

No. 1-25-2213

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

Eleanor Lombardi,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 20M1123134
	)	
A.R.G. Partners, LLC, and Icon Property Management,	)	
LLC,	)	
	)	Honorable Corinne C. Heggie,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice Cobbs concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the circuit court's judgment on counts I and II and dismiss the appeal as to Icon Property Management, LLC. The trial court's finding that plaintiff's \$350 payment was a non-refundable pet fee rather than a security deposit was not against the manifest weight of the evidence. The court also properly found that A.R.G. Partners, LLC rebutted the RLTO's presumption of retaliatory eviction. Plaintiff's challenge to Icon's dismissal is moot.
- ¶ 2 Plaintiff Eleanor Lombardi filed a complaint against defendant A.R.G. Partners, LLC (A.R.G.) and its property manager, defendant Icon Property Management, LLC (Icon), claiming

that they violated Chicago's Residential Landlord Tenant Ordinance (RLTO) ((Chicago Municipal Code § 5-12-010 *et seq.*) (amended Mar. 31, 2004)).

¶ 3 Plaintiff's complaint alleged that the defendants failed to comply with the requirements of the RLTO concerning security deposits. Specifically, she claimed that the \$350 payment she made to the landlord prior to moving into the apartment to secure permission to keep her pet cats in the unit was a security deposit, which was not handled according to RLTO standards.

¶ 4 Additionally, plaintiff asserted that A.R.G. breached the lease agreement and violated the RLTO by allegedly engaging in retaliatory-eviction practices.

¶ 5 The trial court dismissed Icon on the pleadings. After a bench trial, the court found in plaintiff's favor on her breach of contract claim. However, it found in A.R.G.'s favor on plaintiff's cat-deposit and retaliatory-eviction RLTO claims. The court concluded that the \$350 payment was a non-refundable pet fee, not a security deposit, and that A.R.G. had rebutted the presumption of retaliatory eviction.

¶ 6 On appeal, plaintiff contests the trial court's findings and its dismissal of Icon. For the following reasons, we affirm in part and dismiss in part.

¶ 7 BACKGROUND

¶ 8 Plaintiff sued A.R.G. and added Icon as a defendant in her second amended complaint. In counts I and II of her second amended complaint, plaintiff accused A.R.G. of violating the RLTO's security-deposit requirements and its prohibition on retaliatory eviction, respectively. Plaintiff asserted a breach of lease claim in count III. In count IV, plaintiff alleged that Icon, as A.R.G.'s agent, had also violated the RLTO's requirements for security deposits.

¶ 9 Icon moved for dismissal under section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2024)). The trial court granted the motion, dismissing Icon with

prejudice. It stated that Icon could not be held independently liable as an agent. The court held that because A.R.G. had been disclosed as the principal in the lease, plaintiff could not recover from the agent.

¶ 10 At the bench trial, plaintiff testified that she met with Belal Kishta, an Icon employee, on February 28, 2020, to sign a one-year lease for an apartment in a building located on West 18th Place, owned by A.R.G., and managed by Icon. Before their meeting, Kishta texted plaintiff that she would have to pay “\$900 March rent + \$400 move[-]in fee + \$350 cats[,]” which totaled \$1,650. Plaintiff had two cats and understood “\$350 cats” (\$350 payment) to be a pet deposit.

¶ 11 Plaintiff paid the \$1,650, and she and Kishta each signed the lease. The lease specified that the monthly rent was \$900, and that the \$400 “admin fee” was non-refundable. It included a security deposit provision, stating that “Lessee has deposited with Lessor, the sum set forth above as a security deposit to be held by the Lessor *** to secure the faithful performance of all the provisions contained in this lease” and that the security deposit would be returned to the lessee. The lease did not identify a security-deposit amount. Eleanor testified she believed the \$350 was refundable.

¶ 12 Shortly after 1 a.m. on July 23, 2020, the carbon monoxide alarm sounded in the building’s other apartment, which was occupied by Anai Morales. Morales told plaintiff, who Googled what to do. The results of her Internet research suggested evacuating the building and calling 911. Morales left the building. Plaintiff was concerned about her cats, “that they could die[,]” and decided that she “need[ed] to do something about it.” She texted Kishta, alerting him to the alarm and sharing her research results. She also called 911.

¶ 13 The fire department responded. Plaintiff texted Kishta that the firefighters found “some [gas]” in Morales’s apartment. They did not detect any gas in plaintiff’s apartment. The

firefighters, however, told plaintiff that the building had “dozens of code violations” and was potentially “unlivable.”

¶ 14 Peoples Gas also responded, coming to the building at 3 a.m. Plaintiff texted Kishta that the company turned off all the gas.

¶ 15 On July 24, 2020, plaintiff texted Kishta what the firefighters had said about “dozens of code violations” and the building potentially being “unlivable.” She said that she was “concerned” for her and her cats’ health.

¶ 16 Plaintiff also told Kishta that she had learned that Peoples Gas had only turned off her gas, not Morales’s, because Morales did not have an active account with the company. Plaintiff texted that a “professional need[ed] to come out and test that leak.” She testified that she did not know if anyone investigated the gas leak afterwards.

¶ 17 On July 31, 2020, Kishta texted plaintiff that his “bosses” had decided to vacate the building. He also indicated that he had left a 30-day notice at her apartment and would send an email, too. None of these communications mentioned safety or the gas leak.

¶ 18 Plaintiff texted Kishta the next day to ask whether she would be compensated or receive her administrative fees back. Kishta did not respond, and when she tried calling him later, his phone line had been disconnected. Plaintiff never received any money back from A.R.G. She testified that Morales received compensation, though.

¶ 19 On cross-examination, plaintiff admitted she had not asked whether the \$350 payment was refundable before signing the lease, and no one had represented to her that it was so. Additionally, the parties had not taken any steps to alter the lease’s terms.

¶ 20 Plaintiff also agreed on cross that a carbon monoxide leak posed a safety concern and stated that “carbon monoxide kills.”

¶ 21 Kishta, who was called for the plaintiff's case, testified that the \$350 payment was a non-refundable pet fee not intended to cover damage caused by plaintiff's cats.

¶ 22 Gregory Milsk, a managing member of A.R.G. who was called for the plaintiff's case, testified that Icon did not put the \$350 payment in an interest-bearing account.

¶ 23 When called by the defense, Milsk testified that the gas leak "was an issue for all the tenants in the building and a very major health risk." It was decided to vacate the building to ameliorate the code violations and gas concerns. Milsk stated all tenants were given 30 days' notice and denied retaliating against plaintiff for complaining about the gas leak. He estimated that A.R.G. spent more than \$20,000 on repairs and added that A.R.G. lost money by vacating the building.

¶ 24 Milsk further testified that it was A.R.G.'s practice in Illinois not to take security deposits to "avoid situations like" the instant case. The defense introduced into evidence a business record showing transactions for plaintiff's tenancy. The transaction history included a line for the \$350 payment, which it described as "Pet Fee Non-Refundable."

¶ 25 When called by the defense, Kishta testified that Icon's practice was not to accept security deposits and instead treat payments as non-refundable fees. He also stated that he told plaintiff that the \$350 payment was non-refundable, and he had never heard of any property management company taking a security deposit that was less than one month's rent. Kishta also denied that Icon retaliated against plaintiff, stating that "they wanted to make sure that everybody would be safe" and that plaintiff and Morales had both been given 30 days' notice.

¶ 26 On cross-examination, Kishta admitted that he had previously testified in a deposition that the \$350 payment was to cover damage caused by the cats. He also conceded that at the deposition, he had not remembered telling plaintiff that the \$350 payment was non-refundable.

¶ 27 The trial court found in A.R.G.’s favor on count I. It concluded that the \$350 payment was a non-refundable fee, not a security deposit. The court recognized that neither plaintiff’s nor Kishta’s testimony was precise as to what was said about the \$350 payment’s refundability at the time of the lease’s signing, so it looked to the written evidence—the texts between plaintiff and Kishta and the lease. Both were silent as to whether the \$350 payment was a security deposit.

¶ 28 The trial court also considered that Morales had received compensation, but stated no testimony showed that Morales had paid a security deposit or had any pets. Therefore, it did not find the evidence concerning Morales indicative of whether the \$350 payment was a security deposit. Neither was it persuaded by Kishta’s deposition testimony that the payment was meant to cover cat-related damage to the apartment. The trial court also highlighted that both Kishta and Milsk testified that their practices were not to take security deposits.

¶ 29 The trial court also found in A.R.G.’s favor on count II and concluded that A.R.G. had rebutted the presumption of retaliatory eviction. It said that plaintiff’s 911 call was protected activity, but A.R.G. had rebutted the presumption of retaliatory eviction. The evidence showed that A.R.G. recognized the threat posed by the gas leak to tenant safety. The court commented that plaintiff also expressed concern about the gas leak. The trial court did not find it compelling that none of A.R.G.’s or Icon’s eviction communications failed to mention safety. Rather, all parties seemed to “understand that the gas leak was a safety issue that made the property unlivable.” And both plaintiff and Morales “honored” the notice by moving out.

¶ 30 The trial court found in plaintiff’s favor and awarded damages on count III, the common law breach of contract claim for early termination of the lease.

¶ 31 The trial court later denied plaintiff’s motion to reconsider, and plaintiff timely appealed.

¶ 32 ANALYSIS

¶ 33 The purpose of the RLTO is “to protect and promote the public health, safety, and welfare” of Chicagoans and “to establish the rights and obligations” of landlords and tenants. Chicago Municipal Code § 5-12-010.

¶ 34 Plaintiff advances three arguments on appeal: (1) the \$350 payment was a security deposit entitled to the RLTO’s protections, and the trial court applied the incorrect legal standard when it found otherwise; (2) A.R.G. did not rebut the presumption that they evicted her in retaliation for complaining about the gas leak; and (3) Icon should not have been dismissed because it could be held independently liable as an agent under the RLTO.

¶ 35 Standard of Review

¶ 36 The parties agree that the standard of review for determining whether A.R.G. rebutted the presumption of retaliatory eviction is the manifest weight of the evidence standard.

¶ 37 However, plaintiff contends that the trial court applied the wrong legal standard when determining that the \$350 payment constituted a non-refundable pet fee instead of a security deposit. According to plaintiff, the court valued the payment’s form—its description as “non-refundable” in the transaction history—over the payment’s function—to cover pet-related damages. Therefore, plaintiff argues the trial court used the incorrect standard, and *de novo* review applies.

¶ 38 However, plaintiff’s framing of the issue is not persuasive. Both parties agree that *Steenes v. MAC Property Management, LLC*, 2014 IL App (1st) 120719, provides the standard for determining whether a payment constitutes a security deposit. Plaintiff’s argument is better read as a challenge to how the trial court weighed the evidence—not as a challenge to the test the court applied. Therefore, *de novo* review is inapplicable, and this appeal is a straightforward review of the trial court’s factual determinations.

¶ 39 Whether the \$350 payment was a security deposit or a non-refundable pet fee is a factual question. Such factual determinations are subject to the manifest weight of the evidence standard. *Rivas v. Benny's Prime Chophouse, LLC*, 2025 IL App (1st) 242044, ¶ 48. A factual finding is against the manifest weight of the evidence where “the opposite conclusion is clearly evident[,] or the finding is arbitrary, unreasonable, or not based in evidence.” (Internal quotation marks omitted) *id.*

¶ 40 When applying this standard of review, we will not reweigh the evidence or substitute our judgment for that of the fact finder's. *White v. Advocate Condell Medical Center*, 2026 IL App (1st) 240450, ¶ 138. It is for the trier of fact to determine the credibility of witnesses and the weight to be given to their testimony, and we defer to such findings. *Department of Healthcare and Family Services ex rel. Sanders v. Edwards*, 2022 IL App (1st) 210409, ¶ 63.

¶ 41 The \$350 Payment

¶ 42 The RLTO “was enacted in part to ‘help protect the rights of tenants with respect to their security deposits.’ ” *Steenes*, 2014 IL App (1st) 120719, ¶ 19 (quoting *Lawrence v. Regent Realty Group, LLC*, 197 Ill. 2d 1, 10 (2001)). It obligates a landlord to give receipt for a security deposit, hold such a payment in an interest-bearing account, annually pay the tenant the accrued interest, and return the security deposit to the tenant after the tenant provides notice of lease termination or vacates her apartment. Chicago Municipal Code § 5-12-080 (amended July 28, 2010). If a landlord fails to fulfill these obligations, a tenant is awarded damages of two times the security deposit plus interest. *Id.*

¶ 43 The RLTO does not define security deposit, but this court provided factors to consider when determining whether a fee a landlord charged a tenant is a security deposit under the RLTO or a non-refundable fee in *Steenes*. In that case, the plaintiff's lease required that she pay a

security deposit to ensure her full performance of the lease’s obligation. 2014 IL App (1st) 120719, ¶ 4. The lease did not specify the amount of the security deposit. *Id.* During the application process, she received a welcome statement that detailed non-refundable fees, including a \$350 move-in fee. *Id.*, ¶ 5. On appeal, this court had to ascertain whether the move-in fee was a security deposit under the RLTO. *Id.*, ¶ 19.

¶ 44 Relying on statutory and dictionary definitions of the term “security deposit,” and the particular facts of the case, we determined that the move-in fee was a “charge”—not a security deposit. *Id.*, ¶¶ 20-23. This court reasoned that \$350 was less than half of the plaintiff’s monthly rent, so it could not have been given in exchange for her *full* performance of the lease’s terms. *Id.*, ¶ 23. Also, the move-in fee could not function as a surety because it was described as non-refundable in the welcome statement. *Id.* Additionally, this court said that the welcome statement did not indicate that the move-in fee “was given as security to guarantee plaintiff’s performance under the lease and to be held in trust by the landlord.” *Id.* “Under these circumstances,” we concluded that the move-in fee had “none of the earmarks of a security deposit.” *Id.*

¶ 45 This court also rejected the plaintiff’s argument that the lease’s security deposit provision meant that the move-in fee was a security deposit. *Id.*, ¶ 24. The relevant provision did not reference the welcome statement, the move-in fee, or a specific security-deposit amount. *Id.* The *Steenes* court could not read the lease to mean that the move-in fee was a security deposit. *Id.*

¶ 46 Here, plaintiff argues that the trial court misapplied *Steenes* by using a standard that prioritized form over function and credited trial testimony over a binding judicial admission. She contends that the court should have treated Kishta’s deposition testimony that the \$350 payment was to cover pet-related damages as a binding judicial admission and dispositive under *Steenes*.

¶ 47 Although plaintiff emphasizes Kishta's deposition testimony stating that the \$350 payment was to cover pet-related damages, the trial court was entitled to weigh that testimony against the lease, the transaction history, and plaintiff's own admissions. Even if Kishta's testimony was a binding judicial admission establishing the function of the \$350 payment, the fact that it would be used to cover pet-related damages is only one factor for the court to consider when determining whether the payment was a security deposit. It was within the trial court's purview to decide the weight given to that evidence. *Edwards*, 2022 IL App (1st) 210409, ¶ 63. We will not reweigh the evidence. *White*, 2026 IL App (1st) 240450, ¶ 138.

¶ 48 The trial court conducted a thorough comparison of the relevant factors from *Steenes* to the facts of this case. In *Steenes*, the court noted that the \$350 payment was less than half of the monthly rent, which was \$715 in that case. *Steenes*, 2014 IL App (1st) 120719, ¶ 23. Here, the \$350 payment represents an even smaller proportion of the monthly rent, which was \$900—closer to one-third, rather than one-half, as in *Steenes*. This smaller proportion supports the trial court's conclusion that \$350 would be insufficient to secure plaintiff's full compliance with her lease's obligations.

¶ 49 Additionally, similar to *Steenes*, there is nothing in the record—apart from plaintiff's subjective belief—that indicates the \$350 payment was given as security to guarantee plaintiff's performance or that A.R.G. was obligated to hold the money in trust for her benefit. The lease's security-deposit provision does not specify an amount that could identify the payment at issue as a security deposit, mirroring the circumstances in *Steenes*, where the lease likewise lacked such specification. *Id.*, ¶ 24.

¶ 50 Furthermore, in *Steenes*, only a document separate from the lease indicated the non-refundable nature of the payment at issue. There, the welcome statement described the payment

as non-refundable. *Id.*, ¶¶ 23-24. In the present case, it was reflected in the transaction history. This parallel supports the trial court's determination regarding the nature of the \$350 payment.

¶ 51 As noted, we will not reverse the trial court's findings of fact unless they are against the manifest weight of the evidence. *Rivas*, 2025 IL App (1st) 242044, ¶ 48. A factual finding is against the manifest weight of evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence. In this case, we cannot say that it is clearly evident that the \$350 payment was a security deposit or that the court's finding that it was not a security deposit is arbitrary, unreasonable, or not based in evidence. Therefore, the trial court's finding is not against the manifest weight of the evidence.

¶ 52 Because the trial court's finding that the \$350 payment constituted a non-refundable fee was not against the manifest weight of the evidence, we affirm the trial court's judgment on count I.

¶ 53 Retaliatory Eviction

¶ 54 Plaintiff next argues on appeal that the trial court erred in finding for A.R.G. on count II. She contends that A.R.G. did not rebut the presumption that its eviction of her was retaliatory.

¶ 55 Section 5-12-150 of the RLTO prohibits landlords from retaliating against tenants for, among other things, complaining of code violations or requesting repairs. Chicago Municipal Code § 5-12-150 (amended Nov. 6, 1991). This section also provides that if there is evidence that a tenant engaged in protected conduct within the year preceding the alleged retaliation, that evidence creates a rebuttable presumption that the landlord's conduct was retaliatory. *Id.*

¶ 56 Courts examine the particular facts of the case when determining whether the presumption of retaliatory eviction has been created and whether it has been rebutted. 2 Ill. Real Prop. Serv. § 13:35 (Feb. 2026 update). This court reviews whether a landlord's eviction was

retaliatory under the manifest weight of the evidence standard. *Reed v. Burns*, 238 Ill. App. 3d 148, 154 (1992).

¶ 57 Plaintiff argues that a landlord's unsubstantiated assertions are insufficient to rebut the presumption of retaliatory eviction. She claims that under Illinois law, rebuttal requires independent evidence showing that a landlord's eviction was based on reasons other than a tenant's protected conduct.

¶ 58 Plaintiff dismisses A.R.G.'s evidence that the eviction was based on safety concerns as *post hoc*, self-serving testimony by Kishta and Milsk. She posits that A.R.G.'s communications to plaintiff and Morales at the time of the eviction would have mentioned the safety concerns created by a gas leak, but the communications were silent on that topic. Finally, she emphasizes that if safety was the sole reason for the eviction, A.R.G. had no reason to compensate Morales but not her afterwards.

¶ 59 Plaintiff's arguments are not persuasive. The record on appeal sufficiently supports the trial court's conclusion that A.R.G. had rebutted the presumption of retaliatory eviction, and the opposite conclusion is not clearly evident. A gas leak occurred, necessitating action by the fire department and Peoples Gas. Kishta testified that the gas leak was a serious problem, and Milsk stated that the leak posed a hazard requiring that the building be vacated. The trial court found their testimony credible, and as noted, this court defers to the factfinder's credibility determinations (*Edwards*, 2022 IL App (1st) 210409, ¶ 63) and will not reweigh the evidence (*White*, 2026 IL App (1st) 240450, ¶ 138).

¶ 60 Plaintiff herself recognized the gas leak's danger, as demonstrated by her calling 911 and telling Kishta that she was concerned for her and her cats' health. And, as the trial court reasoned, that the parties' contemporaneous communications did not mention the danger of the

gas leak does not necessarily demonstrate retaliatory intent. Rather, by the time of notice and eviction—after the fire department’s and Peoples Gas’s responses and plaintiff’s research—all were aware of the danger of carbon monoxide poisoning.

¶ 61 No evidence demonstrates that A.R.G. acted to punish plaintiff for her complaint. In fact, Morales was also evicted, and nothing in the record shows that she complained of the gas leak or any other of the building’s conditions. The 30-day notice—though ineffective to terminate a fixed-term lease—was consistent with a building-wide safety response.

¶ 62 Because the trial court’s finding that A.R.G. had rebutted the presumption of retaliatory eviction was not arbitrary, unreasonable, or not based in evidence, and the opposite conclusion was not clearly evident, it was not against the manifest weight of the evidence. Therefore, the court’s decision on count II is affirmed.

¶ 63 Icon’s Dismissal

¶ 64 Plaintiff’s last argument on appeal is that the trial court erred when granting Icon’s section 2-615 motion to dismiss. She asserts that as A.R.G.’s agent, it should be held liable for not following the RLTO’s requirements for security deposits.

¶ 65 We have affirmed the trial court’s finding that the \$350 payment at issue was a non-refundable pet fee and not a security deposit. This has mooted the issue of Icon’s dismissal. Even if we reversed the trial court’s decision to dismiss Icon and remanded for further proceedings, Icon cannot be liable for failing to follow the RLTO’s security-deposit requirements if the \$350 payment was not a security deposit.

¶ 66 The existence of an actual controversy is a “prerequisite to the exercise of this court’s jurisdiction.” (Internal quotation marks omitted) *In re County Treasurer and ex officio County Collector of Cook County*, 2025 IL App (1st) 240045, ¶ 20. Without an actual controversy, an

appeal is moot. *Bright v. Yenchko*, 2026 IL 132015, ¶ 24. Reviewing courts will not answer moot questions, issue advisory opinions, or consider issues where the outcome will not be affected by the decision. *Id.*

¶ 67 This court cannot provide plaintiff with the relief she ultimately seeks. Therefore, the claim is moot, and we will not consider it. Since the issue of Icon's dismissal has become moot, we dismiss the portion of plaintiff's appeal concerning that issue.

¶ 68 CONCLUSION

¶ 69 For the foregoing reasons, we affirm the decision of the circuit court of Cook County on counts I and II and dismiss plaintiff's appeal of Icon's dismissal on grounds of mootness

¶ 70 Affirmed in part and dismissed in part.