the requirements of 2-231(b) are met and one of the requirements of 2-231(c) is met. Rule 2-231(b) states:

> One or more members of a plaintiff class may sue as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims of the representative parties are typical of the claims of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Rule 2-231(c) provides, "[u]nless justice requires otherwise," a class action may proceed if a court finds that subsection b is satisfied and:

> (1) the prosecution of separate actions by individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; *or*
> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; *or*
> (3) *the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and*

> *that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution of separate actions, (B) the extent and nature of any litigation concerning the controversy already commenced by members of the class, (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, (D) the difficulties likely to be encountered in the management of a class action.*

(emphasis added).

Mr. Bennett defined his proposed class as:

> RENT PAYER CLASS:
>
> All persons who were in a lease agreement with the Ownership Defendants in any of the three towers at the Enclave and were third-party intended beneficiaries of the agreements between Ownership and RMS or Ownership and TDG since August 30, 2016.
>
> INJUNCTIVE RELIEF CLASS:
>
> All persons currently residing at the Enclave.[2]

In his motion and at the hearing, he argued that his proposed class met the prerequisites for a class action, under Rule 2-231(b) and the requirements of Rule 2-231(c)(3). He contended that each class member would rely upon the same evidence to establish a breach of implied warranty of habitability and a violation of the MCPA. Mr. Bennett sought to establish predominance based on the defective HVAC units in each apartment and damages

[2] He did not appeal the denial of certification of the injunctive relief class.

to the residents. His motion relied on the use of statistical evidence presented through the testimony of experts, Edmond VandenBosche and Matthew Cooper.

Mr. VandenBosche, a certified industrial hygienist, inspected 23 of the 1,100 apartment units and found mold on at least one convector in each of the inspected apartments. Based on his analysis, he opined that "85% to 95% of convectors" at the complex have mold. Mr. Cooper, a mechanical engineer, inspected more than twenty HVAC units in the Enclave and found that they had not been properly maintained and that they contributed to high humidity levels in all of the apartments. He opined on multiple common issues, including failures of the central HVAC system in the Enclave, failures to maintain the central system and individual units, outcomes resulting from the failures and damages based on a model that identified the needs and costs to remedy the HVAC system, as required by the lease and county ordinances. Ultimately, the court agreed that Mr. Bennett had satisfied the prerequisites for a class action, but the court found the requirements of Rule 2-231(c)(3) had not been met.

In this appeal, Mr. Bennett argues the court erred. He contends that the common question of whether ownership breached the implied warranty of habitability and whether there were injuries to the class members arise from the same operative facts and established predominance. He asserts that predominance does not require uniformity in every aspect or proof of injury for each class member and that a class action in this case would be superior to any alternative form of adjudication. He contends the court erred because it

conducted a merits inquiry and based its decision on factual findings, which was improper. He also argues the court failed to consider the testimony of Mr. Cooper.

Appellees contend the court did not err because individual inquiries would have overwhelmed the common issues. According to Appellees, to demonstrate a breach of warranty of habitability, each class member would have to establish the physical condition of their unit and damages would be "limited to the difference between the amount of rent paid or owed and the reasonable rental value of the dwelling in its deteriorated condition, commencing from the time that landlord acquired actual knowledge of the breach." *Williams v. Hous. Auth. of Baltimore City*, 361 Md. 143, 158 (2000). This would require individual mini-trials.

Appellees also argue that Mr. Bennett's statistical evidence, as presented by his experts, was insufficient to establish predominance. Appellees agree that the court did not comment on Mr. Cooper's report in its opinion, but contend that his testimony was "discussed, at length, during oral argument." Appellees further assert that, assuming *arguendo*, the court did not consider the testimony of Mr. Cooper, his testimony would not have assisted Mr. Bennett in establishing predominance. Cooper inspected a small number of HVAC units and opined that those units had not been properly maintained which contributed to high levels of humidity. Cooper then extrapolated his findings from those apartments and opined that all 1,100 apartments contained defective HVAC units. His opinions are, thus, based on an evaluation similar to the analysis provided by Mr. VandenBosche. Additionally, Cooper's opinions were limited to defects in the HVAC

units and not the presence of mold in the units. His opinion was, thus, irrelevant to the issue of whether the individual units were affected by mold.

In *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 699 (2000), the Court of Appeals examined whether a trial court erred in ordering certification of two classes of Maryland residents in a tobacco injury case. The Court noted that a party moving for class certification bears the burden of proving that the requirements for certification have been met. *Id.* at 726. The Court, important to this case, stated that "[a] court should accept the putative class representative plaintiffs' allegations as true in making its decision on class certification . . . and the determination may not be rested upon the merits of the underlying cause(s) of action . . . ." *Id.* (citations omitted) (alteration in original). The Court went on to state that, "the court can go beyond the pleadings to the extent necessary to 'understand the claims, defenses, relevant facts, and applicable substantive law in order to make a meaningful determination of the certification issues.'" *Id.* at 727 (internal quotation marks and citations omitted).

The Court of Appeals further stated:

> "'the predominance test really involves an attempt to achieve a balance between the value of allowing individual actions to be instituted so that each person can protect his own interests and the economy that can be achieved by allowing a multiple party dispute to be resolved on a class action basis' . . . The predominance test does not require that common issues be dispositive of the action or determinative of the liability issues. . . . Instead, courts should inquire into 'whether proposed classes are sufficiently cohesive to warrant adjudication by representation.' . . . In order to satisfy the predominance test, 'common issues must constitute a significant part of the individual cases.'"

Id. at 743 (citations omitted).

In the present case, the circuit court issued its memorandum and opinion, detailing its findings and rationale. The court found that the predominance requirements of Rule 2-231(c)(3) had not been met. The court stated:

> each Plaintiff would be required to establish case-specific elements of each case, which would require the examination of individual facts and evidence of each class member and essentially engulf the "common" issues in this case. Importantly, each class member would have to show their convector was defective and such defect created a potential for mold and other toxins, which in turn presented a substantial health risk to them. This would be a highly individualized inquiry and would quickly overwhelm the common issues in this case.

In our view, the circuit court did not err. We agree that the specific elements of each case would "essentially engulf the 'common' issues." As noted in *Williams*, and argued by Appellees, each tenant would have to establish that their unit was uninhabitable and that there were damages. Those damages would be based on the difference between what the tenant paid and the reasonable rental value of the unit, and when the landlord had actual knowledge of the breach. Each class member would also have to establish which portions of the unit were damaged, that repairs were not performed in a reasonable time, and that the breach caused actual damages. Such elements required detailed individual assessments and defeated Mr. Bennett's argument for class certification based on common issues and facts.

The circuit court also examined whether the statistical evidence proffered satisfied the predominance requirement. The court referenced the Supreme Court's opinion in

Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 446 (2016), where employees were granted class certification in a lawsuit to recover unpaid overtime wages under the Fair Labor Standards Act of 1938, using a statistical sample. In *Tyson*, the Supreme Court held that "[a] representative or statistical sample, like all evidence, is a means to establish or defend against liability. Its permissibility turns not on the form a proceeding takes - be it a class or individual action - but on the degree to which the evidence is reliable in proving or disproving the elements of the relevant cause of action." *Id.* at 454-55 (citation omitted).

Here, the circuit court found that Mr. Bennett's reliance on the statistical evidence was "fatal" to his motion because of the sample size of inspected apartments. The court found:

> no reasonable juror could find that "85% to 95%" of all convectors in the approximate 1100-unit apartment complex at the Enclave are defective and create substantial health risks based on a sample size of 23 apartments. While Plaintiffs maintain all tenants at the Enclave have the same convectors, there is simply no proof before this Court all of the units are or were defective and are or were creating mold and other toxins. Thus, unlike the plaintiffs in Tyson Foods, the Plaintiffs here are not similarly situated. . . . Moreover, in Tyson Foods, the plaintiffs had no way to determine the amount of time spent donning and doffing because the defendant company did not keep time records as required under the FLSA . . . . The Court notes that unlike the plaintiffs in Tyson Foods, Plaintiffs here had other ways to determine the exact number of defective convectors at the Enclave, and therefore wouldn't require the use of representative and statistical evidence, such as surveys and inspections.

This holding was not error. As stated in *Tyson*, not all inferences drawn from representative evidence are "just and reasonable." 577 U.S. at 459. After stating that

"[r]epresentative evidence that is statistically inadequate or based on implausible assumptions could not lead to a fair or accurate estimate of the uncompensated hours an employee has worked," *id.,* the Supreme Court held there was no legal error by the lower court in admitting the evidence because the petitioner in *Tyson* did not challenge the methodology. *Id.* The Court noted that "[t]he District Court could have denied class certification on this ground only if it concluded that no reasonable juror could have believed that the employees spent roughly equal time donning and doffing." *Id.* (citation omitted).

Here the court's determination was based on its finding that the methodology was inadequate, stating "there is simply no proof before this Court all of the units are or were defective and are or were creating mold and other toxins." The court then clearly stated that "no reasonable juror" could find that 85%-95% of the units were defective based on the sample inspected. On this record, the court's determination that the representative evidence was inadequate to establish predominance was not error.

We also hold that the court did not conduct an improper merits inquiry. Rather, the court properly engaged in a focused examination of Mr. Bennett's pleadings, proffers, and argument in making its meaningful determination regarding class certification. As stated in *Cutler*, a court "'may look beyond the pleadings to determine whether class certification is appropriate.'" 175 Md. App. at 190.

Mr. Bennett's contention that the court ignored Mr. Cooper's testimony is also without merit. While the court's opinion noted only the testimony of Mr. VandenBosche,

there is no support for the notion that the court failed to consider Mr. Cooper's testimony. Simply because the court did not delineate or summarize his testimony in its opinion, does not mean it was not considered. In our review, we found no case law that requires a judge to detail all testimony, proffers, evidence, or argument in its final opinion.

B. The motion for class certification was untimely.

Rule 2-231(d) requires class certification to be determined "as soon as practicable after commencement of the action." Trial courts have discretion to deny class certification if "justice requires otherwise" even if sections 2-231(b) and (c) are satisfied.

Mr. Bennett argues the court erred in denying his motion for class certification based on untimeliness. He asserts the deadline to file his motion for class certification was November 21, 2019 and he filed his motion on that date. He argues his motion was filed as soon as practicable and the court failed to consider the case history in making its determination.

Mr. Bennett asserts that he needed discovery in order to file his motion for class certification. According to him, the delays resulted from discovery disputes and responses from Appellees in September 2019. The final deposition of Appellees was concluded on November 1, 2019, he obtained the transcript on November 5, 2019 and moved for class certification on November 21, 2019. Mr. Bennett argues no Maryland case supports the court's ruling that his compliance with the court ordered class certification deadline would make the motion untimely.

Appellees argue Mr. Bennett was untimely, pointing out that the court's original scheduling order provided for a September 6, 2019 deadline for a motion for class certification. No motion was filed and on September 16, 2019, he filed a motion to modify the scheduling order and sought a deadline of October 21, 2019 for class certification. The court granted the request for an extension; however, no motion was filed. Instead, he filed another motion to extend. At a hearing held by the court on November 13, 2019, the deadline was extended to November 21, 2019. The trial was scheduled to begin on February 10, 2020.

In *Marshall v. Safeway, Inc.*, 437 Md. 542, 562 (2014), the petitioner filed a motion for class certification 15 months after the lawsuit was filed and three weeks prior to trial. He argued that his delay in filing was due to refusals by the defendant to provide certain discovery. *Id.* The circuit court denied class certification, in part, because of its untimeliness. *Id.* In upholding the circuit court's decision, the Court of Appeals found that the trial court did not abuse its discretion. *Id.* The Court stated:

> [T]he Circuit Court considered all of the relevant factors set forth in Md. Rule 2-231. It was concerned first about the lateness of the motion – 15 months after the suit was filed, more than six months after the pretrial conference, and only three weeks before the scheduled trial. To have allowed the motion at that time would necessarily have delayed trial for months, especially if the creditors of the 500+ class members would need to be joined.

Id.

In the present case, the court's memorandum opinion specified:

> Like the plaintiff employees in Marshall, Plaintiffs here argue the delay in filing their motion for class certification was caused by Defendants' refusal to comply with discovery requests. . . . The Court is not persuaded by this argument. It is apparent to this Court Plaintiffs had a sufficient basis to move for class certification at the time of the filing of their first complaint.
>
> Thus, given the length of time this case has been pending, the interest of justice does not require rescheduling trial simply because Plaintiffs failed to seek class certification with dispatch, particularly given the fact the title of Plaintiffs' initial pleading admitted to a plan to seek class certification at the outset of the litigation.

We note that trial courts have discretion to deny class certification if "justice requires otherwise" even if sections 2-231(b) and (c) are satisfied. Here, the court decided, after a review of the case, including its history, case law, and Rule 2-231(d), that the motion was untimely. The court did not abuse its discretion as the court fully examined the required factors in making its determination. Its decision was not "well removed from any center mark." *Nash*, 439 Md. at 67.

C. The record does not reflect that the trial court failed to consider issue class certification.

Because of the complexity of the case, Mr. Bennett contends a class certification as to liability would have been efficient and would have advanced resolution and uniformity. A liability class would have allowed residents to present individual evidence of damages once liability had been established. Mr. Bennett argues the trial court erred in failing to consider his motion for an issue class. Appellees counter he failed to assert any common proof or evidence to resolve the issue of liability as to the three causes of action in his

complaint. Further, even if he did provide such evidence, the issue of liability as to each claim can only be resolved through individualized trials.

Rule 2-231(e) provides an alternative method of class certification. It states: "[w]hen appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class." During the hearing, the court asked:

> THE COURT: Yeah. So yeah, so it's (e). Little E. Tell me about the individual issues that should be certified in that rule. I didn't see anything.

To which counsel for Appellants clarified:

> [COUNSEL]: I don't think we need to – but we did move for it in the alternative, because liability – whether or not it's a term of the contract that this apartment needs to be habitable, that's a sub-issue that could be certified.
>
> Whether or not this common course of action by the defendants did in fact violate it, that's a sub-issue. Whether or not this common course violated the contract itself is a sub-issue. Whether or not this common course of action violated the Maryland Consumer Protection Act is a sub-issue. These are all things that can be turned into sub-issues.

Mr. Bennett's assertion that the court failed to consider his motion is without merit. During the hearing, the court specifically asked what issues should be certified and counsel responded. The court, however, later determined that he did not meet the requirements of Rule 2-231(c) and, in accordance with *Silver*, 248 Md. App. at 709, any subclass formed under 2-231(e) must independently satisfy 2-231(a)-(c). The court was not required to

make express findings regarding whether there should have been an issue class certification because it ruled that the requirements of Rule 2-231(c) had not been met.

II. The circuit court did not err in denying the motion to amend judgment.

Following the jury's verdict, Mr. Bennett moved to amend the judgment, seeking an award of $17,610.47. He argued that he was entitled to restitution damages in the amount of all of the rent he paid in 2017 and 2018 based on the jury's finding that there was a breach of implied warranty of habitability. The trial court disagreed and denied his motion. Mr. Bennett contends the court erred. He asserts that when a jury finds a breach of implied warranty of habitability because of defects in the property, restitution for the full amount of rent paid is the appropriate measure of damages. He cites *Golt v. Phillips*, 308 Md. 1 (1986) and *Citaramanis v. Hallowell*, 328 Md. 142 (1992) for support.

In *Golt*, the tenant sued his former landlord, claiming he had violated the MCPA by advertising and renting an unlicensed apartment to him. 308 Md. at 6. The Court of Appeals agreed and held that advertising and subsequently renting an unlicensed apartment violated the MCPA. *Id.* at 10. The Court determined that Golt was entitled to compensatory damages, consisting of restitution for rent paid to the landlord prior to being evicted, as well as consequential damages for moving expenses and higher rental cost for substitute housing. *Id.* at 11-12. Later, in *Citaramanis*, the Court of Appeals evaluated the applicability of damages recoverable under an MCPA claim that involved no actual damage to plaintiffs. 328 Md. at 147. The plaintiffs sued their former landlord for violating the MCPA after voluntarily moving out of their apartment and having discovered it was

not licensed as a rental property. *Id.* at 145. They sought restitution for their full rental payments. *Id.* The Court of Appeals denied restitution of the rent paid, holding that under a private cause of action for an MCPA violation, plaintiffs must prove actual injury or loss. *Id.* at 151, 153-54. The Court noted that in *Golt*, the plaintiff had been evicted and forced to find alternative and more expensive housing, while the plaintiffs in *Citaramanis* filed their lawsuit after they had moved out. *Id.* at 149-150. The Court explained that in determining the damages due to plaintiffs, the Court was required to look only to plaintiffs' actual loss or injury caused by the unfair or deceptive trade practices. *Id.* at 149. The Court stated: "The result in *Golt* rests on the assumption that the premises were uninhabitable. Thus, the difference in rental value between the *Golt* premises as represented and their condition in fact was one hundred percent of the rent paid." *Id.* at 164.

In the present case, Mr. Bennett argues that restitution damages are required because a claim for breach of the implied warranty of habitability is premised on the leased premises posing a health danger to the occupier. The circuit court ruled that *Golt* was inapplicable, stating: "To the extent that *Golt* allowed for the recovery of all rent paid in the case of unlicensed premises, that case dealt with unlicensed premises and the unique rule, in my view, related to unlicensed premises . . . ."

We observe that *Golt* and *Citaramanis* were MCPA cases and did not address breach of implied warranty of habitability claims and we decline to extend their holdings. Under Maryland law, in accordance with *Williams*, the value of damages in a breach of implied warranty of habitability claim is the difference in the amount of rent paid or owed and the

reasonable rental value of the dwelling in its deteriorated condition, beginning from the time the landlord acquired actual knowledge of the breach. Mr. Bennett's claim that the court erred in failing to amend the verdict to include restitution damages is without merit.

We note also that he made no request for an instruction on restitution damages but he did request the following jury instruction, which the court granted:

> In determining the damages due to the tenant, you must look to the actual loss or injury caused by the unfair or deceptive trade practices. If you find for Plaintiffs, they are entitled to the difference in the amount of rent paid and the value of the property they leased. *Williams v. Housing Authority of Baltimore City*, 361 Md. 143, 146 (Md. 2000); *McDaniel v. Baranowski*, 419 Md. 560, 565 n.5 (Md. 2011) (quoting Black's Law Dictionary 779 (9th ed. 2009))[.]

III. The trial court did not abuse its discretion in excluding Mr. Landsman's testimony.

Under Md. Rule 5-702:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine
> (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
> (2) the appropriateness of the expert testimony on the particular subject, and
> (3) whether a sufficient factual basis exists to support the expert testimony.

Mr. Bennett sought to have Steven Landsman, a property manager with experience in real estate management, testify as to the value of his uninhabitable apartment. Prior to trial, Appellees filed a motion in limine to exclude or limit Landsman's testimony. The circuit court granted in part and denied in part Appellees' motion, stating "the Motion is

DENIED to the extent that Mr. Landsman may offer his opinion (if a sufficient factual basis has been established) that the value of an uninhabitable unit is '0,' and that such a unit is unleasable." During trial, Appellees renewed their motion and the court precluded him from testifying. Mr. Bennett then moved for a mistrial which the court denied.

Mr. Bennett argues the court erred. He asserts that Landsman's lack of experience in apartment management went to the weight of his testimony and not to its admissibility. He argues Landsman is the President and Owner of a full-service real estate company that manages, rents, and sells condominiums, homeowner, and cooperative properties. He would have testified that he manages properties with the same in-unit HVAC convectors and that part of his responsibilities are to ensure that mold does not accumulate in the HVAC system. He would have opined that if an apartment was uninhabitable, its value would be zero.

Following argument, the court ruled that Landsman's proffered testimony as to Appellees' notice of the mold conditions were based solely on his review of other tenants' complaints that Mr. Bennett sought to enter into evidence. The judge explained that the tenant complaints and testimony from Mr. Bennett were sufficient for the fact-finder to determine whether or not Appellees had the requisite notice of the mold conditions without help from Mr. Landsman. The court also held that his opinion testimony would not assist the jury in understanding the evidence. The court stated:

> [Mr. Landsman] hasn't been personally involved in the management of an apartment complex in 40 years. What a landlord's obligated to do is governed by the party's individual lease and applicable law. [Mr. Landsman's] views on what a

> landlord's responsibilities should be are, in my view, irrelevant. Finally, I find that there is no factual or legal basis for his opinion that the lease or the premises has no value. Here again, he is not qualified to offer that opinion. He's not an appraiser, he has no expertise to offer that opinion, and his opinion of no value is not consistent with the law on this subject.

We hold the court's determination was not an abuse of discretion. The court fully evaluated the proffer of Mr. Landsman's testimony and decided that it would not assist the jurors and that he was not qualified to offer the opinions. Its decision was in accord with the proffers and evidence presented in the case.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.