IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

JOHN TENEYCK and AMY TENEYCK, Husband and Wife,
Plaintiffs/Appellees,

v.

ARLEEN POPOVICH, individually and as Personal Representative of the Estate of ROBERT POPOVICH,
Defendants/Appellants.

No. 1 CA-CV 22-0579

FILED 01-25-2024

Appeal from the Superior Court in Navajo County
No. S0900CV201600386
The Honorable Melinda K. Hardy, Judge

AFFIRMED

COUNSEL

Nicholas D. Patton, Show Low
Counsel for Defendants/Appellants

Joseph E. Holland, Snowflake
Counsel for Plaintiffs/Appellees

OPINION

Judge Samuel A. Thumma delivered the opinion of the Court, in which Presiding Judge Michael J. Brown and Judge Andrew M. Jacobs joined.

T H U M M A, Judge:

¶1 This appeal addresses whether a residential tenant is required by statute to demand that the landlord provide an itemized list of deductions from a refundable security deposit before the landlord has any refund obligation. Appellant Arleen Popovich (Landlord) argues that she was not required to return a $2,150 refundable security deposit paid by John and Amy Teneyck (Tenants). Landlord asserts that, although Tenants demanded the return of their refundable security deposit when terminating the lease, Landlord had no refund obligation because Tenants did not demand that Landlord provide "an itemized list of all deductions."

¶2 The superior court found no such demand was required, and that Landlord failed to timely refund the deposit. The court awarded Tenants $2,150, trebled by statute because it was "wrongfully withheld." Dissatisfied, Landlord filed this appeal from the resulting $6,450 judgment. Because Landlord has shown no error, the judgment is affirmed. Because this dispute arises out of contract, Tenants are also awarded their reasonable attorneys' fees and taxable costs incurred in this appeal.

FACTS AND PROCEDURAL HISTORY

¶3 In February 2016, the parties entered a one-year residential lease agreement. Rent was $2,000 per month and the lease required two refundable deposits: (1) a $2,000 security deposit ("to assure payment or performance" of the lease) and (2) a $150 cleaning deposit. The landlord/tenant relationship did not go well and did not last long. By May 2016, Tenants found mold in the bedrooms, confirmed by independent testing. In a July 2016 letter, Tenants terminated the lease and "request[ed] that all security deposits and July's rent be refunded."

¶4 In October 2016, Tenants filed this case against Landlord, claiming the house was uninhabitable. Alleging Landlord "refused to account for and/or return" the deposits, and that Landlord never provided "a statement itemizing their security deposit and what charges, if any, were used against" it, Tenants sought $6,450 "for triple the amount of the security deposit" as authorized by Arizona Revised Statute (A.R.S.) § 33-1321 (2024).[1]

[1] Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

¶5 The court granted Tenants partial summary judgment, concluding Landlord "did not provide an accounting of the security deposit as required by A.R.S. § 33-1321(D)." The court found, however, that there were disputed issues of material fact about how much of the deposit "was wrongfully withheld." After a bench trial, the court found the Landlord wrongfully withheld the $2,150 deposit, that the Landlord did not provide Tenants "an itemized list of all deduction[s] together with the amount due and payable," and awarded Tenants $6,450, representing the deposit plus "twice the amount wrongfully withheld . . . since [Landlord] failed to comply with A.R.S. § 33-1321(D)."

¶6 This court has jurisdiction over Landlord's timely appeal from the resulting judgment under Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) and -2101(A)(1).

DISCUSSION

I. A.R.S. § 33-1321(D) Does Not Require That a Tenant Demand an Itemized List of Deductions from a Security Deposit.

¶7 Tenants demanded, in writing, return of their security deposit. Landlord, however, argues that Tenants were also required to demand "an itemized list of damages" under A.R.S. § 33-1321(D). Because Tenants made no such demand, Landlord argues that "no itemized list was required and the withholding of the deposit, by virtue of the lack of an itemized list alone, is not wrongful."

¶8 Landlord's argument turns on the correct interpretation of A.R.S. § 33-1321(D), a question of law that this court reviews de novo. *See Pima Cnty. v. Pima Cnty. Law Enf't Merit Sys. Council*, 211 Ariz. 224, 227 ¶ 13 (2005). "'[T]he best and most reliable index of a statute's meaning is its language and, when the language is clear and unequivocal, it is determinative of the statute's construction.'" *State v. Hansen*, 215 Ariz. 287, 289 ¶ 7 (2007) (citation omitted). The court must assign to each word its "usual and commonly understood meaning" unless the Legislature "clearly intended" otherwise. *Bilke v. State*, 206 Ariz. 462, 464 ¶ 11 (2003) (citation omitted); *accord* A.R.S. § 1–213.

¶9 A.R.S. § 33-1321, titled "Security deposits," contains various limits and requirements for any security deposit required by a residential landlord. One subpart specifies how, "[o]n termination of the tenancy, property or money held by the landlord as prepaid rent and security may be applied," and what happens if a tenant does not timely dispute deductions or the amount due. *See* A.R.S. § 33-1321(D).

> Within fourteen days, excluding Saturdays, Sundays or other legal holidays, after termination of the tenancy and delivery of possession and demand by the tenant the landlord shall provide the tenant with an itemized list of all deductions together with the amount due and payable to the tenant, if any. Unless other arrangements are made in writing by the tenant, the landlord shall mail the itemized list and any amount due, by first class mail, to the tenant's last known place of residence.

A.R.S. § 33-1321(D). Landlord argues that Section 33-1321(D) should be read so that "demand by the tenant" requires not only a demand for a return of the security deposit (which Tenants made here) but also a specific demand for an itemized list of deductions (which they did not).

¶10 Landlord's argument would mean that, unless a tenant demanded an itemized list of deductions, a landlord could retain the entire security deposit indefinitely. Such a reading would contradict the statutory directive that "[a]t the end of tenancy, all refundable deposits shall be refunded to the tenant pursuant to this section." A.R.S. § 33-1321(G). Such a reading would also contradict the parties' lease, which imposed on Landlord an obligation "to return the refundable deposits to Tenant[s] within the time period provided for" in the Arizona Residential Landlord Tenant Act if the house was "surrendered to Landlord at the termination" of the lease "in a clean and undamaged condition." This lease obligation tracks the Section 33-1321 directive that Landlord return the security deposit to Tenants at the end of the lease, absent Landlord providing a timely itemized list of all deductions.

¶11 Although Landlord seeks to distinguish *Shaefer v. Murphey*, 131 Ariz. 295 (1982) on its facts, that case shows no demand for itemized deductions was required. Construing language textually similar to the current version of Section 33-1321(D), *Shaefer* concluded that "to take advantage" of the statute, "*the landlord* must deliver written notice to the tenant itemizing the amounts due within 14 days after termination of the tenancy. Landlord did not do this." 131 Ariz. at 297 (emphasis added). *Shaefer* also rejected an argument that filing a civil action for money damages complied with the landlord's written notice requirement. *Id.* This analysis also negates Landlord's argument that it could retain the security

deposit, apparently indefinitely, until Tenants made a written demand for an itemized list of deductions.

¶12 To the extent there is any ambiguity in the statute, Landlord has not shown how its view of Section 33-1321(D) would work in practice. When a lease ends, the tenant wants the security deposit returned and the landlord has an obligation to do so. *See* A.R.S. § 33-1321(G). The only exception to that obligation is if the landlord itemizes any deduction from the security deposit and timely provides the tenant proper written notice of "an itemized list of all deductions together with the amount due and payable to the tenant, if any." A.R.S. § 33-1321(D). Only the landlord could know what "itemized list of all deductions" it wished to claim. Reading Section 33-1321(D) to require a tenant to demand an itemized list of deductions (rather than for return of the security deposit) would improperly shift the statutory obligation and create an absurd result, something this court will not do. *See Saban Rent-A-Car LLC v. Ariz. Dep't of Revenue*, 244 Ariz. 293, 301 ¶24 (App. 2018) ("Statutes must be given a sensible construction which will avoid absurd results.") (citation omitted).

¶13 Here, Tenants made a prompt written demand for return of their security deposit. At that point, Landlord had 14 days (weekends and holidays excluded) to either refund the entire security deposit or provide "an itemized list of all deductions together with the amount due and payable to" Tenants. A.R.S. § 33-1321(D). Landlord did neither. Thus, Landlord failed to comply with its obligations, allowing Tenants to recover their wrongfully withheld security deposit "together with damages in an amount equal to twice the amount wrongfully withheld." A.R.S. § 33-1321(E). The superior court, after a bench trial, awarded Tenants that exact amount. On this record, Landlord has shown no error.

II. Tenants Are Awarded Their Reasonable Attorneys' Fees.

¶14 Tenants and Landlord each request their attorneys' fees on appeal, citing A.R.S. § 12-341.01, as well as their taxable costs. Because Landlord is not the successful party, its request is denied. Tenants, however, are the successful parties in this "contested action arising out of a contract." A.R.S. § 12-341.01(A); *see also* Residential Lease Agreement Ex. 1 at 5 ("The prevailing party in any dispute or claim between Tenant and Landlord arising out of or relating to this Lease Agreement shall be awarded all their reasonable attorney fees and costs."). Tenants are therefore awarded their "reasonable attorney fees" incurred on appeal, as well as their taxable costs on appeal, contingent upon their compliance with ARCAP 21.

CONCLUSION

¶15 The judgment is affirmed.

AMY M. WOOD • Clerk of the Court
FILED: TM