

No. 1-25-1362

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROBERT O’CONNOR,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	25 M1 704951
	)	
KIMBERLY RENEE SCOTT,	)	Honorable
	)	Pablo deCastro
Defendant-Appellant.	)	Judge Presiding

PRESIDING JUSTICE ELLIS delivered the judgment of the court, with opinion.
Justices McBride and D.B. Walker concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff Robert O’Connor sued to evict his tenant, defendant Kimberly Scott. He claimed he gave her proper notice to terminate her tenancy, but she refused to vacate the apartment. The trial court entered summary judgment for Robert, finding the notice proper and Robert’s right to possession free and clear from doubt. We find the record insufficient to award the drastic remedy of summary judgment and vacate the court’s judgment.

¶ 2 Kimberly leases an apartment from Robert on the south side of Chicago and may have been doing so for a period of years. In October 2024, Robert sent Kimberly a “120 Day Notice of Termination of Tenancy.” The notice stated:

“You are hereby notified that on the expiration of February 28, 2025, your tenancy of the above-described premises together with all other accommodations used by you in connection with the above described premises will be terminated.”

¶ 3 Kimberly did not vacate the premises. So on March 24, 2025, Robert filed a complaint for eviction, alleging his right to possession of the property. The basis of the eviction was solely that Kimberly “refused to leave the property after their oral or written lease ended.” There is no written lease in the record. The complaint is verified and includes a copy of the 120-day notice described above but otherwise contains no allegations regarding the lease between the parties.

¶ 4 Robert propounded Rule 216 requests to admit. See Ill. S. Ct. R. 216(g) (eff. July 1, 2014). He asked Kimberly to admit two things: (1) she “received a 120-Day Notice from Robert O’Connor on October 30, 2024,” and (2) she is currently still in possession of the property.

¶ 5 Kimberly, self-represented, admitted both facts. She added: “I want to make it clear that my receiving this notice doesn’t mean I agree with everything about how this case has been handled.” She “respectfully reserve[d her] right to raise” several defenses, including “retaliatory eviction”; unfair termination of tenancy; that the eviction “goes against the Woodlawn Anti-Displacement Ordinance”; that Robert “told me I would have the opportunity to buy the home”; that she has “consistently paid rent and it was returned to [her]”; and that “the way this has all been handled has felt like harassment and hasn’t been in good faith.”

¶ 6 Robert then moved for summary judgment, citing Kimberly’s admissions as the only basis. Kimberly raised several arguments in response, principally focused on the “Woodlawn Ordinance” mentioned in her answer to the request to admit. (As best we can tell, Kimberly is referring to what is now the Tenant Opportunity to Purchase Jackson Park Pilot Program (Chicago Municipal Code § 5-10-010 to 5-10-170 (added Sept. 9, 2020)).)

¶ 7 She argued that there is a question “whether this is an ordinary post-lease eviction or part of a broader attempt to capitalize on market trends.” She claimed the Woodlawn Ordinance was passed to “protect residents from displacement” and gave them a right of first refusal if their landlords sell their property. She claimed that she and Robert had multiple discussions about the potential sale of the house; he initially committed to selling it but later demanded an “inflated amount that does not reflect the true market value.” He then “began pressuring me to vacate and later referenced details about my unrelated court matters, which he could only have found by monitoring my legal situation. This combined with rejected rent and legal pressure, gives the appearance of retaliation and harassment.”

¶ 8 The court heard oral argument. The court noted that Kimberly’s response “admits the essential elements of plaintiff’s case.” The court pressed Kimberly about the Woodlawn Ordinance and asked her for a specific provision on which she was relying, which Kimberly could not provide. The court found no relevance to mere discussions or even negotiations about selling the property that did not rise to the level of an agreement to sell.

¶ 9 The court thus granted Robert summary judgment and entered an order of eviction.

¶ 10 Kimberly, now with counsel, filed a notice of appeal. She also moved to stay the eviction and set a use-and-occupancy bond. The circuit court granted the stay and ordered Kimberly to pay \$2,600 per month pending appeal.

¶ 11 We review a grant of summary judgment *de novo*. See *Seymour v. Collins*, 2015 IL 118432, ¶ 42. That means “we sit in exactly the same position as the trial judge” and “[f]or all practical purposes, the parties are litigating the summary judgment motion anew before three judges of the appellate court.” *Thompson v. LaSpisa*, 2023 IL App (1st) 211448, ¶ 27; see *Beauchamp v. Dart*, 2022 IL App (1st) 210091, ¶ 8.

¶ 12 Summary judgment is appropriate when the record evidence—depositions, affidavits, admissions, other documentary evidence—shows that there are no disputed material facts, and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2024); *Andrews v. Carbon on 26th, LLC*, 2025 IL 130862, ¶ 20. Because it is a “drastic” measure that short-circuits a traditional trial on a matter, summary judgment is permissible only when the absence of disputed material facts and the movant’s entitlement to judgment are “free and clear from doubt.” *Owen v. Village of Maywood*, 2023 IL App (1st) 220350, ¶ 18.

¶ 13 The movant bears the burden of presenting sufficient facts establishing its entitlement to judgment as a matter of law. *Performance Food Group Co. v. ARBA Care Center of Bloomington, LLC*, 2017 IL App (3d) 160348, ¶ 18. That is, the movant must establish “all of the essential elements of its claim or cause of action that were not admitted by defendant.” *Id.* ¶ 19; see *Gulino v. Economy Fire & Casualty Co.*, 2012 IL App (1st) 102429, ¶ 16 (movant must present “sufficient facts establishing a *prima facie* case” for judgment as matter of law).

¶ 14 Only if that initial burden is met does the burden of production (not persuasion) shift to the non-movant to put forth contrary evidence or defenses that would preclude summary judgment. *DiFranco v. Fallon*, 2023 IL App (1st) 220785, ¶ 78; *Berke v. Manilow*, 2016 IL App (1st) 150397, ¶ 31.

¶ 15 Robert argues throughout his brief that his evidence was sufficient to carry his burden of proof by a preponderance of the evidence. That standard of proof applies to the ultimate trial after a contest over disputed facts; it has nothing to do with summary judgment, where the movant must demonstrate that *no dispute of material fact exists* in the first instance. *Andrews*, 2025 IL 130862, ¶ 20.

¶ 16 Our standard of review and basic principles of summary judgment settled, we move to

the merits.

¶ 17 Kimberly argues on appeal that Robert never presented sufficient evidence entitling him to judgment, and thus the burden never shifted to her in the first place. Specifically, though Robert based his entitlement to possession on the lease having ended, he provided no evidence regarding “the details of the written or oral lease.”

¶ 18 We will need to unpack a few matters to explain why we agree with Kimberly that the details of the lease were critical to Robert’s right to summary judgment, and why the lack of that information precludes summary judgment.

¶ 19 We first lay out what we know and don’t know. It appears clear from the record that Kimberly initially rented the property from Robert pursuant to a written lease, but at some point in the past that written lease expired, yet the parties carried on their landlord-tenant relationship. In this not-uncommon situation where a written lease expires, but the landlord and tenant agree to continue their landlord-tenant relationship, the law deems the relationship a “holdover tenancy.” See *Bransky v. Schmidt Motor Sales, Inc.*, 222 Ill. App. 3d 1056, 1060 (1991).

¶ 20 If a lease of one year or longer expires and the tenant holds over with the landlord’s consent, the law implies an “ ‘agreement for a year, and from year to year’ ” thereafter. *Id.* at 1061 (quoting *Prickett v. Ritter*, 16 Ill. 96, 97 (1854)); see *Family Properties of Chicago, LLC v. Ring*, 2024 IL App (1st) 231861-U, ¶ 16 (same). In other words, a holdover tenancy ends each year, exactly one year from the date of the expiration of the original lease. For example, if a written lease expired on October 31, 2024, and the tenant held over with the landlord’s consent, the law would imply an additional one-year term ending October 31, 2025, and if the parties desired, an additional year ending October 31, 2026, *et cetera*.

¶ 21 As long as both landlord and tenant are content, this year-to-year tenancy could continue indefinitely. *Bransky*, 222 Ill. App. 3d at 1061; *Bellows v. Ziv*, 38 Ill. App. 2d 342, 347-48 (1962). Indeed, a year-to-year tenancy “has many of the qualities of a tenancy for a definite term of years, *** *except that it cannot be terminated without notice to quit.*” *Bellows*, 38 Ill. App. 2d at 347-48 (emphasis added); see *Prickett*, 16 Ill. at 97; *Bransky*, 222 Ill. App. 3d at 1061.

¶ 22 That last part is key. Compliance with a legally required notice to the tenant before eviction has always been a prerequisite to the right to evict and take possession of the property. See *Herrell v. Sizeland*, 81 Ill. 457, 459 (1876); *Bransky*, 222 Ill. App. 3d at 1061; *Bellows*, 38 Ill. App. 2d at 347-48. That notice was once governed by the common law, see *Prickett*, 16 Ill. at 97, but for decades if not over a century, legislatures have passed laws and adopted ordinances requiring a certain amount of notice, as we discuss below.

¶ 23 We know that Robert sent Kimberly a “120 Day Notice of Termination of Tenancy” advising her that, after February 28, 2025, her “tenancy” at her apartment “will be terminated.” And we know that Robert held up this notice, and Kimberly’s admission that she received it, as his sole basis for summary judgment.

¶ 24 Was this notice sufficient, such that Robert’s action for eviction—his right to possession—was valid? We do not know for two reasons: (1) Robert did not cite the state law or city ordinance on which he was relying to demonstrate the validity of his notice, and (2) even if we knew that information, we do not know when the lease (or holdover tenancy) ended—so we would not know the end date from which we could count back 120 days to ensure that Robert complied with that law.

¶ 25 Robert made no attempt to demonstrate the source or legal validity of his 120-day notice. Not in his complaint, not in his motion for summary judgment, not anywhere else in the trial

record, and certainly not on appeal. And because he provided no evidence, in Kimberly’s words on appeal, of “the details of the written or oral lease”—most specifically, the end date—we would not know if the notice was within 120 days of the end date, anyway.

¶ 26 We could make guesses. Given the title of the notice—“120 Day Notice of Termination of Tenancy”—and given that Kimberly’s residence is located in Chicago, it seems likely that Robert was attempting to comply with section 5-12-130(j)(3) of the Residential Landlord and Tenant Ordinance, or “RLTO,” adopted by the Chicago City Council. See Chicago Municipal Code § 5-12-130(j)(3) (amended Nov. 24, 2020). That section provides that, “[f]or any residential tenancy greater than three years, the landlord shall notify the tenant in writing *at least 120 days prior to the stated termination date of the rental agreement* of the landlord’s intent to terminate a periodic tenancy.” *Id.* (emphasis added).

¶ 27 Then again, in the portion of the Code of Civil Procedure governing evictions, state law requires the landlord to give 60 days’ notice to terminate a year-to-year tenancy, but that notice may be provided *within 120 days* of the preceding 60 days. See 735 ILCS 5/9-205 (West 2024).

¶ 28 The RLTO provision is the more likely candidate, as it is a true 120-day period, and Chicago has home-rule powers to provide expanded protection to tenants. See *City of Chicago v. Roman*, 184 Ill. 2d 504, 512 (1998); *Said Iskan Investments, LLC v. Drew*, 2024 IL App (1st) 231707-U, ¶ 27 (noting interaction between RLTO’s notice periods for evictions and notice provisions contained in Code of Civil Procedure for evictions). On the other hand, the state law specifically refers to a “tenancy from year to year,” which appears to describe Kimberly’s tenancy on the nose. 735 ILCS 5/9-205 (West 2024).

¶ 29 Which law applies? The mystery is not ours to solve. It is incumbent on the movant for summary judgment to establish his right to judgment as a matter of law—here, his right to

possession of the property. He cannot do so without establishing the validity of his notice to terminate the tenancy. And he cannot expect a court to award him summary judgment (or affirm it on appeal) if he does not provide the most rudimentary information—the law that validates his notice and the end date of the lease or tenancy, so we can be certain that he complied with that law.

¶ 30 Given that the notice Robert sent indicated that Kimberly was to vacate the premises by February 28, 2025, we might guess that this was the date the year-to-year tenancy was scheduled to end. But mere surmise or inference is no substitute for establishing a fact as undisputed. See *Aalbers v. LaSalle Hotel Properties*, 2022 IL App (1st) 210494, ¶ 15; *Cole v. Paper Street Group, LLC*, 2018 IL App (1st) 180474, ¶ 41.

¶ 31 We understand Robert’s complaint that evictions are intended to be summary statutory proceedings. But he was the one who moved for summary judgment, rather than resolving this in what likely would have been a short trial with facts that are presumably undisputed (Kimberly’s purported defenses aside). If a party moves for summary judgment, that party must establish that the material facts are undisputed and that he is entitled to judgment as a matter of law. *Andrews*, 2025 IL 130862, ¶ 20. Principles of summary judgment do not change depending on the type of case involved.

¶ 32 The circuit court of Cook County, one of the largest court systems in the nation, contains many specialized courtrooms, including for housing and evictions. It is not uncommon for lawyers who specialize in certain matters, and judges in courtrooms devoted to such matters, to speak their own language. We have little doubt that Robert’s lawyer knows exactly which law governed his notice, and the judge likely did, too. But that doesn’t mean the lay defendant,

Kimberly, did. And it does not mean that a panel of appellate judges that hear all civil and criminal appeals out of Cook County will have the answer at their fingertips, either.

¶ 33 That is why movants must *establish* these matters *in the record* to make their case, particularly at summary judgment, subject to *de novo* review by the reviewing courts. It would not have been difficult. Robert could have issued one more request to admit to Kimberly to establish the end date of their lease or tenancy or proved it himself via affidavit or documentary evidence. He easily could have cited the law that validates his notice.

¶ 34 In all likelihood, this is merely a short-lived victory for Kimberly, at least on the question of notice, for we assume that Robert can easily set forth the law and facts he needs on remand. (We express no opinion on the defenses Kimberly has asserted.)

¶ 35 Regardless, we agree with Kimberly that Robert did not satisfy his initial burden of establishing a *prima facie* case for judgment as a matter of law. The court erred in entering summary judgment in Robert's favor.

¶ 36 The judgment of the circuit court is vacated. We remand for further proceedings.

¶ 37 Vacated and remanded.

O'Connor v. Scott, 2026 IL App (1st) 251362

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 25-M1-704951; the Hon. Pablo deCastro, Judge, presiding.

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