Circuit Court for Prince George's County
Case No. CAL16-35673 & CAL17-07312

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND737

No. 737 & 1657

September Term, 2017

ELIZABETH HANSON-METYER

V.

LESLIE RACH

Wright,
Leahy,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wright, J.

Filed: August 21, 2018

BACKGROUND

This consolidated opinion arises from a landlord–tenant dispute between appellants, Arthur Hawgood and Elizabeth Hanson-Metayer, and their Landlords, Leslie Rach and Aly Lo, appellees.[1] Appellants alleged retaliatory action, marital discrimination, housing discrimination, disability discrimination, trespass, intrusion upon seclusion, breach of lease, rent escrow, and conspiracy, among various other claims.

After a bench trial, the Circuit Court for Prince George's County granted summary judgment against appellants, finding their claims to be baseless.

Appellants timely appealed and ask us to review several questions, which we have reduced to two:[2]

[1] The appellees failed to file a brief in this case and their request to proceed to oral argument without filing a brief was denied by this court.

[2] Appellants presented the following questions for our review:

> 1. What qualifies as the requisite proof needed to show a retaliatory motive to defeat summary judgment on a [Md. Code (1974, 2010 Repl. Vol.) Real Property Article ("RP")] § 8-208.1 claim?
>
> 2. For a breach-of-contract action,
> a. Can a landlord knowingly violate the warranty of habitability under RP § 8-211 and his maintenance obligations;
> b. What are the bounds of the covenant of quiet enjoyment; and
> c. Did the trial court err in ignoring appellants' evidence on rodents?
>
> 3. For a negligence action, did the trial court erroneously find that
> a. Landlords were not negligent, and
> b. that appellants had a burden to present evidence of facts that were not challenged by Landlords?

1. Did the circuit court properly grant summary judgment?

2. Did the circuit court properly award attorney's fees?

For the reasons to follow, we affirm the decision of the circuit court.

FACTS

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4. Pursuant to county law and contract law, when does a right of inspection become illegal harassment and trespass?

5. Does a right of inspection permit a landlord to commit acts that would otherwise be considered the tort of intrusion upon seclusion?

6. Is there a cognizable claim under State Government Title 20's Anti-discrimination housing laws if the Landlords discriminate but fail to achieve their primary discriminatory objective, *i.e.*, actual eviction?

7. Did the trial court improperly deny an injunction to stop illegal eviction actions in district court because it believed it lacked the authority despite statutory law and longstanding common law even?

8. Did the circuit court err by failing to consider appellant's ability to pay in applying sanctions pursuant to RP § 8-208.1(c)(2)?

9. Did the circuit court err by assigning $38,314.25 in attorney's fees to appellee without making findings as to whether the amount was reasonable under the "Lodestar Method"?

10. Did the circuit court err by assigning $38,314.25 in attorney's fees - the amount billed to contest all of appellant's counts under RP § 8-208.1(c)(2) when only seven out of 22 counts were qualifying retaliation claims?

11. Did the circuit court err by assigning $38,314.25 in attorney's fees based solely on a defective billing record and testimony elicited from objected to leading questions?

12. Assuming *arguendo* there was attorney error, does failing to introduce evidence that is indisputably correct and would have proven a claim meritorious overcome a ruling that a cause of action is frivolous or in bad faith?

In May 2016, appellants decided to separate, and Mr. Hawgood asked Ms. Hanson to move out of their home, which forced Ms. Hanson to find new housing for herself and the couple's four children. Ms. Hanson initially approached Ms. Rach about a property located on Adelphi Road. Ms. Rach informed Ms. Hanson that the property would be unsuitable for her and the children because it was located on a busy street. Instead, Ms. Rach and Mr. Lo, given the time sensitive nature of the situation, invited Ms. Hanson to rent the property, located at 3314 Gumwood Drive ("the Property"). When Ms. Rach inquired as to how many tenants would be living in the home, Ms. Hanson answered that she did not expect her husband, Mr. Hawgood, to be living at the home because of the separation. With that understanding, the parties signed the lease in late May which did not include Mr. Hawgood. Ms. Hanson and the children moved in on or about June 1, 2016.

Toward the end of the summer, Mr. Hawgood's home, managed by Streamline Management, allegedly flooded and that created an environment for the growth of toxic mold. Mr. Hawgood vacated the property and eventually negotiated a settlement with Streamline Management. During this time, appellants were working on repairing their marriage, and Mr. Hawgood moved into the Property with Ms. Hanson and the children.[3] At this time, Mr. Hawgood was still not a named or signed party to the lease.

[3] In an affidavit, Ms. Hanson states that she and Mr. Hawgood opted to try living together for up to fifteen days, the statutory time period that Prince George's County ("P.G. County") permitted a guest to stay without becoming an unauthorized tenant.

At the end of May, after Mr. Hawgood had moved into the home, Ms. Rach emailed Ms. Hanson inquiring about whether Mr. Hawgood had moved in, in addition to writing about other matters. Ms. Hanson responded by formally asking that Ms. Rach and Mr. Lo sign Mr. Hawgood to the lease. Ms. Rach responded that, unlike Ms. Hanson, the Landlords had not had the opportunity to properly vet Mr. Hawgood. Ms. Hanson responded that because Mr. Hawgood was admitted to "various state bars" and had TSA-precheck, the background check should be waived. The Landlords denied Ms. Hanson's request citing, in part, that Mr. Hawgood failed to pay rent at his prior residence with Streamline Management.[4]

On September 12, 2016, appellants filed their first complaint (the "September Complaint") against appellees alleging housing discrimination, retaliatory action, conspiracy, rent escrow, breach of contract, fraud, negligent misrepresentation, and negligence.

On September 13, 2016, the hot water heater at the Property began malfunctioning and stopped working. Ms. Hanson contacted Mr. Lo after the heater had been serviced. According to Ms. Hanson, Mr. Lo refused to fix the water heater due to the complaint filed the day before.

[4] Prior to the tenancy at the appellees' property, Ms. Hanson and Mr. Hawgood began withholding their rent at their former tenancy, located at 7095 Wildwood Drive in Takoma Park, Maryland, due to alleged violations of the implied warranty of habitability pursuant to RP § 8-211(i). Streamline Management sued appellants for unpaid rent in early May and late July.

On September 14, 2016, appellants filed a motion for an "Emergency Temporary Restraining Order," seeking repair of the hot water heater after alleging that appellees had "flatly refused" to fix the hot water heater. That same day, Ms. Rach petitioned for a Peace Order alleging that Mr. Hawgood had "entered my property 3 times since September 11, [2016,] coming to [the] door, asking for me, and accosted me by getting out of a vehicle with an accomplice after phoning to ask if I 'have children' and saying[,] 'you don't know who you are dealing with.'" The District Court of Maryland for Montgomery County granted the order, effective through September 21, 2016.[5] The court ordered that Mr. Hawgood stay away from and refrain from contacting Ms. Rach and her daughter at school, Ms. Rach's place of employment, or their home. The parties reached a Settlement Agreement on September 21, 2016.

On September 22, 2016, Issac Marks, appellees' counsel, asked Alexander Hawgood[6], appellants' counsel, to cease and desist from communication, as he was "essentially engaging in the unauthorized practice of law." Mr. Marks also let Alexander Hawgood know that appellees would be conducting inspections of the property on September 23, 2016, and that Mr. Hawgood, per the peace order, should not be present.

In October 2016, Ms. Rach began rejecting rent money from Mr. Hawgood, and in this same month, the appellees made their first Complaint for Repossession of Rented

[5] Rach later sought a modification of the order, asking for it to apply to the Property in dispute because Mr. Hawgood was living there illegally.

[6] Alexander Hawgood is the brother of appellant Hawgood and represented the appellants at different points during the case.

Property in the District Court of Maryland for Prince George's County.[7] In the middle of October, Ms. Rach and Mr. Marks, inspected the property, in question, and found that it had a horrible stench, was messy, and that appellants had altered the fixtures. All conditions were violations of the lease.

On October 26, 2016, appellants filed their second-amended complaint alleging housing discrimination, Hyattsville disability discrimination, retaliatory actions, self – help eviction, conspiracy, rent escrow, breach of contract, fraud, negligent misrepresentation, negligence, contract reformation, trespass, and intrusion upon seclusion.

On October 27, 2016, appellants filed a motion for a temporary restraining order and a preliminary injunction in the circuit court to enjoin "[appellees] and the clerk of the district court [for Prince George's County] from filing and pursuing any claims in Maryland District Court for the breach of lease and failure to pay rent claims (the "October motion")."[8] Appellants alleged that appellees were bringing claims against them in district court for failure to pay rent and breach of lease in order to nullify their constitutional right to a jury trial. Judge Erik H. Nyce of the Circuit Court for Prince George's County, denied appellants' request for a Temporary Restraining Order ("TRO")

[7] Ms. Hanson never paid rent; her father made the first rent payment, and Mr. Hawgood made the subsequent payments.

[8] Appellees filed complaints against appellants in the District Court of Maryland for Prince George's County for non-payment of rent and breach of lease.

because it did not have "the authority to restrain somebody from going to a proper court of jurisdiction."

On November 16, 2016, appellees sent appellants a Notice of Default, outlining various violations of the lease terms: the number of occupants, the subletting to Mr. Hawgood, the failure to pay the water bill, and the removal of fixtures, including the smoke detector, the thermostat for the air conditioning unit, and the installation of television wall mounts.

Dissatisfied with Judge Nyce's findings, appellants filed a second motion for a preliminary injunction on or about November 22, 2016 (the "November motion"), Judge Leo Green of the Circuit Court for Prince George's County presiding, that was nearly identical to their October motion. Judge Green denied this motion after a December 20, 2016 motions hearing "for the same reasons as . . . given by the court on previous occasions [.]" Judge Green ruled that the district court had original jurisdiction over a landlord and tenant dispute.

In December 2016, the dispute came to a head. On December 8, 2016, appellees filed a Complaint for Repossession of Rented Property alleging a failure to pay rent due for December. On December 8, 2016, appellees sent appellants a 14-Day Notice of Termination of Tenancy, Demand to Vacate Premises, and Notice Regarding Security Deposit. Like the Notice of Default, appellees alleged various violations of the lease, this time including a violation of the pet policy, failure to obtain evidence of renter's insurance, and the accumulation of clothing and debris around the premises. Around that

same time, appellants also filed a motion for the special admission of appellants' counsel who was not a member of the Maryland bar.

On December 21, 2016, appellants filed an appeal of the December 20, 2016 order denying their November Motion for preliminary injunction. Appellees filed a Motion to Dismiss Appeal on March 24, 2017, and the Court of Special Appeals granted appellees' motion on May 19, 2017, because neither the circuit court record nor docket had the circuit court's ruling as required by Md. Rule 2-601(b).

The following month, on January 6, 2017, Mr. Marks sent a letter to Mr. Hawgood stating that Mr. Hawgood's check for $1,850.00, the rental amount, was "not acceptable and is being returned to you [since] you previously attempted to submit a check on this or a similar out-of-state personal account on behalf of Ms. Hanson, and later stopped payment on the check."

On July 25, 2017, Judge Alves in the Circuit Court for Prince George's County, held a hearing on the Motion to Dismiss or, in the alternative, a Motion for Summary Judgment.[9] The court held a disposition hearing on August 3, 2017. Appellants' counsel

[9] At the July 25, 2017 hearing, Mr. Marks, appellees' counsel, raised a preliminary matter: the preliminary TRO "that the [c]ourt did not dissolve last Tuesday." Mr. Marks told the court that he had an email exchange with Mr. Hawgood related to the keys for the property. According to Mr. Marks, Mr. Hawgood had not yet picked up the keys. Mr. Marks said that he went over to the house to see whether Mr. Hawgood's suits were still there. Mr. Hawgood emailed Mr. Marks letting him know that one of the locks that had glue in it was his and that he wanted it, and that if it was not returned "he would file something." After Mr. Marks told Mr. Hawgood that he could file "another frivolous pleading," Mr. Hawgood responded "[a]nd I might add the TRO, both, were frivolous, but you lost, if you haven't forgotten." The court found that the issue of the TRO was moot and only considered the Third Amended Complaint.

did not appear, and the court gave its ruling, finding against appellants because there was no genuine dispute of material fact. Additional facts will be provided as they become relevant to our analysis.

STANDARD OF REVIEW

An appellate court decides whether summary judgment was granted properly as a matter of law under a *de novo* standard of review. *Anne Arundel County v. Bell*, 442 Md. 539, 552 (2015). "Before determining whether the [c]ircuit [c]ourt was legally correct in entering judgment as a matter of law . . . we independently review the record to determine whether there were any genuine disputes of material fact." *Windesheim v. Larocca*, 443 Md. 312, 326 (2015). A genuine dispute of material fact is a dispute between the parties about a fact that will somehow affect the outcome of the case. *Lynx, Inc. v. Ordnance Products*, 273 Md. 1, 7-8 (1974). As this Court has previously summarized such an inquiry:

> In determining whether a genuine dispute of material fact exists and, if not, what the ruling of law should be, the court examines the pleadings, admissions, and affidavits, etc., resolving all inferences to be drawn therefrom against the moving party. In other words, all inferences must be resolved against the moving party when determining whether a factual dispute exists, even when the underlying facts are undisputed. But, we caution, the mere existence of a scintilla of evidence in support of the plaintiffs' claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff.

Campbell v. Lake Hallowell Homeowners Ass'n, 157 Md. App. 504, 518 (2004) (internal citations and quotations omitted).

In the context of a motion for summary judgment, a court must view the evidence in a light most favorable to the non-moving party. *Mathews v. Cassidy Turley Maryland, Inc.*, 435 Md. 584, 598 (2013). "Even where the underlying facts are undisputed, if the undisputed facts are susceptible of more than one permissible factual inference, the choice between those inferences should not be made as a matter of law, and summary judgment should not be granted." *Heat & Power Corp. v. Air Prod. & Chemicals, Inc.*, 320 Md. 584, 591 (1990).

If no material facts are in dispute, we then decide whether the trial court properly entered summary judgment as a matter of law. *Catalyst Health Solutions, Inc., v. Magill*, 414 Md. 457, 471 (2010). We evaluate the same material from the record and decide the same issues as the circuit court; "[i]ndeed, an appellate court ordinarily may uphold the grant of a summary judgment only on the grounds relied on by the trial court." *Campbell*, 157 Md. App. at 518-19 (internal quotations and citation omitted).

Therefore, to overcome summary judgment, a party must not only make "general allegations or conclusory assertions," that do not detail the facts a party believes are in dispute. *Educ. Testing Serv. v. Hildebrant*, 399 Md. 128, 139 (2007) (citations omitted). Doing so without precision will *not* overcome a motion for summary judgment. *Id*. In this case, appellants would successfully overcome a motion for summary judgment only if they identified, with particularity, each material fact in genuine dispute and provided support for its contentions "by an affidavit or other written statement under oath." Md. Rule 2-501(b).

We will first independently review the record to determine whether appellants have presented a genuine dispute of material fact for each of their claims in the order presented by the circuit court. Then we will determine whether appellants' presentation was sufficient to overcome a motion for summary judgment. Last, we will decide whether this case was properly resolved by grant of summary judgment.

DISCUSSION

The circuit court properly determined that it did not have the authority to prevent appellees from bringing an action in the district court.

Appellants argue that the circuit court erred in denying appellants' preliminary injunction against the Landlords because it believed that it was outside of its authority. Further, appellants submit that the circuit court's failure to enjoin the Landlords from litigating in the circuit court would have a *res judicata* effect on their claims and would deprive appellants of their constitutional right to a jury trial. Appellants ask this Court to "continue the Court of Appeals' analysis of [Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("Cts. & Jud.")] §4-401(4) from *Williams v. Housing Auth. of Baltimore City*, 361 Md. 143 (2006) a little farther."

Both times that the preliminary injunction came before both Judge Nyce and Judge Green of the Circuit Court for Prince George's County, the court determined it did not have the jurisdiction to enjoin the appellees from proceeding with their action in the district court. We agree.

Cts. & Jud. § 4-401(4) guides our analysis of appellants' first claim. Under that Article, the district court has exclusive original civil jurisdiction in: (1) actions involving

landlord and tenant, distraint, or wrongful detainer, regardless of the amount involved; (2) petitions of injunctions filed by a tenant in an action under Md. Code (1974, 2010 Repl. Vol.), Real Property Article ("RP") § 8-211 or a local rent escrow law or a person who brings an action under RP § 14-120, or RP § 14-125.2. This appeal arises out of a landlord-tenant dispute, bringing it under the jurisdiction of the district court. We will address appellants' request that we extend the Court of Appeals' analysis in *Williams* further.

Williams involved a tenant who brought a rent escrow action in the district court against her landlord, the Housing Authority of Baltimore City (the "HABC"), after the HABC failed to repair certain conditions in the home that she considered dangerous, including a rodent infestation, leaking water from the bathtub, and holes in the ceiling. *Williams*, 361 Md. at 146. Her action was filed on the form printed and supplied by the district court. *Id*. at 147. The tenant also filed for damages arising out of the alleged breach of two warranties, which was dismissed by the district court. *Id*. at 149. The tenant then filed a notice of appeal, but because she did not make the required $50.00 deposit for the transcript fee, a transcript of the proceeding was never prepared or filed. *Id*. at 150-51. Subsequently, the district court transmitted the balance to the circuit court, and the district court document noted that the rent escrow action was *de novo*. The circuit court waived its filing fee, treated the appeal as *de novo*, and placed the case on an expedited track. *Id*. at 151. The plaintiff and her attorney were never notified of the trial date. When they did not appear, the court dismissed the appeal for lack of prosecution.

Id. The tenant's counsel filed a motion for new trial, reinstatement of the appeal, and noted that the appeal should have been heard on the record, which the court denied. *Id*.

The Court of Appeals noted:

> [P]etitioner's claim was filed on the pre-printed [d]istrict [c]ourt form, which expressly allows an action for breach of warranty of habitability or quiet enjoyment to be joined with a rent escrow action. That suggests, as strongly as anything could, that the [d]istrict [c]ourt does not regard warranty of habitability or quiet enjoyment claims as having to be filed separately from other landlord-tenant actions.

Id. at 159.

The Court held that there was "no legal, factual, or practical basis for the district court judge's conclusion that a claim for breach of warranty of habitability under § 9-14.1 of the Public Local Laws of Baltimore City or of quiet enjoyment under RP § 2-115 cannot be joined and tried with a rent escrow action." *Id*. at 160. There is nothing in *Williams* that would compel a different finding than what was made by the two judges that addressed this issue.

The district court retained exclusive and original jurisdiction over this landlord tenant dispute, and the circuit court was not bound, and did not have the discretion, to enjoin appellees and the district court from continuing that failure to pay rent action. Accordingly, the circuit court did not err in its determination that it lacked the jurisdiction to enjoin the district court from proceeding with the failure to pay rent and breach of lease actions.

The circuit court did not err in dismissing appellants' claim of housing and marital discrimination.

Appellants aver that the circuit court erred in finding that the appellees did not discriminated against them because of their marital status. At oral argument, appellants argued that they fall within protected status, and that the appellees did not want them to be together because they separated and then rekindled their relationship.

Appellants ask this Court to reevaluate the circuit court's determination under the *prima facie* burden-shifting test outlined in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), because "Federal courts apply it for cases under the Fair Housing Act ["FHA"]." Appellants proffer that appellees' failure to accept Mr. Hawgood as a resident amounted to a "refusal to rent" and "otherwise [made] the rental unavailable." Appellants also submit that appellees' refusal to grant Mr. Hawgood tenancy was "a denial of the 'privileges' of the rental contract's Sub-Tenancy Clause."

The circuit court found that this claim was frivolous and found that Md. Code (1984, 2014 Repl. Vol.), State Government Article ("SG") § 20-705(1) and (2) did not apply to appellants' claim because Mr. Hawgood was living there, and appellees knew Ms. Hanson was married when they leased to her. We agree.

Courts have applied the *McDonnell Douglas* framework to housing discrimination claims. *See, e.g., Mencer v. Princeton Square Apartments*, 228 F.3d 631, 634 (6th Cir. 2000). To survive summary judgment, appellants must allege sufficient facts to establish a *prima facie* case of housing discrimination. To establish a *prima facie* case of housing discrimination, a plaintiff must prove that: (1) he or she is a member of a statutorily protected class; (2) that he or she applied for and was qualified to rent or purchase certain property or housing; (3) that he or she was rejected; and (4) that the housing or rental

property remained available thereafter. *See Mencer*, 228 F.3d at 634-35; *Soules v. U.S. Dept. of Housing and Urban Development*, 967 F.2d 817, 822 (2d Cir. 1992). Appellants' claims fail under both the FHA's standards and those outlined by SG § 20-708(1).

The FHA prohibits discrimination in housing rentals and conditions based on specific protected classes, such as race, religion, national origin, and, familial status. It is unlawful for a housing provider to discriminate based on familial status in the terms or conditions of selling or renting housing. 42 U.S.C. § 3604(a)-(b). The FHA also prohibits a housing provider from making any statements or representations related to housing rentals or sales that indicate any preference, limitation, or discrimination based on familial status. 42 U.S.C. § 3604(c). Congress added this FHA provision prohibiting discrimination based on families with children under 18 in 1988. FHA Amendments of 1988, Pub. L. No. 100-430, 102 Stat. 1620.

Under the FHA's standards, the marital status of adult tenants is irrelevant. *See* 42 U.S.C. §§ 3604(a)-(f), 3605(a), 3606 (omitting "marital status" from categories of protected classes under the FHA); *Soules*, 967 F.2d at 821 ("Congress' primary concern [in passing the FHA] was to eliminate direct discrimination against families *with children*.") (emphasis added). Under the FHA, appellants' protected class claims would fail. We next turn to SG § 20-701, which parallels the FHA.

Appellants' argue that they fall within a protected class for the purposes of SG § 2-705, states that a person may not:

> 1) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, or national origin;
>
> 2) discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, or national origin;
>
> * * *
>
> 4) represent to any person, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, or national origin, that any dwelling is not available for inspection, sale, or rental when the dwelling is available[.]

SG § 20-701(h) defines marital status as "the state of being single, married, separated, divorced, or widowed." Under this statute, appellants would be a member of the protected class because they are married. However, their success ends there.

Appellants' argument hinges on a statement from Ms. Rach's affidavit that, "[t]ermination of the Lease is not based solely on Plaintiff Hawgood living at the property or Plaintiff's marital status, and is not in any way retaliation." Appellants take Ms. Rach's statement in the affidavit completely out of context. In actuality, Ms. Rach's affidavit reads:

> 31. Due to Plaintiff Hanson's continual violations in paragraph 30, above, and refusal to comply with the terms of the Lease, which I felt was causing major damage to and had created a stench within the Property, Plaintiff Hanson was given a notice of termination of the Lease. (Affidavit Exhibit C). Termination of the Lease is not based solely on Plaintiff Hawgood living at the Property or Plaintiffs' marital status, and is not in any way in retaliation against Plaintiffs.

Paragraph 30 of Ms. Rach's affidavit refers to the following: Ms. Hanson subletting the home to Mr. Hawgood in breach of the lease; the changing of the locks on the doors of the Property without written consent of the Landlords; keeping a total of 4 animals on the Property without written approval or a pet deposit; making unauthorized alterations including removal of the thermostat of the heat and air conditioning system, the removal of the smoke detector, the installation of three television wall mounts, failure to keep the Property in a clean and sanitary condition; and the failure to provide the Landlords with proof of renter's insurance. We find the above language in Ms. Rach's affidavit to be ambiguous. Despite a finding of ambiguity, the appellants still failed to establish a *prima facie* case of discrimination under the *McDonnell Douglas* framework, which they were required to do.

By way of example, one of the most difficult issues that is often raised in housing discrimination cases is whether an applicant was "qualified" to rent the home. The term "qualified to rent" has been defined as "ready and able to accept defendants offer to rent or buy." *Mencer v. Princeton Square Apartments*, 228 F.3d 631, 635 (6th Cir. 2000) (quoting *Schanz v. Village Apartments*, 998 F. Supp. 784, 788 (E.D. Mich. 1998)).

The record reflects that in September 2016, appellees learned that Mr. Hawgood was living at the premises, even though Ms. Hanson had signed only for herself and the children. When Ms. Rach questioned Ms. Hanson about whether Mr. Hawgood was living at the home, Ms. Hanson asked that the Landlords add Mr. Hawgood to the lease. Ms. Hanson also responded that the security check on her applied to Mr. Hawgood. Not so. Mr. Hawgood never formally applied, nor was he qualified, to rent the house. The

record reflects that appellees continually let Ms. Hanson know that they had a right to vet prospective renters. Last, Mr. Hawgood continued to live at the premises, although he was not a party to the lease. This is contrary to any concept that the property was still available or that Mr. Hawgood was "ready and able" to rent the property.

Further, appellants' disbelief of the Landlords reasons is not enough to find intentional discrimination. The Landlords reasons cannot be proved to be a "pretext for discrimination" unless it is shown both that the reason was false, and that discrimination was the real reason." *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 519 (1993). "The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains *at all times* with the plaintiff." *Id*. at 507 (emphasis added).

Absent direct evidence of intentional discrimination, appellants had the burden of proving by a preponderance of the evidence a *prima facie* case of discrimination. Appellants did not meet that burden here. Therefore, we hold that the circuit court did not err in finding that appellants' housing discrimination claims had no merit.

The circuit court did not err in dismissing appellants' disability and animal service discrimination claims.

Appellants argue that they "presented a sufficient case for disability discrimination." Appellants claim that they produced "undisputed" evidence that Ms. Hanson had a disability; namely, a severe anxiety disorder. Closely related to retaliatory action claims, appellants argue that "terminating a lease and suing for possession due to a

protected status clearly falls into 'the otherwise make unavailable' language of SG § 20-706, and 'retaliation' under SG § 20-708, or an attempt under SG § 20-801."

It is undisputed that appellant has a disability for the purposes of SG § 20-701(b)(1).[10] To prevail on a claim of disability discrimination in housing, appellants must first prove a *prima facie* case of reasonableness for a requested accommodation, in this case, a service animal, and appellees bear the burden of proving that an accommodation is unreasonable. *Board of Directors of Cameron Grove Condo., II v. State Com'n on Human Relations*, 431 Md. 61, 80 (2013).

In *Board of Directors of Cameron Grove Condo., II*, the Court of Appeals looked to the burden of proof articulated by the Fourth, Fifth, and Sixth Federal Circuits, which require the complaining party to prove that an accommodation is reasonable. *Id*. at 75. There, a condominium board of directors needed to prove that providing keys to two disabled unit owners for the back and side doors of the building was unreasonable considering the costs attendant in doing so. *Id*. at 63. The Appeal Board of the Commission on Human Relations (now the Commission on Civil Rights) found that the

[10] SG § 20-701(b)(1) defines disability as:

> (i) a physical or mental impairment that substantially limits one or more of an individual's major life activities;
>
> (ii) a record of having a physical or mental impairment that substantially limits one or more of an individual's major life activities; or
>
> (iii) being regarded as having a physical or mental impairment that substantially limits one or more of an individual's major life activities.

board of directors violated the housing law by failing to reasonably accommodate the owners. *Id*. at 63.

To trigger a duty to provide a reasonable accommodation, a tenant must first make the request. *Douglas v. Kriegsfeld Corp*., 884 A.2d 1109, 1122-23 (D.C. 2005). The FHA has the same standard.

In the instant case, Ms. Hanson made the request for her service animal *after* she had signed her lease. While Ms. Hanson and Ms. Rach had a lengthy back and forth over the course of several days, Ms. Rach eventually consented to having the service animal in the residence. It appears from the record that the service animal continued to live at the premises until appellants vacated the home.

Important to note, the appellants are correct in suggesting that appellees did not consent to the *additional* animals that were in their home. The record reflects that by the time the multitude of litigation began, there were three other animals living in the home, in addition to the service animal that had the permission to reside there. It was those additional animals that were in violation of the lease's terms.

By allowing the service dog to remain in the home, the appellees made a reasonable accommodation. The circuit court correctly found that there was no genuine dispute of material fact as to this claim.

The circuit court did not err in finding no genuine dispute of material fact related to appellants' retaliatory action claims.

Appellants aver that the retaliatory motive of appellees is evidenced by "tight temporal connections." Appellants state that an analysis using tight temporal connections

is a question of first impression for Maryland courts and directs us to several federal circuit court opinions. Appellants argue that the circuit court improperly dismissed all eight of their retaliatory action claims by "disregarding logical evidence, ignoring the statute, or improperly invoking *res judicata*." Appellants proffer that we should consider temporal proximity in assessing whether appellees took retaliatory action against them.

Appellants submit the following seven retaliatory actions: (1) appellees' Notice of Default letter; (2) appellees' alleged refusal to repair the hot-water heater; (3) Ms. Rach's peace order against Mr. Hawgood; (4) appellees' asking for reimbursement; (5) appellees' rejection of Mr. Hawgood's rent check; (6) appellees' first breach of lease action; and (7) threatening to remove appellants from the lease.

At the August 3, 2017 hearing Judge Alves, in the Circuit Court for Prince George's County, found that Retaliatory Action claims 1, 2, 3 and 4 failed to state a claim upon which relief could be granted. Regarding Retaliatory Action 1, Judge Alves found that Mr. Hawgood was not on the lease and that there was no evidence of retaliatory action.

As to Retaliatory Action 2, Judge Alves found that the appellants agreed to repair, and did repair, the water heater and garbage disposal. As to Retaliatory Action 3, Judge Alves found that Mr. Hawgood entered into and was under an agreement that resolved the issues stemming from the peace order. As to Retaliatory Action 4, which dealt with the appellants' request for reimbursement of the hot water heater, which the appellees fixed, Judge Alves found no evidence of retaliation.

Regarding Retaliatory Action 5, which was related to the appellees' breach of lease claims, Judge Alves found that there was no dispute that for the months that appellees were seeking rent, the appellants had failed to pay that rent, and the appellees had a right to file for non-payment of rent. We review these claims *de novo* for legal correctness and review each of these alleged retaliatory actions in turn.

The circuit court did not err in finding no genuine dispute of material fact related to the failure to pay rent cases as retaliation.

State law protects a residential tenant from retaliation by a landlord for certain activities, and proof of retaliation may be a defense to eviction and may entitle the tenant to an award of damages, attorneys' fees, and court costs. Maryland's anti-retaliation statute prohibits landlords from taking certain adverse actions against a tenant for reasons that the law deems improper. Before discussing retaliatory actions, we provide the relevant statute.

A tenant may make a claim for "retaliatory action," either as a defense in an action for possession brought by the landlord or as an affirmative claim. RP § 8-208.1(b). A landlord may not do the following for improper reasons:

> (i) Bring or threaten to bring an action for possession against a tenant;
>
> (ii) Arbitrarily increase the rent or decrease the services to which a tenant has been entitled; or
>
> (iii) Terminate a periodic tenancy.

RP § 8-208.1(a)(1).

The statute specifies the following as improper reasons for a landlord to take one of those actions against a tenant:

> (i) Because the tenant or the tenant's agent has provided written or actual notice of a good faith complaint about an alleged violation of the lease, violation of law, or condition on the leased premises that is a substantial threat to the health or safety of occupants to:
>
> 1. The landlord; or
>
> 2. Any public agency against the landlord;
>
> (ii) Because the tenant or the tenant's agent has:
>
> 1. Filed a lawsuit against the landlord; or
>
> 2. Testified or participated in a lawsuit involving the landlord; or
>
> (iii) Because the tenant has participated in any tenants' organization.

RP § 8-208(a)(2).

If the court finds that a landlord committed a retaliatory action, the court may award the tenant damages against the landlord in an amount not to exceed the equivalent of three months' rent, reasonable attorneys' fees, and court costs. RP § 8-208.1(c)(1).[11] However, a tenant may obtain such relief only if the tenant is "current on the rent due and owing to the landlord at the time of the alleged retaliatory action," unless the tenant is withholding rent for various legal reasons. RP § 8-208.1(d).

In *Lockett v. Blue Ocean Bristol*, 446 Md. 397 (2016), the Court of Appeals analyzed the statute and addressed what the term "rent" meant in the statute. The *Lockett* Court held that a tenant's "rent" consists of the periodic sum owed to a landlord and that,

[11] If the court finds that the tenant's assertion of retaliatory action was made "in bad faith or without substantial justification," the court may enter a similar judgment against the tenant in favor of the landlord. RP § 8-208.1(c)(2).

in the case, the tenant was current on her rent and was eligible for relief under the anti-retaliation statute. *Id*. at 419.

Here, the appellants were not "current on the rent due," as the record reflects that the first "failure to pay rent" action commenced in October 2016 after Ms. Rach emailed Ms. Hanson that payment would only be accepted if it came from Ms. Hanson herself, or her parents, whom were her guarantors on the lease. Because appellants were not "current on the rent due," their claims of retaliatory action are barred unless they can prove that they were withholding their rent under RP § 8-211, due to a landlord's failure to repair or eliminate serious conditions or defects in the residential unit. Nothing in the record reflects that appellants were withholding their rents, due to a failure of the landlord to repair the unit.

Accordingly, the circuit court did not err in finding no genuine dispute of material fact related to appellants' claim of retaliation due to the failure to pay rent cases.

The circuit court did not err in finding no genuine dispute of material fact related to the breach of lease cases.

We discern no error on the part of the circuit court. A landlord brings a breach of lease action under RP § 8-402.1, which provides a different procedure "for recovery of the premises when the tenant has breached a covenant of the lease, other than the covenant to pay rent that is currently due." *Brown v. Housing Opportunities Com'n of Montgomery County*, 350 Md. 570, 577 (1998).

RP § 8-402.1 mandates that a court weigh equitable factors before evicting a tenant and granting possession to a landlord. Those factors may include "the actual loss

or damage caused by the violation at issue, the likelihood of future violations, and the existence of effective alternative remedies for past or existing violations." In the instant case, the appellants were bound to the terms of their lease, which stated in pertinent part:

> 8. **Number of Occupants**. Lessee agrees that the demised premises shall be occupied by no more than 5 persons, consisting of 1 adult(s) and 4 child(ren) under the age of 18 years without the written consent of Lessor.
>
> 9. **Locks**. Lessee agrees not to change Locks on any door or mailbox without first obtaining Lessor's written permission. Having obtained written permission, Lessee agrees to pay for changing the Locks and to provide Lessor with one duplicate key per Lock.
>
> * * *
>
> 13. **Assignment and Subletting**. Without the prior written consent of Lessor, Lessee shall not assign this lease, or sublet or grant any concession or license to use the premises or any part thereof. A consent by Lessor to one assignment, subletting, concession or license shall not be deemed to be a consent to any subsequent assignment, subletting, concession, or license. An assignment, subletting, concession or license without the prior written consent of Lessor, or an assignment or subletting by operation of law, shall be void and shall, at Lessor's option, terminate this lease.
>
> * * *
>
> 19. **Right of Inspection**. Lessor and his agents shall have the right at all reasonable times during the term of this lease and any renewal thereof to enter the demised premises for the purpose of inspecting the premises and all building and improvements therein [with at least 24 hours' notice.]
>
> 20. **Maintenance and Repair**. Lessee will, at his sole expense, keep and maintain the leased premises and appurtenances in good and sanitary condition and repair during the term of this lease and any renewal thereof. In particular, Lessee shall keep the fixtures in the house on or about the leased premises in good order and repair; keep the furnace clean; keep the electric bills in order; keep the walks free from dirt and debris; and, at his sole expense, shall make all required repairs to the plumbing, range, heating apparatus, and electric and gas fixtures whenever damage thereto shall have resulted from Lessee's misuse, waste, or neglect[.] Major maintenance and

> repair of the leased premises, not due to Lessee's misuse, waste, or neglect . . . shall be the responsibility of Lessor or his assigns.
>
> * * *
>
> 29. **Default**. If any default is made in the payment of rent, or any part thereof, at the times hereinbefore specified, or if any default is made in the performance of or compliance with any other term or condition hereof, the lease, at the option of Lessor, shall terminate and be forfeited, and Lessor may re-enter the premises and remove all persons therefrom. Lessee shall be given written notice of any default or breach, and termination and forfeiture of the lease shall not result if, within 3 days of receipt of such notice, Lessee has corrected the default or breach or has taken action reasonably likely to effect such correction within a reasonable time.

In the September 2016, November 2016, and December 2016, "Notice of Default" letters, appellees informed appellants that they were in violation of the following lease terms: Paragraph 8 (Number of Occupants), Paragraph 15 (Alteration and Improvement), Paragraph 20 (Maintenance and Repair), Paragraph 22 (Pets), and Paragraph 35 (Insurance). The record reflects, through affidavits and photographic evidence, that appellants removed the thermostat for the air conditioning unit from the wall, that there was a substantial amount of debris and objects scattered throughout the home, and that the Rinnai combi boiler with a fuse error was serviced and paid for in September 2016.

As such, given the leases' terms, the appellees were well within their right to file a breach of lease claim, and the circuit court did not err in finding a genuine dispute of material fact.

The circuit court did not err in finding no genuine dispute of material fact related to the hot water heater.

Appellants allege that appellees refused to perform "legally required services" when the hot-water heater broke.

The Circuit Court for Prince George's County, found that this claim was moot because the appellees, by court order, fixed the hot water heater. We agree, and will not address this claim further as the hot water heater was fixed, thus there was no retaliatory action to be found.

The circuit court did not err in finding that there was no retaliatory action stemming from Ms. Rach's peace order against Mr. Hawgood.

Appellants submit that a peace order "qualifies as an action under RP § 8-208.1(a)(1)(i) because the Landlords used it to attempt to prevent Mr. Hawgood from going to the property, thus making it an action for possession against a subtenant." Appellants next argue that for a settlement agreement to waive a retaliation suit, it must either directly waive the claim or state the action was legitimate – and state that the settlement agreement between Ms. Rach and Mr. Hawgood did neither.

Judge Alves found that there was no evidence that the peace order was filed in retaliation, and that the parties reached an agreement. The record reflects that Ms. Rach's peace order was intended to protect Ms. Rach and her daughter after they were approached by Mr. Hawgood who told Ms. Rach that she did not know who she was dealing with. Ms. Rach later sought to modify the peace order to attach to the premises because "[Mr. Hawgood] is living illegally at this residence, and demanding repairs to the home." As we discussed *supra*, the record reflects that Mr. Hawgood did not formally apply to rent the property nor was he vetted to be added to the lease.

Appellants submit no evidence, other than conclusory allegations, that appellees filed a peace order in retaliation against them. As such, we find no error from the circuit court.

The circuit court did not err in finding that appellants' claims regarding reimbursement for the water heater were baseless and not retaliatory.

Appellants argue that "Landlords cannot demand payment for an act they chose to complete," and that it was undisputed that the Landlords agreed to fix the hot – water heater. Judge Alves found that there was no evidence presented showing that the appellees asking for money for the repair of the water heater, which appellants were required to maintain per the lease, was retaliatory. We agree.

On the issue of reimbursement for the water heater, a close reading of the Lease evidences that it would depend on whether the repair of the water heating was a result of neglect as to who would be responsible for maintaining the hot water heater. Requesting reimbursement alone would not suggest retaliation. There was no evidence in the record disputing that. Thus, the circuit court was correct in finding that appellants presented no evidence of retaliation.

The circuit court did not err in finding that there was no genuine dispute of material fact related to appellants' self-help eviction claims.

Appellants contend that Judge Alves ignored RP § 8-216 and that "they were under the immediate and reasonable apprehension that Mr. Hawgood would be forcibly removed from the property," due to appellees' "Notice of Default." Judge Alves found that appellants' Count IX, self-help eviction claim, failed to state a claim upon which relief could be granted. We agree.

RP § 8-216 states:

(a)(1) In this section the following words have the meanings indicated.

(2) "Threaten to take possession" means using words or actions intended to convince a reasonable person that the landlord intends to take imminent possession of the property in violation of this section.

(3)(i) "Willful diminution of services" means intentionally interrupting or causing the interruption of heat, running water, hot water, electricity, or gas by the landlord for the purpose of forcing a tenant to abandon the property.

(ii) "Willful diminution of services" does not include a landlord choosing not to continue to pay for utility service for residential property after a final court order awarding possession of the residential property, if the landlord has provided the tenant reasonable notice of the landlord's intention and the opportunity for the tenant to open an account in the tenant's name for that service.

Restrictions relating to taking or threatening to take possession of dwelling unit

(b)(1) Except as provided in paragraph (2) of this subsection, a landlord may not take possession or threaten to take possession of a dwelling unit from a tenant or tenant holding over by locking the tenant out or any other action, including willful diminution of services to the tenant.

(2) A landlord may take possession of a dwelling unit from a tenant or tenant holding over only:

(i) In accordance with a warrant of restitution issued by a court and executed by a sheriff or constable; or

(ii) If the tenant has abandoned or surrendered possession of the dwelling unit.

Remedies for violation of section

(c)(1) If in any proceeding the court finds in favor of the tenant because the landlord violated subsection (b) of this section, the tenant may recover:

(i) Actual damages; and

(ii) Reasonable attorney's fees and costs.

(2) The remedies set forth in this subsection are not exclusive.

Temporary measures taken by landlord

(d) This section may not be construed to prevent a landlord from taking temporary measures, including changing the locks, to secure an unsecured residential property, if the landlord makes good faith attempts to provide reasonable notice to the tenant that the tenant may promptly be restored to possession of the property.

Originating in fourteenth-century England, peaceable self-help is a common law remedy that provides title owners with the right to repossess their real property from a possessor who has no legal right to reside on that property. *See, e.g., Laney v. State*, 379 Md. 522, 543 (2004) ("The right of peaceable self-help, therefore, is a viable mechanism for a title owner of property to obtain actual possession of real property from a holdover mortgagor."); *see also*, 1 Julian J. Alexander, *British Statutes in Force in Maryland* 247 (2d ed. 1912) (explaining the common law background of the causes of action that gave rise to the self-help remedy). Self-help is a long-established common law remedy for titleholders in Maryland. However, what appellees did here in issuing a "Notice of Default" letter did not amount to a self-help eviction as appellants allege.

Pursuant to RP § 8-216(a)(1)(2), "threaten to take possession" means "using words or actions intended to convince a reasonable person that the landlord intends to take imminent possession of the property in violation of [that section]." There was no basis for the argument that a "Notice of Default" letter, which provided appellants with the opportunity to mitigate their default, meant that appellees would imminently take possession of the property. In fact, the opposite is true. If the tenant mitigated the

default, they would in fact remain in good standing. We hold that the circuit court did not err regarding this claim.

The circuit court did not err in finding that there was no genuine dispute of material fact related to appellants' conspiracy claim.

Appellants argue that "[i]t is undisputed that Landlords were married, live[d] with each other, routinely communicated with each other regarding the proposed sub-tenancy," and that the Landlords jointly owned and agreed to lease to appellants.[12]

Judge Alves found that appellants failed to state a claim because there was no evidence that the defendants conspired against appellants, no evidence that the appellees accomplished any illegal act, and an earlier circuit court ruling by Judge Byrons in the District Court of Maryland for Prince George's County found that appellees did not breach the lease.

To bring a claim for civil conspiracy, a plaintiff must show the following: (1) a confederation of two or more persons by agreement or understanding, (2) some unlawful or tortious act done in furtherance of the conspiracy, or use of unlawful or tortious means to accomplish an act not in itself illegal, and (3) actual legal damage resulting to the plaintiff. *Llyod v. General Motors Corp*., 397 Md. 108, 154 (2007).

There is no evidence in the record that appellees conspired against appellants. Nor is there evidence in the record that appellees did anything illegal in maintaining the terms of their lease with appellant. Last, appellants did not present any evidence that any legal

[12] The record does not reflect any instance where appellees agreed to rent to both Ms. Hanson and Mr. Hawgood, only that appellees agreed to rent to Ms. Hanson.

damage resulted to them because of appellees' conduct. Due to appellants' lack of evidence showing that this fact was in dispute, we find that there was no genuine dispute of material fact as to this claim.

The circuit court did not err in finding no genuine dispute of material fact related to appellees' rent escrow action.

Appellants argue that Judge Alves erred in finding that appellants failed to satisfy their rent obligations. In their brief, appellants assert that Mr. Hawgood paid Ms. Hanson's rent for July, August, and September, without any complaint by Landlords.

Again, Judge Alves found that appellants failed to state a claim upon which relief could be granted because it was undisputed that the rent was unpaid. Judge Alves also noted that these matters were within the district court's jurisdiction, which also found that appellants had failed to satisfy their rent obligations.

Finally, Judge Alves found that, again, Mr. Hawgood failed to have any privity on the matter because he was not a party to the lease. As mentioned above, appellees were within their right to bring a failure to pay rent claim and properly brought that claim in the district court.

The circuit court did not err in finding no genuine dispute of material fact related to appellants' breach of contract and negligence claims.

Appellants argue that the Landlords were contractually obligated to remove the pokeweed plant that allegedly poisoned their son. They also argue that Judge Alves erred in failing to consider their claim that appellees violated the covenant of quiet use and enjoyment. Last, appellants contend that Landlords were negligent in failing to remove the Pokeweed plant that they knew was poisonous in violation of Prince George's County

Code § 13-302.4. As appellants have relied both on State law and Prince George's County Codes, we will assess both and the arguments, in turn.

As to the pokeweed plant, the circuit court found that the appellants failed to meet their burden because it was the appellees' duty to maintain the property and that, during the time in question, appellants' son ingesting the Pokeweed plant, appellees were maintaining the property. Judge Alves noted that appellants declined appellees' assistance and, at that point, the bush became overgrown. Last, Judge Alves determined that appellants failed to provide any evidence establishing that the Pokeweed plant was poisonous.[13]

[13] *Phytolacca Americana*, otherwise known as the Common pokeweed, is a large, bushy, herbaceous perennial that sometimes resembles a small tree. It is native to the eastern United States and can be found in pastures, roadsides, fencerows, open woods, and wood borders. The seedlings of the common pokeweed appear from mid-spring to early summer, and the flowers are produced from July to September. Birds can eat pokeweed berries without adverse reactions. However, *all* parts of common pokeweed are toxic to humans, pets, and livestock. The roots of the pokeweed are the most poisonous, and the leaves are intermediate in toxicity, which increases with maturity. The berries of the Pokeweed are the least toxic. Children are most frequently poisoned by eating raw berries. Infants are especially sensitive and have died from eating only a few raw berries. The plant is also poisonous to adults. Research with humans has also shown that common pokeweed can cause mutations, like cancer, and birth defects. The juice of the Pokeweed plant is absorbed through the skin. Symptoms of poisoning from the Pokeweed plant include: burning sensations in the mouth, salivation, gastrointestinal cramps, vomiting, and bloody diarrhea. Most people and animals recover within two days if only a small quantity is ingested. However, if massive quantities are consumed, more severe symptoms can occur, such as anemia, altered heart rate and respiration, convulsions and death from respiratory failure. Ohio Perennial and Biennial Weed Guide, *Common Pokeweed (Phytolacca americana)*, The Ohio State University College of Food, Agricultural, and Environmental Sciences, http://www.oardc.ohio-state.edu/weedguide/single_weed.php?id=112 (last visited July 11, 2018).

To establish a claim for negligence under Maryland law, a party must prove four elements: "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Sterling v. Johns Hopkins Hosp.*, 145 Md. App. 161, 169 (2002) (citations, internal quotation marks, footnote, and emphasis omitted); *accord*, *100 Inv. Ltd. P'ship v. Columbia Town Ctr. Title Co.*, 430 Md. 197, 212-13 (2013).

The threshold requirement is the existence of a duty. *See Sterling*, 145 Md. App. at 169. "[F]or without a duty, no action in negligence will lie." *Evergreen Assocs., LLC v. Crawford*, 214 Md. App. 179, 187 (2013) (citation and internal quotation marks omitted). "[U]nder current Maryland law the extent of the duty depends upon the status of the plaintiff [ ] at the time of the accident." *Casper v. Charles F. Smith & Son, Inc.*, 316 Md. 573, 578 (1989) (citing cases); *accord Deboy v. City of Crisfield*, 167 Md. App. 548, 555 (2009).

Maryland case law has recognized that, under general principles of negligence, a landlord has a duty to exercise reasonable care for a tenant's safety. Critical to the determination of the existence of a landlord's duty is the degree to which a landlord exercises control over the conditions of the property. The Court of Appeals has explained that, "'[w]hen a landlord has leased property but has not parted control with a portion of it . . . the landlord may be liable for a foreseeable injury caused by a known dangerous or defective condition located within the part of the property over which the

landlord retained control.'" *Hemmings v. Pelham Wood, Ltd. Liab. Ltd. P'ship.*, 375 Md. 522, 537 (2003).

In *Matthews v. Amberwood Assocs. Ltd. P'ship., Inc*., 351 Md. 544 (1998), the Court of Appeals explained:

> a common thread running through many of our cases involving circumstances in which landlords have been held liable (*i.e*., common areas, pre–existing defective conditions in the leased premises, a contract under which the landlord and tenant agree that the landlord shall rectify a defective condition) is the landlord's ability to exercise a degree of control over the defective or dangerous condition and to take steps to prevent injuries arising therefrom.

Id. at 557. "[T]he principle that the landlord may have a duty with regard to matters within his control extends beyond common areas; it may be applicable to conditions in the leased premises." *Id*.

To prove duty, appellants would have had to provide evidence showing that the Landlords had control over the property and that the resulting injury was reasonably foreseeable. The record does not reflect that appellants submitted that evidence. Instead, appellants made conclusory claims that appellees knew of the pokeweed plant and its consequences because they had a pokeweed plant in their own yard.

Appellants are correct that Prince George's County Code § 13-302.4 prohibits "all noxious weeds," but the fact remains that it was appellants who were bound by the terms of the lease to "maintain the leased premises." The record reflects that appellees had initially taken care of the lawn, but the record also reflects that appellants asked appellees to stop that service, and assumed that responsibility to save thirty dollars, the amount of

said service. The circuit court did not err in finding that there was no genuine dispute of material fact.

The circuit court did not err in finding no genuine dispute of material fact related to appellants' fraud claim.

We will not address this fraud claim as appellants failed to raise it in their brief to this court. Md. Rule 8-504(a)(6) requires "[a]rgument in support of the party's position on each issue." "[I]t is not incumbent upon this Court, merely because a point is mentioned as being objectionable at some point in a party's brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested." *State Rds. Comm'n v. Halle*, 228 Md. 24, 32 (1962); *accord Larmore v. Larmore*, 241 Md. 586, 590 (1966).

"[W]e have repeatedly declined to address arguments that are not properly briefed," *Blue v. Arrington*, 221 Md. App. 308, 321 (2015), and we need not do so now.

The circuit court did not err in finding no genuine dispute of material fact arising from appellants' trespass and intrusion upon seclusion claims.

Appellants argue that appellees abused their right to inspect, invaded appellants' privacy, and exceeded the scope of an inspection that rose to the level of trespass. Judge Alves found that appellees gave proper notice to appellants each time they visited the property and found no genuine dispute of material fact.

We have explained that "trespass is a tort involving 'an intentional or negligent intrusion upon or to the possessory interest in property of another.'" *Mitchell v. Baltimore Sun Co.*, 164 Md. App. 497, 508 (2005) (quoting *Ford v. Baltimore City Sheriff's Office*, 149 Md. App. 107, 129 (2002)). "In order to prevail on a cause of action for trespass, the

plaintiff must establish: (1) an interference with a possessory interest in his property; (2) through the defendant's physical act or force against that property; (3) which was executed without his consent." *Id*. The "tort of invasion of privacy is not just one tort, but encompasses four different types of invasion tied together under one title. One form of invasion is intrusion upon the seclusion of another." *McCauley v. Suls*, 123 Md. App. 179, 190 (1998) (citations omitted).

Intrusion upon seclusion has been defined as: "The intentional intrusion upon the solitude or seclusion of another or his private affairs or concerns that would be highly offensive to a reasonable person." *Furman v. Sheppard*, 130 Md. App. 67, 73 (2000). Intent is clearly required; "'[t]he tort cannot be committed by unintended conduct amounting merely to a lack of due care.'" *Bailer v. Erie Ins. Exchange*, 344 Md. 515, 527 (1997) (citations omitted).

Appellants did not provide evidence to dispute the fact that appellees were on the property *with their consent*, both for their trespass claim and the intrusion upon seclusion claim. The lease clearly states in relevant part:

> 19. **Right of Inspection**. Lessor and his agents shall *have the right at all reasonable times during the term of this lease and any renewal thereof to enter the demised premises for the purpose of inspecting the premises and all building and improvements therein [with at least 24 hour notice]*.

(Emphasis added).

Given this language, appellees had the consent of appellants to inspect the property, and the record reflects that appellees always gave 24 hours' notice to

inspect the property. On this claim, appellants have failed to raise a genuine dispute of material fact.

The circuit court did not err in awarding attorney's fees, but erred in failing to show that it went through the *Lodestar* analysis.

Appellants contend that Judge Alves erred in refusing to accept evidence of their ability to pay, in failing to make any findings as to the reasonableness of the attorney's fees under the Lodestar method, and in assigning attorney's fees for work conducted to defend against 22 counts of appellants' complaint "when only seven of those counts qualified under RP § 8-208.1(c)(2), and by determining the amount based on a facially defective billing statement that was supported by leading questions. Appellants also contend that Judge Alves erred in not taking into consideration their ability to pay.

We first begin with the connection between RP § 8-208.1(c)(2) and Md. Rule 2-703(f)(3). RP § 8-208.1(c)(2) states "[i]f in any proceeding the court finds that a tenant's assertion of a retaliatory action was in bad faith or without substantial justification, the court may enter judgment against the tenant for damages not to exceed the equivalent of 3 months' rent, reasonable attorney fees, and court costs."

Md. Rule 2-703 governs the attorneys' fees allowable by law. Md. Rule 2-703(f)(2) states that: "If, under applicable law, the verdict of the jury or the findings of the court on the underlying cause of action permit but do not require an award of attorneys' fees, the court shall determine whether an award should be made. If the court determines that a permitted award should be made or that under applicable law an award

is required, the court shall apply the standards set forth in subsection (f)(3) of this Rule and determine the amount of the award."

Md. Rule 2-703(f)(3) outlines factors to be considered in making the determination of attorneys' fees which include:

> (A) the time and labor required;
> (B) the novelty and difficulty of the questions;
> (C) the skill required to perform the legal service properly;
> (D) whether acceptance of the case precluded other employment by the attorney;
> (E) the customary fee for similar legal services;
> (F) whether the fee is fixed or contingent;
> (G) any time limitations imposed by the client or the circumstances;
> (H) the amount involved and the results obtained;
> (I) the experience, reputation, and ability of the attorneys;
> (J) the undesirability of the case;
> (K) the nature and length of the professional relationship with the client; and
> (L) awards in similar cases.

Md. Rule 2-703(f)(2)-(3); *see also* Md. Rule 3-741(e)(2)(a) (directing the district court to consider the same factors when determining an award of attorneys' fees); *also see Johnson v. Georgia Highway Express, Inc*., 488 F.2d 714, 717-19 (5th Cir. 1974) (iterating those factors).

The Court of Appeals has approved the use of these factors in statutory fee–shifting cases where the Lodestar method is generally appropriate. *See Monmouth Meadows Homeowners Ass'n, Inc. v. Hamilton*, 416 Md. 325, 333-34 (2010). The Lodestar method is a method of calculating attorney's fees by "multiplying the number of hours reasonably spent pursuing a legal matter by a 'reasonable hourly rate' for the type of work performed." *Monmouth Meadows Homeowners Ass'n*, 416 Md. at 333. "This

amount is then adjusted by the court, depending on the effect of numerous external factors bearing on the litigation as a whole." *Id.* The Lodestar method is "generally appropriate in the context of fee-shifting statutes." *Id.* at 334. The Lodestar approach has public policy goals and "is designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that other methods would provide inadequate compensation." *Id.* at 334-35 (quoting *Krell v. Prudential Life Ins. Co. of Am.*, 148 F.3d 283, 333 (3d Cir. 1998)).

Closely related to the Lodestar approach and Md. Rule 2-703 is Rule 1.5(a) of the Maryland Lawyers' Rules of Professional Conduct, which also lists factors that should be considered in determining the reasonableness of a fee and identifying "the time and labor required" first in a list of eight factors for determining a reasonable fee.[14]

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[14] The factors to be considered in determining the reasonableness of a fee include the following:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

The Court of Appeals has noted that "Courts should use the factors set forth in Rule 1.5 as the foundation for analysis of what constitutes a reasonable fee[.]" *Id.* at 336-37. In a footnote in *Monmouth*, the Court of Appeals noted "we do not mean to suggest that a court must always make explicit findings with respect to Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct, as the circuit court did in this case. Nor must a court always mention Rule 1.5 as long as it utilizes the rule as its guiding principle in determining reasonableness." *Monmouth Meadows Homeowners Ass'n*, 416 Md. at 340, n.13.

During the September 8, 2017 hearing on attorney's fees before Judge Alves, counsel for the appellants, Mr. Moran,[15] asserted that he believed appellees' counsel had a "defective" billing record because "[t]here were actually a number of charges that related both to the district court, and I think it would be safe to say the Court of Special Appeals cases." Counsel for appellees stated that the affidavit he submitted to the court "did not include the appeals from district court cases to this case, or to this [c]ourt, because [a circuit court judge] was assigned for all matters." Appellees' counsel noted that the affidavit in support of the attorney's fees asked for legal fees of $47,477.50, but that he and appellants' counsel, Mr. Moran, had discussed the fees and he had subtracted expenses in the amount of $594.25, leaving a total of $48,041.75.

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(8) whether the fee is fixed or contingent.

[15] Mr. Moran made his first appearance as counsel on September 8, 2017, during the hearing on appellees' attorney's fees. Before this, Counsel Hawgood, Mr. Hawgood's brother, was appellant's counsel.

Ms. Rach was sworn in and testified that she paid $48,041.75 legal fees, plus fees, paying a total legal fee amount of $47,447.50. Appellants' counsel sought to question the total amount that Ms. Rach paid. Ms. Rach responded in the following colloquy:

> THE WITNESS: I've paid amounts exceeding the $48,041.
>
> [Appellants' Counsel]: How much?
>
> A: Probably 15, $20,000 more. And this doesn't include charges beyond July. So I've paid actually more than that in this case.

Appellants' counsel proffered to the court that "[m]y client may actually be in contention to be one of the brokest people on the planet . . . [b]etween him and his wife, they truly have about one million dollars of student loan debt, about $50,000.00 in credit card debt, and Mr. Hawgood's income last year was below the poverty line." Mr. Moran then sought to enter Mr. Hawgood's tax returns into evidence, which the court refused. The court stated, "this state does not anywhere have the [c]ourt consider a person's ability to pay. That's because the nature of these attorney's fees are such to, I guess, dissuade tenants and/or landlords from doing the retaliatory actions or frivolous actions that the statute is meant to prohibit."

Mr. Hawgood testified that "many of the transactions on this bill, and some have been admitted to by the defense already, are from cases not inside the circuit court case. Some of them are from the Court of Special Appeals." Mr. Hawgood testified that he knew this "[f]rom the language on the bill, the way that the bill is

drafted, and the dates, and my memory of the proceedings when the proceedings happened."

After Judge Alves heard testimony from Mr. Hawgood and Ms. Rach, Mr. Marks stated that appellees were looking to remove $9,727.50 from the fees, leaving a total of $38,314.25.[16]

The first question to be discussed is whether the court properly used the Lodestar method. While the court certainly heard testimony that Mr. Mark's attorney's fees were reasonable through Mr. Hawgood, Ms. Rach, and the statements of Mr. Marks and Mr. Moran, the court did not sufficiently articulate its analysis for the record, which it was required to do. Instead, the court simply stated that "the [d]efendant's fees in this case amounting to $38,314.25 are fair, reasonable [,] and were necessary in this case [.]"

Maryland Rule 2-703(g) states: "The court shall state on the record or in a memorandum filed in the record the basis for its grant or denial of an award [of attorneys' fees]." This makes it possible for an appellate court to review the reasons for the grant of an award of attorneys' fees in this case. *See Ocean City, Md., Chamber of Commerce, Inc. v. Barufaldi*, 434 Md. 381, 401-02 (2013) (a trial court commits legal error if it considers the wrong factors when deciding whether to award attorneys' fees); *Bd. of Trustees, Cmty. Coll. of Baltimore County. v. Patient First Corp.*, 444 Md. 452, 486

[16] The parties engaged in a long back and forth about which attorney's fees were reasonable, related to appellate matters, or were not within the purview of the court. Thus, the parties ended up agreeing to take out certain fees.

(2015) ("there must be sufficient information in the record to enable a reviewing court to follow the reasoning of the trial court").

Here, the circuit court made no such determination, but awarded counsel attorney's fees in this case. The record reflects that appellees' counsel submitted an accounting of his billing in this case, but it is not clear whether the circuit court conducted a reasonableness determination.

We must remand this case to the circuit court *only for a determination on the attorney's fees.* The setting of a fee under this approach is largely discretionary. Parroting what the Court of Appeals said in *Admiral Mortg., Inc. v. Cooper*, 357 Md. 533, 553 (2000), "we do not suggest that the amount of the fee awarded . . . in this case was inappropriate." We want to see the court's analysis.

Finally, in addressing appellants' ability to pay argument, we look to the Court of Appeals' ruling in *Barafuldi*, 434 Md. at 398 (internal citations and quotations omitted) (emphasis in original), where the Court stated:

> In some contexts, a defendant's ability to pay is an important factor in a court's review of a jury's decision to award punitive damages. However, an award of attorneys' fees and costs in a wage claim action is "remedial" rather than punitive. Therefore, the focus is not on whether the defendant is penalized by the award, but whether the harm to the *plaintiff* is remedied. Denying an award of fees based on the defendant's ability to pay is inconsistent with the statutory goal of making the plaintiff whole.

Similar to a wage claim action, an award of attorney's fees in this assertion of a retaliatory action would be remedial and not punitive and would be an essential part in making the appellees whole. A potential high attorney's fee is the natural consequence of

bringing multiple frivolous lawsuits. The court did not err in not considering the appellants ability to pay.

CONCLUSION

Given that the record reflects no attempts by the appellants to present evidence showing that any material facts were in dispute, we hold that the circuit court did not err in granting the appellees' motion for summary judgment. We remand this case to the circuit court to engage in and elucidate its Lodestar method as to attorney's fees.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS IN CONFORMANCE WITH THIS OPINION; COSTS TO BE PAID 70% BY APPELLANTS AND 30% BY APPELLEES.