UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 753

September Term, 2015

RYAN CIANCI, ET AL.

v.

JOHN C. BOYD, ET AL.

Eyler, Deborah S.,
Arthur,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: November 7, 2016

In the Circuit Court for Howard County, Ryan and Tiffany Cianci, the appellants, sued their former landlords, John Boyd and Margaret Schumacher Boyd, the appellees, for violations of the Maryland Consumer Protection Act ("CPA"), Md. Code (1975, 2013 Repl. Vol.), sections 13-101–13-501 of the Commercial Law Article ("CL"), conversion, and breach of the covenant of quiet enjoyment. The court granted summary judgment in favor of the Boyds on all counts, denied the Ciancis' motion to alter or amend the judgment, and granted the Boyds' post-judgment petition for attorneys' fees.

The Ciancis present four questions on appeal, which we have combined, reordered, and rephrased:

> I. Did the circuit court err by granting summary judgment in favor of the Boyds on Counts II and III of the complaint?
>
> II. Did the circuit court err by granting summary judgment in favor of the Boyds on Counts I and IV of the amended complaint?
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> III. Did the circuit court err or abuse its discretion by awarding attorneys' fees to the Boyds and by ordering the Ciancis to post a supersedeas bond?

For the following reasons, we answer the first question in the negative and the second question in the affirmative. Our resolution of the second question requires us to vacate the award of attorneys' fees.

FACTS AND PROCEEDINGS[1]

In 2011, the Boyds purchased a 25-acre lot on Belmont Woods Road, Elkridge, Howard County ("the Property"), abutting Patapsco State Park. The Property is improved with a nearly 6,500 square foot main house with an address of 6565 Belmont Woods Road ("the main house" or "the Premises"); a smaller guest house with an address of 6567 Belmont Woods Road; six sheds, and two fenced paddocks. The unimproved portions of the Property are wooded. The Boyds live down the street from the Property, at 6589 Belmont Woods Road. They purchased the Property with the intention of renting out the main house and the guest house.

In the fall of 2011, the Boyds applied to the Howard County Department of Inspections, Licensing, and Permits ("DILP") for a rental housing license for the guest house.[2] By letter dated October 6, 2011, DILP advised the Boyds that the guest house would need to be inspected before the license could issue and "THIS PROPERTY CANNOT BE OCCUPIED BY TENANTS AND IS NOT OFFICIALLY LICENSED UNTIL AN INSPECTION HAS BEEN CONDUCTED AND APPROVED BY THIS

[1] Because the Ciancis appeal from the grant of summary judgment, we present the facts in the light most favorable to them based upon the evidence adduced on the summary judgment record.

[2] Pursuant to section 14.901 of the Howard County Code ("HCC"), a property owner must apply for a rental housing license prior to leasing the property and the license only will be issued after the property has been inspected and found to be in compliance with Howard County property maintenance code.

DEPARTMENT." The inspection was conducted, a rental license for the guest house was issued, and the Boyds advertised the guest house for rent.

On November 22, 2011, the Ciancis travelled to Maryland from Nevada to search for a rental property for themselves and their 9-year-old daughter. They were planning to move to Maryland in January 2012 because Mr. Cianci had been admitted to the University of Maryland School of Law in Baltimore City and Ms. Cianci had accepted a job in a hospitality services position at the Four Seasons Hotel also in Baltimore City.

A realtor showed the Ciancis the guest house on the Property. They told the realtor they were more interested in the main house, however, which was unoccupied, but was not being advertised as a rental property. Ms. Cianci located contact information for the Boyds, drove to their house, and inquired about renting the main house. Ms. Boyd told Ms. Cianci that she and her husband were making repairs to the main house before offering it for rent, but they were interested in renting it quickly.

On November 25, 2011, after Ms. Cianci had returned to Nevada, the Boyds sent the Ciancis an email advising that they hoped to have the main house ready for tenants by January 2012, and that the "bulk of the painting[] and repairs" would be completed by then. This was agreeable to the Ciancis. In December 2011, the Ciancis submitted a rental application to the Boyds. They later agreed to a move-in date around January 5, 2012.

On January 13, 2012, the Ciancis' belongings arrived at the main house and the parties executed a lease agreement ("the First Lease"). The Boyds did not then have a rental license for the main house as required by HCC section 14.901.

The First Lease was for a term of just under 18 months, beginning January 14, 2012,[3] and ending July 31, 2013. It contained the following pertinent provisions. The Ciancis agreed to pay $2,300 per month in rent, plus a $2,300 security deposit and a $500 pet deposit. The basement was "not included in the rental portion of [the First Lease]" and the Boyds would not be "maintain[ing]" it. First Lease § 4. The Boyds "reserve[d] the right to limit or control, within reasonable permissive scope, the [Ciancis]' use of any and all common areas on the property which the premises is located." *Id.*

The Ciancis warranted that they had "examined the Premises" and that it was "in good order, repair, and in a safe, clean, and tenantable condition." First Lease, § 5. The Ciancis were responsible for "keep[ing] and maintain[ing] the Premises and appurtenances in good and sanitary condition and repair during the term of the [First Lease]" and agreed to notify the Boyds "immediately . . . in writing of any dangerous or defective conditions on the property." First Lease, § 11. The Ciancis agreed to "arrang[e] for and pay[] for all utility services required on the Premises." First Lease, § 10.

[3] The First Lease states that the term begins January 14, 201**1**, but this is clearly a typo.

The Boyds and their agents were authorized "to enter the Premises for the purpose of inspecting the Premises and all buildings and improvements thereon and for the purpose of making any repairs, additions or alterations as may be deemed appropriate" at "all reasonable times." First Lease, § 13.

An "Attorneys' Fees" provision in the First Lease stated that the Ciancis agreed "to pay all expenses . . . incurred [by the Boyds], including a reasonable attorneys' fee[,]" to "enforce any of the conditions or covenants . . . including the collection of rentals or gaining possession of the Premises." First Lease, § 23.

About two weeks after the Ciancis moved in, Ms. Cianci and Ms. Boyd met for a walk-through of the Premises, not including the basement. During the walk through, Ms. Boyd completed a "MOVE IN INSPECTION" sheet. She noted repairs that would need to be made, including replacement of "cracked + loose tiles" by the kitchen sink, installation of electrical outlet covers and light switch plates, and installation of "many . . . window handles [and] . . . several missing + damaged screens."

During the term of the First Lease, the Ciancis complained that the Boyds were frequently at the Premises during weekend hours making repairs, often without having given them "adequate notice." For example, in June 2012, the Ciancis notified the Boyds that they would be away for 10 days. They hired a house-sitter to stay at the Premises during their absence. While the Ciancis were away, Mr. Boyd and a contractor entered the Premises, without notice, to check the well pump, because the water supply to the guest house had been cut off. The Ciancis' house-sitter thought that someone was

breaking in and called the Ciancis in a panic. The Boyds ultimately determined that the well pump at the Premises needed to be replaced. This repair caused the water and electricity at the Premises to be shut off and the Ciancis' housesitter was forced to leave and stay elsewhere.

In February 2013, the Boyds began making arrangements to renovate the kitchen at the Premises, including repairs to the loose and broken tiles noted during the January 31, 2012 walk-through. A contractor came to the Premises on February 10, 2013. He advised Ms. Cianci that the Premises would not be habitable during the renovation, especially for their infant (born on December 31, 2012), because the door would need to be left open for long stretches of time, there would be no access through the main living areas, and there would be significant dust and debris. The remodel was anticipated to take 10 days. The Ciancis advised the Boyds that they could stay with friends for most of the 10-day renovation, but asked for the rent to be abated in the amount of their hotel bill for the remaining 1-3 days. The Boyds would not agree to this arrangement, however, and cancelled the planned renovation. They also did not make repairs to the kitchen tiles.

In June 2013, the Ciancis and the Boyds negotiated a lease renewal. At that time, Ms. Cianci had just returned to work after her maternity leave and Mr. Cianci was studying for the bar exam. The Ciancis asked to renew for a 2-year term, but the Boyds only would agree to a 1-year term. The Ciancis conditioned the renewal of their lease on the Boyds' agreeing to go forward with the repairs to the kitchen.

On July 10, 2013, the Ciancis and the Boyds executed a new lease agreement ("the Second Lease"). The one-year term of the Second Lease began August 1, 2013, and ended July 31, 2014. The Second Lease was substantially the same as the First Lease except that it did not exclude the basement and the attorneys' fee clause was much broader. That clause stated: "In any legal action to enforce the terms hereof or relating to the premises, regardless of the outcome, the [Boyds] shall be entitled to all costs incurred in connection with such action, including attorney fees." Second Lease, § 23.

During the term of the Second Lease, the disputes between the parties escalated. The Ciancis asked the Boyds to give them at least 24-hours' notice before entering for non-emergency repairs and maintenance. The Boyds took the position that notice was required if they (or their contractors) were entering the main house, but not if they were entering the Property to do work near the main house.

Disputes also arose over the use of three sheds located approximately 200 feet in front of the main house. The Ciancis thought the sheds were included as part of the leased Premises. Around August 2013, the Boyds permitted a contractor and a tenant in the guest house to store their belongings in these sheds. Mr. Cianci confronted the contractor and the tenant about their use of the sheds and both claimed that Mr. Boyd had told them that the Ciancis had consented to their use of the sheds.

In October 2013, the Boyds began making repairs to the Premises in anticipation of applying to Howard County ("the County") for a rental housing license. On some occasions, the Ciancis specifically asked the Boyds not come to the Premises for repairs

because they had guests staying with them. According to the Ciancis, the Boyds ignored these requests.

On October 28, 2013, the DILP cited the Boyds for not having a rental license for the main house. The Boyds applied for a rental license on October 30, 2013. Meanwhile, they continued making repairs to the main house, including completely retiling the kitchen floor, replacing the subflooring, and removing and resetting the steps at the entryway to the main house.

On November 14, 2015, a County Code Enforcement Officer inspected the Premises. The next day, DILP issued a "Notice of Violation," citing the Boyds for fourteen violations of the County Property Maintenance Code, including a broken door on the wood burning fireplace, missing interior handles on windows, a lower level door that would not open, and drywall cracks along the ceiling seams in two upstairs bedrooms. The letter advised the Boyds that they had 30 days to make the repairs and to arrange for a re-inspection of the Premises.

Over the next twenty days, the Boyds made the repairs. On December 4, 2013, they were issued a rental license for the Premises.

On January 25, 2014, a pipe burst at the main house. During the repair of that pipe, the Ciancis learned that the well-pump on the Property served the main house and the guest house, but the electricity for the well pump was being charged solely to them. In February 2014, Mr. Cianci filed a criminal complaint against Mr. Boyd for theft of the electricity and for leasing the Premises without a rental license. The State's Attorney

declined to prosecute the charges and other charges brought by the Ciancis before and thereafter.

In March 2014, the Ciancis stopped paying rent and the Boyds filed an action against them in the District Court of Maryland for Howard County. On April 4, 2014, the District Court entered a judgment of possession in favor of the Boyds. On April 13, 2014, the Ciancis moved out of the main house. The Boyds re-let the main house to new tenants beginning June 1, 2014. On August 11, 2014, the district court entered judgment against the Ciancis for $1,860 in unpaid rent, plus costs and attorneys' fees.

Meanwhile, on April 25, 2014, the Ciancis filed their complaint in the instant action, stating four counts. In Count I, they alleged that the Boyds had engaged in unfair and deceptive trade practices, in violation of the CPA, by leasing the Premises in a defective condition and without a rental housing license. In Count II, they alleged that the Boyds also engaged in unfair trade practices under the CPA by failing to disclose the material fact that the well pump at the main house also serviced the guest house and that the Ciancis were being charged for that service. In Count III, they alleged that the Boyds "wrongfully converted the electrical service paid for by the [Ciancis] to their own use and benefit." Finally, on Count IV, they alleged that the Boyds breached the covenant of quiet enjoyment by their repeated entries onto the Premises without notice or consent; by permitting unauthorized persons to use the sheds; and by failing to clear snow from the driveway. In all four counts, the Ciancis sought $500,000 in compensatory damages,

plus attorneys' fees and costs. In Count III, they also sought $100,000 in punitive damages.

On June 9, 2014, the Boyds filed a motion to dismiss the complaint or, in the alternative, for summary judgment. They attached affidavits by Mr. Boyd and Ms. Boyd; copies of the First and Second Lease; the October 6, 2011, letter to the Boyds from the DILP with regard to their rental license application for the guest house; the November 15, 2013 DILP Notice of Violation for the Premises; the rental housing license issued for the Premises on December 4, 2013; a May 27, 2014 letter from the Boyds to the Ciancis advising them that they owed $4,701.11 in back rent; and a June 4, 2014 letter from a master plumber hired by the Boyds to calculate the electricity usage for the well pump service to the guest house. We shall discuss certain of these exhibits in further detail, *infra*.

The Ciancis filed an opposition, attaching an affidavit by Mr. Cianci. The Boyds filed a reply and attached a second affidavit by Mr. Boyd. The Ciancis moved to strike Mr. Boyd's second affidavit, arguing that it included inadmissible hearsay. The court denied the motion.

On August 29, 2014, the court held a hearing on the Boyds' motion. On Count I, the court determined that the Ciancis had failed to state a claim for a breach of the CPA arising from the lack of a rental license because they had not alleged facts to show how they were injured by that violation. The court granted the Boyds' motion to dismiss that count with leave to amend within 21 days. The court granted summary judgment in

favor of the Boyds on Counts II and III. With respect to Count II, the court concluded that the $78 or $79 cost to the Ciancis for the electricity to power the well pump for the guest house was *de minimus*; therefore, the failure to disclose that the Ciancis were paying for the guest house tenants' use of the well pump was not a *material* omission and was not a violation of the CPA. On Count III, asserting conversion, the court determined that it was undisputed that the Boyds had reimbursed the Ciancis for any electrical overcharge, and therefore the conversion claim was moot. On Count IV, alleging breach of the covenant of quiet enjoyment, the court granted summary judgment in favor of the Boyds with respect to the allegation that they failed to clear snow from the driveway, but otherwise denied the motion as to that count. The court entered an order memorializing these rulings on September 30, 2014.

On September 22, 2014, before the order referenced above was entered, the Ciancis filed an amended complaint.[4] They added to Count I allegations that they had "endured numerous defects and problems with the [P]remises since the inception of the [First Lease]," including a malfunctioning stove, rodent and bug infestations, kitchen floor disrepair, frozen water pipes, and repair and replacement of a bathroom floor; and that these problems were "a threat to [their] health, safety and welfare" and were a direct

[4] Even though the court granted judgment in favor of the Boyds on Counts II and III, and partial summary judgment in favor of the Boyds on Count IV, the amended complaint included those counts in full. However, the order granting summary judgment was docketed before the amended complaint was filed.

result of the Boyds' failure to obtain a rental license prior to leasing the Premises. They sought $36,839.

On October 9, 2014, the Boyds filed a motion to dismiss Count I of the amended complaint and/or for summary judgment on Counts I and IV. In addition to the exhibits attached to their prior motion, they included new affidavits; a survey of the Property showing that the sheds at issue were on public property; and a copy of the August 2014 district court judgment in their favor. The Ciancis opposed the motion, attaching a new affidavit by Mr. Cianci.[5]

On October 24, 2014, the court granted the parties' joint motion to modify the scheduling order. Under the modified scheduling order, all dispositive motions were due to be filed no later than January 13, 2015.

On December 12, 2014, the court held a hearing on the second motion to dismiss and/or for summary judgment and denied it.

Discovery ensued. On December 22, 2014, Mr. Boyd was deposed and, on January 16, 2015, the Ciancis were deposed.

On January 14, 2015, the Boyds filed a counter-complaint asserting claims for fraud, negligent misrepresentation, and intentional misrepresentation arising out of statements the Ciancis made on their rental application. They sought $50,000 in compensatory damages and also sought punitive damages.

[5] The Boyds moved to strike the Ciancis' opposition as untimely because it was filed outside of the 15-day period provided under Rule 2-311(b). The court denied the motion to strike.

On February 25, 2015, the Boyds filed a second, renewed motion for summary judgment, attaching the deposition transcripts in full, as well as other exhibits. They requested a hearing on their motion. The Ciancis filed an opposition to the motion on March 19, 2015, without attaching any additional exhibits.

The circuit court did not hold a hearing. By order signed April 1, 2015, and entered April 6, 2015, it granted the motion for summary judgment.

Within ten days, the Ciancis moved to alter or amend the judgment. They argued that the court had erred procedurally by granting the motion without a hearing, and that the court had erred substantively by granting summary judgment even though there were genuine disputes of material fact. On May 14, 2015, the court entered an order denying the motion to alter or amend.[6]

Meanwhile, on May 11, 2015, the Boyds filed a motion for attorneys' fees pursuant to section 23 of the Second Lease and Rule 1-341.[7] They alleged that they had incurred fees and costs of $27,384. In support, they attached billing records and an affidavit by their attorney. The Ciancis opposed the motion for attorneys' fees and requested a hearing, although they did not do so in strict compliance with Rule 2-311(f).

[6] The order mistakenly stated that it was denying the *Boyds'* motion to alter or amend. The court subsequently issued a corrected order.

[7] Rule 1-341(a) permits a court to award attorneys' fees to a party when "the conduct of [an adverse] party in maintaining or defending any proceeding was in bad faith or without substantial justification."

On June 11, 2015, the Ciancis filed a notice of appeal. As we shall explain, that appeal was premature because the Boyds' counter-complaint remained pending.

On June 18, 2015, the parties filed a joint stipulation for the voluntary dismissal of the Boyds' counter-complaint, with prejudice. The court entered an order so dismissing the counter-complaint on July 13, 2015.

By order entered on July 16, 2015, the court granted the Boyds' motion for attorneys' fees and entered a judgment in their favor for $27,384.

On August 10, 2015, the Ciancis filed a second notice of appeal. This Court consolidated the second appeal with the first appeal.

We shall include additional facts in our discussion of the issues.

DISCUSSION

I.

Procedural Issues

Before turning to the questions presented, we shall address two procedural issues raised by the parties. First, the Ciancis assert that the circuit court failed to docket the order granting the Boyds' second, renewed motion for summary judgment and that this "clerical error" may deprive this Court of jurisdiction. They are mistaken. Docket entry "00025000" reflects the filing of the Boyds' second renewed motion for summary judgment. The column labeled "Ruling" reflects that the motion was "Granted" and the column labeled "Closed" reflects that the date of the ruling was April 6, 2015, which is

consistent with the date stamp on the order in the record. Thus, the order granting the second renewed motion for summary judgment was docketed.

Second, the Boyds argue that the Ciancis failed to note a timely appeal from the September 30, 2014 order granting summary judgment on Counts II and III of the complaint (and partial summary judgment on Count IV) and that this Court "should not consider their arguments as to Counts 2 and 3." This contention is wholly without merit. With certain limited exceptions not applicable here, "the right to seek appellate review of a trial court's ruling ordinarily must await the entry of a final judgment that disposes of all claims against all parties." *Salvagno v. Frew*, 388 Md. 605, 615 (2005); *see also* Md. Rule 2-602(a). When the circuit court entered summary judgment in favor of the Boyds on Counts II and III of the complaint, there was not a final appealable judgment as to Count I, which was dismissed with leave to amend, or Count IV, which remained pending (except with respect to snow removal).

The Ciancis filed two notices of appeal in this case. The first was filed on June 11, 2015, within thirty days of the denial of their motion to alter or amend the order granting the Boyds' second renewed motion for summary judgment. At that time, however, the Boyds' counter-complaint still was pending and therefore there was not yet a final judgment that disposed of all claims against all parties.

The second notice of appeal was filed on August 10, 2015, within thirty days of the July 13, 2015 order dismissing the Boyds' counter-complaint and also within thirty days of the July 16, 2015 order granting the Boyds' motion for attorneys' fees. That

notice of appeal was timely and confers appellate jurisdiction on this Court with respect to all of the issues raised in the instant appeal.[8]

II.

Grant of Summary Judgment on Counts II and III of the Complaint

Our standard of review on appeal from the grant of summary judgment is well-established:

> An appellate court reviewing a summary judgment examines the same information from the record and determines the same issues of law as the trial court. *PaineWebber Inc. v. East*, 363 Md. 408, 413, 768 A.2d 1029, 1032 (2001) (citation omitted). . . . . We recently reiterated the standard of review for a trial court's grant or denial of a motion for summary judgment in *Myers v. Kayhoe*, 391 Md. 188, 892 A.2d 520 (2006):
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> > The question of whether a trial court's grant of summary judgment was proper is a question of law subject to *de novo* review on appeal. *Livesay v. Baltimore*, 384 Md. 1, 9, 862 A.2d 33, 38 (2004). In reviewing a grant of summary judgment under Md. Rule 2-501, we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. *Id*. at 9-10, 862 A.2d at 38. We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party. *Id*. at 10, 862 A.2d at 38.
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> *Id*. at 203, 892 A.2d at 529.

[8] While the Ciancis' notice of appeal specified that it was an appeal from the "Order Granting [the Boyds'] Motion for Attorney Fees, entered herein on July 16, 2015," we have explained that "the language used in [an] appellant's notice of appeal does not determine what we may review." *Green v. Brooks*, 125 Md. App. 349, 363 (1999).

United Servs. Auto. Ass'n v. Riley, 393 Md. 55, 67 (2006). Thus, our starting point is the record on summary judgment with respect to Counts II and III of the complaint, both of which pertained to the electricity charges for the well pump on the Property.

In support of these counts, the Ciancis asserted that they paid all the utility charges for the Premises, including charges for electricity. A well on the Property supplied the main house and the guest house with water. The well was operated by an electric pump and the cost for the operation of that pump was charged to the Ciancis as part of their electric bill. For the first two years they leased the Premises, they were unaware that they were being charged for the electricity used to pump well water to the guest house. They learned of this fact on January 25, 2014, during the repair of a burst pipe on the Premises. According to the Ciancis, prior to January 25, 2014, they "specifically asked [the Boyds] if their electricity [sic] powered the water supply for the adjacent rental premises and each time the [Boyds] represented to [the Ciancis] that their electric did not provide power to the water supply for the adjacent premises." They maintained that the Boyds knew or should have known that they were being charged for electricity to supply water to the guest house and that the Boyds intentionally concealed this fact from them by arranging for repairs to the well pump to be carried out when they were not home.

As noted, in Count II, the Ciancis claimed the Boyds engaged in an unfair or deceptive trade practice under the CPA by concealing that the Ciancis were incurring the utility charges for the guest house water supply. And, in Count III, they claimed that the

Boyds "wrongfully converted the electrical service paid for by [the Ciancis] to their own use and benefit, without the consent or knowledge of [the Ciancis]."

In their first motion to dismiss or for summary judgment, the Boyds argued they were entitled to judgment as a matter of law on Count II because there was no evidence that they knew that the electricity for the well pump usage for the guest house was being charged to the Ciancis or that they had ever provided any information to the Ciancis about the well pump usage. They further argued that the Ciancis had failed to allege with requisite specificity how they were damaged by the alleged failure to disclose. They asserted that they had hired a master plumber to install a water sub-meter on the Property in May 2014 to determine the amount of water used by the guest house. The master plumber determined that the electricity charge for the guest house water usage, assuming peak BGE rates, amounted to $1.42 over 27 days, or $19.20 annually.

On Count III, the Boyds argued that the Ciancis had failed to state a claim for conversion because the Boyds had not "exercised any complete dominion and control over any of [the Ciancis's] personal property." They asserted, moreover, that they had sent the Ciancis a check for $78.35 to reimburse them for guest house's share of the electrical bill.[9]

In addition to affidavits attesting to these facts, the Boyds attached the following relevant exhibits to their motion. Exhibit H was a letter from the Boyds to the Ciancis

[9] This amounted to approximately $2.90 per month that the Ciancis had paid utility bills for the Premises.

dated May 27, 2014, advising that a check was included for "the amount due to you for well pump usage by [the guest house tenants] from January 2012 until April 2014." That letter also referenced a prior letter dated March 28, 2014. Exhibit I was a letter dated June 4, 2014 to Mr. Boyd from a master plumber explaining that he had installed a "water flow meter" on the Property on May 8, 2014, to measure the water usage by the guest house, and that he had returned on June 4, 2014, to read the meter, which showed 4,210 gallons of usage over 27 days. Based upon the gallons per minute rating of the pump, combined with its load rating, the plumber calculated that the electrical usage of the pump associated with that meter reading would equate to $1.42 for 27 days, or $19.20 per year.

In their opposition, the Ciancis argued, with respect to Count II, that the Boyds must have known that there was only one well pump on the Property they owned and that that well pump necessarily served both the main house and the guest house. In any event, the issue of when the Boyds learned that the Ciancis were paying for the well pump usage by the guest house tenants was one of disputed fact. With regard to damages, the Ciancis argued that they should be "afforded the opportunity of obtain [sic] their own expert and submit their own measure of damages for the Court to determine an award." On Count III, they argued that they had stated a claim for conversion and that they had sufficiently pleaded damages. They attached an affidavit by Mr. Cianci averring that he and his wife had "specifically questioned the [Boyds] about the well pump [in the guest house] prior to November, 2012 and each time the [Boyds] assured the [Ciancis] that the well pump

for the [guest house] was separate from the [Premises]." He further averred that he and his wife "categorically reject[ed] and refute[d] the calculation of damages . . . of $78.35."

The Boyds filed a reply and attached a second affidavit by Mr. Boyd attesting that by letter dated March 28, 2014, he had provided Mr. Cianci an estimate of the well pump usage for the guest house at a rate of $2.90 per month and had offered him full reimbursement; that Mr. Cianci had responded to that letter on March 31, 2014, stating that he had obtained "estimates from licensed specialists regarding the well pump usage" that far exceeded that amount; that Mr. Cianci had not provided Mr. Boyd with copies of those estimates; that Mr. Boyd hired the master plumber to measure the water usage in May 2014, and the master plumber calculated that the electrical usage by the guest house tenants amounted to approximately $19.20 per year; and that Mr. Boyd reimbursed the Ciancis for an amount in excess of that estimate.

The Ciancis moved to strike paragraph 3 of Mr. Boyd's second affidavit, pertaining to the master plumber's calculations, as inadmissible hearsay. That motion was denied.

At the hearing on August 29, 2014, the court determined that the Boyds had presented unrefuted evidence that the well pump usage for the guest house amounted to less than $2 per month. In ruling on Count II, the court assumed that the Boyds knew that the well pump serviced both the main house and the guest house *and* that they misrepresented and/or failed to disclose that fact to the Ciancis. It determined, however, that a charge of less than $2 per month for the guest house tenants' use of the well pump

was not a material fact and, as such, there had been no violation of the CPA. On Count III, the court ruled that assuming the Ciancis stated a claim for conversion, the Boyds were entitled to judgment because they already had reimbursed the Ciancis for the guest house's share of the electrical charge.

a.

Count II

The Ciancis contend the circuit court erred by granting summary judgment in favor of the Boyds because there was ample evidence adduced on the summary judgment record to create a genuine dispute of material fact as to when the Boyds knew, or should have known, that the well pump on the Premises also served the guest house; and that the court "wrongfully applied the law, when it considered an exhibit that would not be admissible at trial, to form the basis of its ruling on proof of actual damages." Specifically, they maintain that the master plumber was not qualified to opine about electricity usage and the court erred by relying on those calculations without giving the Ciancis the opportunity to hire their own expert to rebut them.

The Boyds respond that the court properly ruled, based upon the affidavits submitted by them and other competent evidence, that they did not fail to disclose a *material* fact with respect to the well pump. They maintain that the Ciancis had ample opportunity to rebut the evidence that the cost of the guest house's well pump usage was, at most, $79 over a more than two year period, but failed to do so. We agree.

In his second affidavit, Mr. Boyd attested that he hired the master plumber to measure the well pump usage for the guest house, that the master plumber estimated that the cost of usage was $1.42 per month, and that Mr. Boyd sent the Ciancis a check for $78.35, which was $38.59 more than that estimate. The Boyds also attached the estimate they received from the plumber explaining his calculations. This was competent evidence in the summary judgment record that would be admissible as the opinion of an expert witness at trial. The Ciancis did not rebut it or present any countering evidence. Mr. Cianci's affidavit merely stated, in a conclusory fashion, that he and his wife "rejected and refuted" the calculation of damages. They did not offer any evidence that the well pump usage by the guest house was higher than estimated by the master plumber. They also did not rebut Mr. Boyd's statement in his second affidavit that Mr. Cianci had represented to him that he already had obtained estimates from specialists.

It is an unfair or deceptive trade practice under the CPA to "[f]ail[] to state a material fact if the failure deceives or tends to deceive[.]" CL § 13-301(3). The circuit court did not err by concluding, based upon the only evidence in the summary judgment record on damages, that the Boyds' failure to tell the Ciancis that they would be paying approximately $1.60 per month to supply water to the guest house was not a failure to disclose a *material fact* in violation of the CPA. A fact is "material" when a "reasonable person would attach importance to its existence in determining his choice of action." *Golt v. Phillips*, 308 Md. 1, 10 (1986) (citing *Restatement (Second) of Torts*, § 538 (1977)). The Ciancis agreed to pay $2,300 per month, plus utilities, to lease the

Premises. We think it plain that a reasonable person would not attach importance to the addition of $1.60 per month in utility charges. The circuit court did not err by entering summary judgment in favor of the Boyds on Count II.

b.

Count III

The Court of Appeals has explained that

> [c]onversion is an intentional tort, consisting of two elements, a physical act combined with a certain state of mind. The physical act can be summarized as "any distinct act of ownership or dominion exerted by one person over the personal property of another in denial of his right or inconsistent with it." *Allied Investment Corp. v. Jasen*, 354 Md. 547, 560, 731 A.2d 957, 963 (1999) (quoting *Interstate Ins. Co. v. Logan*, 205 Md. 583, 588-89, 109 A.2d 904, 907 (1954)). This act of ownership for conversion can occur either by initially acquiring the property or by retaining it longer than the rightful possessor permits.

Darcars Motors of Silver Spring, Inc. v. Borzym, 379 Md. 249, 261-62 (2004).

The Ciancis failed to state a claim for conversion. They did not allege that the Boyds engaged in any "physical act" to deprive them of their property. Rather, they alleged that the well pump served the main house and the guest house, but that the cost for the electricity powering the well pump was being charged only to them.[10] The Boyds did not physically exercise any control over the electrical supply to the well pump. On this basis, we conclude that the circuit court properly granted summary judgment in favor

[10] The Ciancis also suggest that the Boyds wrongfully converted their electric supply to power lights in the sheds that they (the Boyds) permitted third parties to use. The Ciancis did not allege a wrongful conversion of the electrical supply to the sheds and we decline to consider that argument on appeal.

of the Boyds on Count III. In addition, the court correctly determined that the conversion claim was moot because the Boyds reimbursed the Ciancis for the supposedly covered sums.

III.

Grant of Summary Judgment on Counts I and IV of the Amended Complaint

As discussed, after the Ciancis filed their amended complaint, the Boyds twice moved for summary judgment. Their first motion, filed on October 9, 2014, was denied following a hearing. Their second, renewed motion, filed on February 25, 2015, was granted without a hearing.[11] We address each count in turn.

a.

[11] As a threshold matter, the Ciancis argue that the circuit court erred by granting the Boyds' second renewed motion for summary judgment without holding a hearing. We agree. Rule 2-311(f) provides that "[a] party desiring a hearing on a motion" shall request one in the title of the motion or response and in the body of the motion or response under a heading titled "Request for Hearing." It also provides that "the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested [in compliance with the rule]." The Court of Appeals has held that if the moving party requests a hearing, there is no need for the non-moving party to file a "redundant request[]." *Phillips v. Venker*, 316 Md. 212, 217 (1989). This is so even if the non-moving party does not respond to the motion. *Id*. (citing P. Niemeyer and L. Richards, *Maryland Rules Commentary*, 33 (1984, 1988 Supp.)).

In their second motion for summary judgment, the Boyds requested a hearing in substantial compliance with Rule 2-311(f). While the request for a hearing was not included in the title of their motion, it was set forth in the body of their motion under a separate heading. The circuit court treated it as a proper request for a hearing and docketed a "Request for Motions Hearing" separately from the motion for summary judgment. Because the Boyds requested a hearing on their motion, the Ciancis were not obligated to request a hearing in their opposition (and they did not). The grant of the Boyds' motion for summary judgment was dispositive of the Ciancis claims on Counts I and IV of the amended complaint. The court erred by granting the motion without holding a hearing.

Count I

In Count I of the amended complaint, the Ciancis alleged that the main house was not a licensed rental property, which was a violation of HCC section 14.901, and leasing it was an unfair and deceptive trade practice under the CPA. They claimed that they were damaged by the violation because, had the main house been inspected by DILP before they rented it, the Boyds would have been required to make numerous repairs to it. They alleged that the defects existing during the tenancy, including those identified by DILP after its inspection, were a threat to their health, safety, and welfare. They alleged that the violation resulted in damages of $36,839.

In *Golt v. Phillips*, 308 Md. at 1, the Court of Appeals considered whether it was a violation of the CPA to lease an unlicensed rental property and, if so, the nature of the damages. In that case, a real estate partnership advertised a furnished apartment in Baltimore City for rent at a rate of $135 per month, plus utilities. John Golt responded to the advertisement and toured the apartment with his daughter-in-law. The apartment was dirty and in need of repairs, but the landlord assured him that it would be cleaned and repaired prior to the start of the lease term. Golt signed a month-to-month lease, paid the first month's rent, and paid a security deposit. After he took possession of the apartment, he learned that the toilet facilities were located outside the apartment and were shared with other tenants in the building. Golt made repeated, unanswered requests for repairs. He then contacted the Baltimore City Department of Housing and Community (BCDHC), which informed him that the partnership did not have a license to operate the building as

a multiple unit rental dwelling and that the property had not been inspected. Upon inspection, the BCDHC identified numerous violations, including the shared toilet facilities, defective door locks, and the lack of fire exits or doors. The partnership was ordered to correct the violations or to cease leasing the units in the building. The partnership sent Golt an eviction notice. He moved out after living there for just three months and began leasing a new apartment for $234 per month.

Golt sued the partnership in District Court to recover his security deposit, which was being withheld to cover unpaid rent and utility charges, and alleged a violation of the CPA. The District Court awarded Golt his security deposit, but granted judgment in favor of the partnership on the CPA claim because Golt had inspected the apartment before signing the lease. Golt's appeal to the circuit court was dismissed.[12] His petition for a writ of *certiorari* was granted.

In the Court of Appeals, Golt argued that the partnership had violated the CPA by advertising and leasing an unlicensed apartment and that he had a right to recover all of the rent paid, plus consequential damages caused by his eviction. The Court held that the advertisement and the rental of the unlicensed apartment plainly was an unfair and deceptive trade practice in violation of the CPA. As relevant here, it reasoned that the partnership's not having a rental license was a material fact and that its failure to disclose that fact to Golt had a tendency to deceive him. This was so even though the partnership

[12] The Court of Appeals noted that the circuit court's dismissal of Golt's appeal was improper and treated the dismissal as an affirmance.

claimed ignorance of the law requiring it to obtain a license. The Court further held that Golt was entitled to restitutionary damages in the amount of the rent he had paid during his three-month tenancy, plus the costs he had incurred in his move. It reasoned that the purpose of the licensing regime is to ensure that properties are inspected for compliance with the housing code and that it would be unjust to permit the landlord to "retain any benefits from the unlicensed lease." *Id*. at 13. Thus, Golt was entitled to "restitution" for the rent he had paid for three months, plus consequential damages incurred during his eviction and the difference in cost for his substitute housing during the remainder of the legal term of his lease.[13] *Id*. at 13-14. The Court remanded the matter for a determination of the precise amount of Golt's damages.

Six years later, the Court of Appeals decided *CitaraManis v. Hallowell*, 328 Md. 142 (1992). In that case, a married couple, the CitaraManises, responded to a newspaper advertisement for a duplex house for rent in Columbia. They entered into a one-year lease for the house and paid a security deposit. During the tenancy, the landlords made minor repairs as necessary and the condition of the house was "acceptable" to the CitaraManises. *Id*. at 145. At the end of the one-year lease term, the parties orally agreed to extend the lease on a month-to-month basis at a slightly higher rent. The CitaraManises moved out six months later. Shortly before they moved out, they discovered that the house was not licensed as a rental property in Howard County. Three

[13] Even though Golt was leasing the apartment month to month, his lease provided that he was entitled to a 60-day notice to vacate. Thus, the Court held that he could recover damages for 60 days after the date of the eviction notice.

months later, they sued their former landlords, alleging violations of the CPA for advertising and leasing an unlicensed house. The CitaraManises sought restitution in the total amount of the rent they had paid during the 18-month tenancy. The landlords admitted in their answer that the house was unlicensed and that they had not informed the CitaraManises of that fact. Relying on *Golt*, the circuit court granted summary judgment in favor of the CitaraManises, and awarded them restitutionary damages of more than $15,000.

On appeal, this Court reversed. We reasoned that the CitaraManises had failed to produce any evidence that there were substantial housing code violations during the tenancy or that any defect in the premises had caused "a diminution of the rental value" of the property, and, as such, they had failed to prove damages under the CPA. *Hallowell v. CitaraManis*, 88 Md. App. 160, 171 (1991). The Court of Appeals granted the CitaraManises' petition for writ of *certiorari*.

The Court retreated from its decision in *Golt*, stating that it had spoken "much too broadly" by suggesting that a landlord never could retain the rent paid for an unlicensed rental unit. 328 Md. at 150. It emphasized that, in *Golt*, the property had been uninhabitable, and therefore "the difference in rental value between the *Golt* premises as represented and their condition in fact was one hundred percent of the rent paid." *Id*. at 164. In contrast, the CitaraManises did not allege that their rental house had been "unclean, unsafe, uninhabitable, or unsuitable in any regard." *Id*. at 149. In fact, they

took the position that the condition of the house was "irrelevant," and there was no need for them to prove any actual damages. *Id*.

The Court held that in a private cause of action under the CPA, a plaintiff must prove "'injury or loss sustained by him [or her] as the result of a practice prohibited [by the CPA.]'" *CitaraManis* at 152 (quoting CL § 13-408(a)). It reasoned, moreover, that awarding the CitaraManises restitution for all the rent they had paid would be in the nature of a punitive remedy, which is not the purpose of the private cause of action under the CPA. Because the circuit court granted summary judgment in favor of the CitaraManises without requiring them to make any showing of actual loss caused by the lack of a rental license, the Court vacated the judgment and remanded for further proceedings. On remand, the CitaraManises would be required to "show the degree of violation of the underlying housing code," if any, and to prove "actual injury or loss" resulting from the violations. *Id*. at 164. *See also McDaniel v. Baranowski*, 419 Md. 560, 587-88 (2011) (affirming the denial of a CPA claim premised on lack of licensure because the tenant failed to adduce any evidence of actual injury).

That same day, the Court of Appeals also decided *Galola v. Snyder*, 328 Md. 182 (1992). Dale Snyder leased a house in Howard County from the Galolas for a term of one year, which was then extended for a second year by mutual consent. During the second year of the lease, Snyder complained to the DILP that the Galolas had not made necessary repairs to the house. The DILP investigated and discovered that the house was

not licensed as a rental property. It sent notification to the Galolas. The Galolas applied for a license. The DILP inspection revealed numerous housing code violations, including

> cracks, holes, loose paint, loose plaster and water stains in and on the ceilings, water stains on the walls, windows that admit rain, a defective air conditioning unit, a defective wood stove, insufficient heat, dampness in habitable rooms, improper drainage, water in the basement, and a basement rail that was in disrepair.

Id. at 184. As a result, the DILP denied the application for a rental license pending the completion of repairs to the house and a re-inspection.

The Galolas did not make the repairs and, four months later, advised the DILP that they would withdraw the house from the rental market. Snyder continued to live in the house for the four months post-inspection, but refused to pay rent. The Galolas sued Snyder in District Court and she counterclaimed, seeking restitution for all rent paid based on the lack of a rental license. The case was transferred to the circuit court and summary judgment was entered in favor of Snyder.

The case reached the Court of Appeals, which reversed. Concluding that *CitaraManis* was dispositive, it held that Snyder was not entitled to restitution for rent that she paid "unless [she could] establish that . . . she was provided less than she had bargained for in the lease." *Id*. at 186. Because the circuit court had not required Snyder to make any showing of actual loss, the Court vacated the judgment and remanded for further proceedings for Snyder to show her actual loss occasioned by the "the defects in the property which would have been disclosed upon [pre-licensing] inspection." *Id*.

We return to the case at bar. In their second renewed motion for summary judgment, the Boyds conceded that they did not have a rental license for the main house when the First and Second Leases were executed. They argued, however, that the Ciancis lacked evidence to show that they had suffered actual loss or damages as a result of their not having a rental license. They pointed to Ms. Cianci's deposition testimony that she and her husband created a spreadsheet detailing all of the repairs performed during their tenancy and estimating their damages using a formula they created. These damages were entirely speculative, in their view. They asserted that unlike in *Golt* and like in *CitaraManis*, the Premises were habitable; the Ciancis were content with the condition of the Premises throughout most of the tenancy; the Boyds made repairs when requested in a timely fashion; the Ciancis renewed their lease for a second term; and the housing code violations identified by the DILP inspector were not "identified as being a serious threat to the health, safety, and welfare of [the Ciancis]." Thus, the Boyds maintained, the Ciancis had failed to offer any proof that they suffered an actual loss as a result of the lack of a rental license. They relied primarily on the Ciancis' deposition testimony, deposition exhibits, including the spreadsheet prepared by Ms. Cianci, and affidavits by the Boyds.

The Ciancis responded to the second renewed motion for summary judgment but did not attach an affidavit or any exhibits. They argued that there was a genuine dispute of material fact as to the actual damages caused by the Boyds' failure to disclose the lack of a rental license and that that was an issue for the trier of fact.

The moving party on a motion for summary judgment has the burden of proving "the absence of a genuine issue of material fact." *Carter v. Aramark Sports & Entm't Servs. Inc.*, 153 Md. App. 210, 224 (2003). "A material fact is a fact the resolution of which will somehow affect the outcome of the case." *King v. Bankerd*, 303 Md. 98, 111 (1985). In the case at bar, we conclude that the Boyds failed to meet their burden. We explain.

The exhibits attached to the Boyds' motion, viewed in a light most favorable to the Ciancis, the non-moving parties, showed that Ms. Cianci and Ms. Boyd walked through the Premises together about two weeks after the Ciancis moved in and made a list of required repairs. One such repair involved the kitchen floor. Ms. Cianci testified at her deposition that, at the inception of the tenancy, the kitchen "floor buckled" and that "[d]ozens and dozens of tiles [were] fractured, broke, and there little shards of tile you stabbed your foot on, you cut your toes on." She and her husband did not let their children "near it" and "cover[ed] it with things constantly so that [they] wouldn't hurt [themselves] on [the broken tiles.]" Despite the Ciancis' complaints about the condition of the kitchen floor, the Boyds did not repair it until "the weeks that led up to [the November 14, 2015 DILP inspection]," a full 21 months after the Ciancis moved in. Ms. Cianci further testified that, throughout the first 22 months of their tenancy, outlet and light switch plates were missing; window screens were missing; windows did not "close properly"; there was no deadbolt on the front door; and the blower on a large wood

burning fireplace did not work. The Boyds only made the repairs to these defects in the weeks proceeding the DILP inspection or as required by the DILP after the inspection.

With respect to damages, Ms. Cianci testified that she calculated that the disruptions to their use and enjoyment of the Premises resulting from repairs made during the tenancy that would have been required prior to the issuance of a rental license amounted to $3,024.80. She arrived at that figure by calculating the daily cost of rent ($75.62 per day) and multiplying that number by the number of full and partial days that she and her family were deprived of the use of the main house due to ongoing repairs. She also testified that they incurred costs from eating out when their kitchen was being repaired; energy expenses due to windows that would not close all the way; and loss of the use of large portions of their home once their younger daughter began crawling because of the exposed outlets.

Ms. Cianci also calculated damages based upon the loss of use of the basement. The basement was comprised of 2,448 square feet, with three bedrooms, two bathrooms, a family area, and an office. As mentioned, it was excluded from the First Lease, but was included in the Second Lease.[14] Ms. Cianci testified that she had since learned that the Boyds were not permitted to exclude a portion of the home from the First Lease. In any event, when the Ciancis executed the Second Lease, only 200 square feet of the basement was habitable because one of the bathrooms was not functional and was covered in mold;

[14] As noted, the monthly rent did not change between the First and Second Lease.

there was mold all over the walls of the bedrooms and family area; and the windows could not be opened from the inside.[15] After the DILP inspection, the Boyds fixed the non-functional bathroom, cleaned the mold off the walls, repainted the entire basement, and installed interior handles on all of the windows. Ms. Cianci testified that by her calculation, she and her husband suffered an actual loss of $19,320 because they were deprived of the use of 35% of the total square footage in the house for the 23-month period prior to the rental license being issued.

Ms. Cianci's deposition testimony, which was before the court on the second renewed motion for summary judgment, was sufficient to create a genuine dispute of material fact on the issue of the "injury or loss sustained by [the Ciancis] as the result of a practice prohibited [by the CPA.]" CL § 13-408(a)). Unlike in *CitaraManis*, the Ciancis did not seek restitution for all of the rent paid during their tenancy. Rather, they sought to be compensated for the loss of the use of all or part of the Premises during various points in the tenancy as a direct result of repairs and defects that would have been required to be remedied prior to the issuance of a rental license under the County property maintenance code. Ms. Cianci also adequately explained how she measured the monetary loss suffered as a result of the repairs and defects. *See Galola*, 328 Md. 186 (damages measured by "actual loss or injury suffered . . . because of the defects in the

[15] According to Ms. Cianci, Ms. Boyd tried to prevent the DILP inspector from entering the non-functioning bathroom by locking the door and labeling it a utility closet. The DILP inspector directed her to unlock the door, however, and cited the Boyds for a violation relating to the bathroom.

property which would have been disclosed upon [pre-licensing] inspection"). Having failed to establish that there was no genuine dispute of material fact on that issue, the Boyds were not entitled to summary judgment on Count I of the amended complaint.

b.

Count IV

The Ciancis claimed that the Boyds breached the covenant of quiet enjoyment by entering the Premises "without notice to [them] and without their consent" and by "authorizing other persons to utilize the sheds . . . without notice . . . [or] . . . consent." A breach of a tenant's right to quiet enjoyment occurs when "the landlord or someone whose conduct is attributable to him [or her], interferes with a permissible use of the leased property by the tenant." *Bocchini v. Gorn Mgmt. Co.*, 69 Md. App. 1, 10 (1986) (citation omitted). "[T]here may be a breach of the covenant of quiet enjoyment even when the tenant remains in possession of the premises." *Nationwide Mutual Ins. Co. v. Regency Furniture, Inc*., 183 Md. App. 710, 734 (2009). The "scope or magnitude of the interference necessary to constitute a breach . . . must be such as goes to the essence of what the landlord is to provide." *Id*. If that threshold is met, the tenant may recover damages for the "difference in value between what the tenant in fact received and what he would have received, absent the breach." *Id.*

In support of their second renewed motion for summary judgment, the Boyds attested, by way of affidavits, that they always gave written or verbal notice to the Ciancis before entering the Premises and that they only entered the Premises between 9

a.m. and 6 p.m. except in cases of emergency. The Ciancis' deposition testimony, which also was before the court on that motion, created a genuine dispute of fact on that issue, however. Ms. Cianci testified that the Boyds entered the Premises without notice on many occasions and, on at least one occasion, they lied about it. She further testified that Mr. Boyd came onto the Premises for the purpose of disturbing their quiet enjoyment during the weekend of her husband's graduation from law school. She had specifically asked the Boyds not to enter the Premises that weekend because they were hosting family. Nevertheless, Mr. Boyd drove onto the Property, parked his car in such a way as to block the only driveway permitting ingress and egress to the main house, and wandered around the Property near the main house. During that time, Mr. Cianci's stepmother, who was staying with them, and had driven to the grocery store, was unable to return to the Premises. When the Ciancis asked Mr. Boyd to leave, he refused. Eventually, the police were called and the police asked Mr. Boyd to leave. Only then did he agree to leave the Property. According to Ms. Cianci, this disturbance lasted for hours.

The Boyds further asserted in their motion that the sheds were not included in the leased Premises and, as such, the Ciancis were not entitled to control the use of the sheds by third parties. They rely on a land survey they commissioned during the instant litigation that shows that the sheds are located on public land, not on the Property; the language of the First and Second Lease, which does not mention the sheds; and Mr. Cianci's deposition testimony that he and his wife never used the sheds to store their

belongings. In his deposition, however, Mr. Cianci testified that the sheds were located in their front yard, approximately 200 feet from the main house; that the electricity panel box in the main house powered electricity for the lights in the three sheds; and that the sheds only were accessible from the narrow driveway that ended at the main house. Based on these facts, Mr. Cianci took the position that he and his wife reasonably had a right to control the use of the sheds and that the Boyds' actions throughout the term of the First Lease was consistent with the sheds' being part of the leased Premises. He maintained that during the term of the Second Lease, however, the Boyds authorized third parties to store items in the sheds without notice to the Ciancis and that the third parties parked directly in front of the main house to load and unload items from the sheds.

In light of the conflicting evidence on both issues, the Boyds failed to establish the absence of a genuine dispute of material fact with respect to whether their entries onto the Premises without notice and their agents' use of the sheds breached the covenant of quiet enjoyment and, if so, the amount of the damages incurred by the Ciancis.

IV.

Attorneys' Fees

In light of our resolution of Question II, we must vacate the award of attorneys' fees. For guidance on remand, we shall address the Ciancis' argument that the attorneys' fee clause in the Second Lease is void and unenforceable. That clause states: "In any legal action to enforce the terms hereof or relating to the premises, *regardless of the*

outcome, the [Boyds] shall be entitled to *all costs incurred in connection with such action, including attorney fees*." Second Lease, § 23 (emphasis added).

The Ciancis contend the fee clause is void under Md. Code (1974, 2010 Repl. Vol., 2013 Supp.), section 8-105 of the Real Property Article ("RP") governing the "exculpatory clauses and indemnification clauses" in leases. That statute states, in pertinent part:

> If the effect of any provision of a lease is to indemnify the landlord, hold the landlord harmless, or preclude or exonerate the landlord from any liability to the tenant, or to any other person, for any injury, loss, damage, or liability arising from any omission, fault, negligence, or other misconduct of the landlord on or about the leased premises or any elevators, stairways, hallways, or other appurtenances used in connection with them, *and not within the exclusive control of the tenant*, the provision is considered to be against public policy and void.

RP § 8-105 (emphasis added). As the Court of Appeals has explained, RP section 8-105 does not prohibit indemnification clauses covering areas "within the exclusive control of the tenant" and a tenant may have exclusive control of premises even though the landlord "reserve[s] under the lease the right to enter the premises at any time to inspect or repair." *Prince Phillip P'Ship v. Cutlip*, 321 Md. 296, 302-03 (1990).

In the case at bar, the Ciancis alleged that the Boyds violated the CPA, committed a wrongful conversion, and breached the covenant of quiet enjoyment by, *inter alia*, their intrusions into the Premises; their failure to repair defects within the Premises; their failure to obtain a rental license for the Premises; and their failure to notify the Ciancis that the well pump on the Premises also served the guest house. Thus, to the extent that the attorneys' fee clause is an indemnification clause covered by section 8-105, *see*

SunTrust Bank v. Goldman, 201 Md. App. 390, 398 (2011) (attorneys' fees clauses are in the nature of indemnity agreements), the effect of the attorneys' fees clause as applied in this case was not to indemnify the Boyds for their negligence or misconduct in areas outside of the Ciancis' exclusive control. For this reason, we conclude that the attorneys' fees clause is not void under RP section 8-105.

The Ciancis also contend that the attorneys' fees clause in the Second Lease is void for overbreadth because it requires an award of all attorneys' fees incurred by the Boyds in any action "relating to the [P]remises, *regardless of the outcome*" and without regard to the reasonableness of the fees incurred. (Emphasis added.) We agree that the clause is overbroad, but disagree that it is completely unenforceable as a result. "Contract provisions providing for awards of attorney's fees *to the prevailing party in litigation under the contract* generally are valid and enforceable in Maryland." *Myers v. Kayhoe*, 391 Md. 188, 207 (2006) (emphasis added). "[T]rial courts are required to . . . examine the prevailing party's fee request for reasonableness," even if a reasonableness clause is absent from the contract. *Id*. In determining the reasonableness of a fee request premised on a fee-shifting provision in a contract, the court should look to the factors set forth in Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct.[16] *See Monmouth Meadows Homeowners Ass'n, Inc. v. Hamilton*, 416 Md. 325, 336–37 (2010).

[16] Those factors are:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(Continued…)

The attorneys' fee provision in the Second Lease does not include a "reasonableness" clause and does not condition an award of fees to the Boyds on their having prevailed in the underlying lawsuit. We conclude that the language permitting the Boyds to seek attorneys' fees and costs in any suit relating to the Premises "regardless of the outcome" must be excised and the Second Lease must be construed to permit the Boyds to seek only reasonable, *prevailing party* attorneys' fees. *See Fowler v. Printers II, Inc*., 89 Md. App. 448, 465-66 (1991) (discussing the "blue pencil" rule permitting a court to excise offensive contractual language); *Tawney v. Mutual System of Md., Inc*., 186 Md. 508, 521 (1946) (striking offensive language in an employee non-competition agreement). At such time as a final judgment is entered on remand, if the Boyds have ultimately prevailed, they would be entitled to seek an award of reasonable fees incurred in defending the action. *See Congressional Hotel Corp. v. Mervis Diamond Corp*., 200 Md. App. 489, 498 n.3 (2011) (quoting *Royal Inv. Group, LLC v. Wang*, 183 Md. App.

(…continued)

> (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
> (8) whether the fee is fixed or contingent.

406, 457 (2008), in turn quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)) ("[A] litigant is a 'prevailing party' if he succeeds 'on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.'").[17]

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID ONE-HALF BY THE APPELLANTS AND ONE-HALF BY THE APPELLEES.

[17] In that situation, any award of attorneys' fees must comport with Rule 2-705.