ATTORNEYS FOR APPELLANT

Donald E. Morgan
Nadine E. McSpadden
Kristine A. Gordon
Benjamin A. Wolowski
Taft Stettinius & Hollister LLP
Indianapolis, Indiana

Cheryl A. Koch-Martinez
Indiana Legal Services
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Eric C. Bohnet
Indianapolis, Indiana

ATTORNEY FOR AMICUS – NATIONAL ASSOCIATION OF CONSUMER ADVOCATES

Duran L. Keller
Keller Law
Lafayette, Indiana

ATTORNEY FOR AMICUS – CITY OF INDIANAPOLIS

Matthew K. Giffin
Office of Corporation Counsel
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Demond Latroy Welch, *Appellant/Cross-Appellee-Defendant,* v. 1106 Traub Trust, *Appellee/Cross-Appellant-Plaintiff.*	January 30, 2023 Court of Appeals Case No. 21A-PL-2888 Appeal from the Marion Superior Court The Honorable Kurt M. Eisgruber, Judge The Honorable Christopher B. Haile, Magistrate Trial Court Cause No. 49D06-2104-PL-12267

Opinion by Judge Tavitas

Chief Judge Altice and Judge Brown concur.

Case Summary

[1] Demond Latroy Welch appeals the trial court's denial of his request for attorney fees against 1106 Traub Trust ("Trust"). The Trust brought an action against Welch for damages and possession of the property at issue pursuant to a "Residential Lease Agreement and Option to Purchase Real Estate" ("Agreement"). Welch filed a counterclaim against the Trust for damages pursuant to Indiana Code Chapter 32-31-8, which governs a landlord's obligation to provide habitable property under a rental agreement. The trial court found for Welch on his counterclaim, granted possession of the property to the Trust, granted the Trust back rent, and denied both parties' requests for attorney fees.

[2] On appeal, Welch argues that the trial court erred by denying his request for attorney fees pursuant to Indiana Code Chapter 32-31-8. The Consolidated City of Indianapolis and Marion County and the National Association of Consumer Advocates filed amicus curiae briefs in support of Welch. The Trust cross-appeals and argues: (1) the trial court erred by denying its request for attorney fees and late fees pursuant to the Agreement; (2) the trial court erred by granting Welch's counterclaim against the Trust; and (3) the judgment exceeded the jurisdictional limit for a Small Claims Court. We conclude that: (1) the trial court did not err by denying Welch's claim for attorney fees; (2) the trial court did not err by denying the Trust's request for attorney fees or late fees; (3) the trial court did not err by granting Welch's counterclaim; and (4) the Small Claims Court did not abuse its discretion by transferring the matter to the Superior Court. Accordingly, we affirm.

Issues

[3] Welch raises several issues, which we consolidate and restate as whether the trial court abused its discretion by denying Welch's request for attorney fees. On cross-appeal, the Trust also raises several issues, which we consolidate and restate as:

I. Whether the Trust was entitled to attorney fees pursuant to the Agreement.

II. Whether the Trust was entitled to late fees pursuant to the Agreement

III. Whether the trial court erred by granting Welch's counterclaim against the Trust.

IV. Whether the trial court's judgment amount exceeded the jurisdictional limit for a Small Claims Court.

Facts

[4] The Trust owns a rental property residence at 1106 North Traub Avenue in Indianapolis. On October 6, 2016, Welch met with Laura Zhaos Falp, the Trust's trustee, at the residence, which had been occupied by squatters. The residence was in extremely poor condition, including nonfunctional doors and locks; broken windows; a broken water line; no gas service; feces and urine throughout the residence; dead animals in the attic; holes allowing animals access into the attic; debris and clutter throughout the residence; holes in the walls and floors; and missing or malfunctioning plumbing and electrical systems. Falp told Welch that it would be his "responsibility to make [the residence] livable." Tr. Vol. II p. 39.

[5] The Trust and Welch then entered into the Agreement, which required Welch to "take the house 'As Is, Where It Is and How It Is'" and noted that the residence was a "handyman special/fix-upper with rent discount every month." Ex. Vol. III p. 5-6. The rent was $750.00 per month less a $100.00 per month "improvement & maintenance rent discount," plus $25.00 per month for a "rent

to buy option fee."[1] *Id.* The Agreement also provided for late fees for late payments and attorney fees in the event of a default by either party to the Agreement.

[6] Welch moved into the residence and began making repairs. Welch repeatedly contacted Falp about repairs to the property, and Falp "always" told Welch that "it was [his] responsibility." Tr. Vol. II p. 43. On one occasion, Falp told Welch to perform some work in the basement, and Falp said that she would "take . . . [it] off the rent payment." *Id.* at 84. Welch installed new piping to repair the gas furnace, but when the gas company turned the gas on, it determined that the furnace was "just too old and [was] leaking." *Id.* at 87. Welch was required to use space heaters during the winter or stay in a hotel when it was too cold. Welch texted Falp "a lot about the heat." *Id.* at 111. Every time Welch asked Falp to "do something," she told him to "have [his] people do it." *Id.*

[7] Welch fell behind on his rent payments, and on November 6, 2020, the Trust filed a Notice of Claim for Possession of Real Estate in Small Claims Court. The Trust alleged that Welch failed to pay his rent and that the Trust was entitled to possession of the Property. Welch filed an answer and counterclaim against the Trust. The Small Claims Court found that the matter involved a

---

[1] Confusingly, the Agreement provided "$25/mon (x27 mons on deposit & x 84 mons/7yrs rent to buy option fee of $9,500 will need to be paid off Balance $0.00 by Mar 1st, 2023 in order to claim the deed of above propertr Free & Clear." Ex. Vol. III p. 5 (errors in original).

"Rent to Buy" contract, "which is not a rental agreement," and informed the Trust that it could request transfer to the Marion Superior Court within ten days or the matter would be dismissed. Appellant's App. Vol. II p. 3.

[8] On January 19, 2021, the Small Claims Court transferred the case to the Marion Superior Court. After the transfer, Welch filed his amended answer and counterclaims. The counterclaims included: (1) the failure to meet landlord habitability obligations under Indiana Code Chapter 32-31-8; (2) unjust enrichment; (3) unconscionability; (4) breach of contract; and (5) violations of the Residential Real Estate Sales Disclosure Act, Indiana Code Chapter 32-21-5.

[9] The trial court held a bench trial in September 2021. Findings of fact and conclusions thereon were requested pursuant to Indiana Trial Rule 52, and Welch's proposed findings of fact and conclusions thereon included a request for a briefing schedule regarding his petition for attorney fees. The trial court found in favor of Welch on his habitability counterclaim and in favor of the Trust on its claim for back rent and possession of the property and entered findings of fact and conclusions thereon. The trial court found, in part:

> 60. The Contract contained language about tenant being responsible for repairs and maintenance and language about renting the premises "as is." A landlord cannot delegate its duty to provide and maintain a safe, clean and habitable dwelling to a tenant. Additionally, residential property may not be leased in "as-is condition" if the condition of the property falls short of applicable legal requirements. *See* Ind. Code 32-31-8-5(1) and Ind. Code 32-31-8-4.

61. The provision of the Contract renting the property "as is" is illegal and void, as it contravenes state law by purporting to waive the landlord's warranty of habitability and to make tenant responsible for repairs and maintenance. *See* Ind. Code 32-31-8-4.

62. The illegal terms also violate the public policy protections passed by the Indiana legislature through the state landlord-tenant statutes to ensure access to safe, clean and habitable rental housing.

63. The Traub premises were not habitable at the time the Contract was entered into on October 6, 2016, per the undisputed evidence presented.

64. Plaintiff failed to deliver the premises to Welch on October 6, 2016, in a safe, clean and habitable condition as required under statutory landlord obligations outlined in IC 32-31-8, *et. seq.*

65. Plaintiff had actual knowledge or was on notice of its noncompliance with its nondelegable warranty of habitability and refused to remedy its failure to provide and maintain a habitable unit.

66. At the time of delivery, the property lacked smoke alarms, adequate flooring, weather-and water-tight roof and foundation, running water, plumbing, functional sewage system, heat, functional doors and windows, lead paint disclosure in violation of IC 32-31-8-5 & 7 and Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X). The Traub house was also infested with rodents and did not adequately prevent pests' access into the house.

67. Plaintiff failed to comply with all applicable health and housing codes as to exterior doors and windows and locking mechanisms, plumbing, sewage, toilet and kitchen facilities, floors and floor covering, weather and water tight [sic] foundation, prevention of pest infestation, stormwater drainage, flooding prevention, as required by the Marion County Code and as required by IC 32-31-8.

68. Welch suffered damages as a result of the illegal Contract terms about repairs and as a result of Plaintiff's breach of the warranty of habitability at the time of delivery of the rental unit, including a) being left with no choice but to make and pay for significant repairs while b) simultaneously paying rent at a higher rate than fair market value.

* * * * *

70. The uncontroverted fair market value rent of $475 of the Traub premises was established through expert testimony of appraiser Mark Ratterman at trial. *See* Exhibits AAA & BBB.

71. Welch paid rent for the Traub premises at a higher rate of $650 than the fair market value of $475 in their defective condition and the rent obligation should be adjusted accordingly. *See Breezewood Mgmt. Co. v. Maltbie*, 411 N.E.2d 670 (Ind. Ct. App. 1980).

72. Plaintiff is entitled to back rent in the amount of $1,400.00.

73. In addition to breaching the warranty of habitability at the time of delivery of the home, Plaintiff breached the warranty of habitability in an ongoing manner by failing to maintain the premises in a habitable condition and continues to be in breach, primarily due to lack of heat. *See* IC 32-31-8-5.

74. Plaintiff also failed to maintain in good and safe working condition the following: solid foundation that did not result in leaks or standing water in the basement and an operable heating system in violation of Chapter 10 of Marion County, Indiana Housing and Environmental Standards.

75. Welch suffered damages as a result of Plaintiff's ongoing breach of the warranty of habitability and is entitled to damages for purchase of materials and improvements made that did not address habitability issues at the outset.

76. Per IC 32-31-8-6(d)(1) and the underlying public policy of ensuring safe, clean and habitable housing options, Welch is entitled to recovery of his actual and consequential damages.

77. The Plaintiff has waived any claim for late fees by failing to provide notice to the Defendant and accepting rent late.

78. Plaintiff is entitled to possession of the property.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

• Plaintiff is entitled to possession of the property and Defendant shall vacate the property no later than November 28, 2021[,] at 5:00 p.m.

• The Defendant's Counterclaims are GRANTED as detailed below:

a. Breach of Warranty of Habitability and Enforcement of Landlord's Noncompliance with Tenant Rights and Landlord Obligations:

i) at the time of delivery of the rental unit and

ii) on-going, in particular, lack of heat;

- And the Court grants the following relief:

a. Actual and consequential damages to Welch in the amount of [$]7,234.47 as detailed below.

i. $7,234.47 for repairs Welch was induced to make upon move-in to make the Traub premises habitable and other documented repairs.

ii. Welch is responsible for $1,400.00 in unpaid rent.

iii. *Damages owed by Plaintiff after subtracting Welch's rent owed total **$5,837.37** and judgment is entered in that amount in favor of Demond Welch and against 1106 Traub Trust plus 8% post judgment interest.

* * * * *

c. The parties shall pay their own attorney fees and costs

Appellant's App. Vol. II pp. 25-28.

[10] Welch filed a motion to correct error regarding his attorney fee request.[2] Welch argued that the trial court erred by summarily ruling on the request for attorney fees without considering argument or evidence. The trial court denied Welch's motion to correct error. Welch now appeals, and the Trust cross-appeals.

Discussion and Decision

[11] The trial court issued findings of fact and conclusions thereon pursuant to a request under Indiana Trial Rule 52(A). Accordingly, we apply a two-tiered review. *Wysocki v. Johnson*, 18 N.E.3d 600, 603 (Ind. 2014). We "affirm when the evidence supports the findings, and when the findings support the judgment." *Id.* We do not "set aside the findings or judgment unless [they are] clearly erroneous," and we must give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* (citing Ind. Trial Rule 52(A)). "Findings of fact are clearly erroneous only when they have no factual support in the record." *Id.* "[A] judgment is clearly erroneous if it applies the wrong legal standard to properly found facts." *Id.* at 604. We review the trial court's legal conclusions de novo. *Gittings v. Deal*, 109 N.E.3d 963, 970 (Ind. 2018).

[12] This litigation concerns Indiana Code Chapter 32-31-8, which governs a landlord's obligations under a rental agreement. Although the Agreement here

[2] The Trust also filed a pro se motion to correct error, but it was stricken as untimely and unsigned by the Trust's attorney.

is not a straightforward rental agreement, our Supreme Court held in *Rainbow Realty Grp., Inc. v. Carter*, 131 N.E.3d 168, 172 (Ind. 2019), that a very similar agreement was "subject to the protections afforded by the residential landlord-tenant statutes." In *Rainbow Realty*, despite the rent-to-own provisions of the agreement, our Supreme Court held that the landlord "had to deliver the House in a safe, clean, and habitable condition—which they did not do." *Rainbow Realty*, 131 N.E.3d at 173. The Court noted that the landlord-tenant statutes are "about protecting people from their own choices when the subject is residential property and their contract bears enough markers of a residential lease." *Id.* at 177.

[13] Under Indiana Code Section 32-31-8-5, a landlord must do the following:

> (1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.
>
> (2) Comply with all health and housing codes applicable to the rental premises.
>
> (3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.
>
> (4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:
>
> (A) Electrical systems.

> (B) Plumbing systems sufficient to accommodate a reasonable supply of hot and cold running water at all times.
>
> (C) Sanitary systems.
>
> (D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.
>
> (E) Elevators, if provided.
>
> (F) Appliances supplied as an inducement to the rental agreement.

The failure to meet these obligations subjects a landlord to certain remedies, including the possibility of an award of attorney fees to the tenant. *See* Ind. Code § 32-31-8-6.

[14] The trial court here found that the Trust failed to ensure that the residence was delivered in "a safe, clean and habitable condition" as required by Indiana Code Chapter 32-31-8. The trial court also determined that Welch owed back-rent based upon the fair market rental rate of the residence, which was introduced through Welch's expert. The trial court, however, did not award attorney fees to either party. The parties now challenge several of the trial court's findings and conclusions.

I. Welch's Claim for Attorney Fees

[15] Welch argues that the trial court erred by denying his request for attorney fees. "The general rule in Indiana, and across the country, is that each party pays its own attorney's fees; and a party has no right to recover them from the opposition unless it first shows they are authorized." *River Ridge Dev. Auth. v. Outfront Media, LLC*, 146 N.E.3d 906, 912 (Ind. 2020). "Known as the American Rule, this doctrine reflects a compromise between keeping courts open to all and allowing attorneys the freedom to contract with clients." *Id.* The rule, however, is not without exceptions. *Id.* "Statutes can authorize courts to award attorney's fees, and courts have carved out exceptions to the American Rule using their inherent equitable powers." *Id.*

[16] Welch contends that Indiana Code Section 32-31-8-6(d) required an award of attorney fees to him. The statute provides:

> If the tenant is the prevailing party in an action under this section, the tenant **may obtain** any of the following, if appropriate under the circumstances:
>
> (1) Recovery of the following:
>
> (A) Actual damages and consequential damages.
>
> (B) **Attorney's fees and court costs**.
>
> (2) Injunctive relief.
>
> (3) Any other remedy appropriate under the circumstances.

(Emphasis added).

[17] We acknowledge that "the purpose of Section 32-31-8-6 and similar statutes authorizing the recovery of attorney's fees is to 'serve [the] public policy of equal access to courts despite [the] relative financial conditions of parties.'" *Husainy v. Granite Mgmt., LLC*, 132 N.E.3d 486, 499 (Ind. Ct. App. 2019) (citing *Pinnacle Props. v. Saulka*, 693 N.E.2d 101, 105 (Ind. Ct. App. 1998), *trans. denied*). Our Supreme Court has held: "Prevailing parties under the residential landlord-tenant statutes are eligible to recoup their fees. An award of fees, however, is discretionary." *Rainbow Realty*, 131 N.E.3d at 178.

[18] The relevant statute provides that the tenant "**may** obtain" an award of attorney fees; the statute does not provide that the tenant "**shall** obtain" an award of attorney fees. "It is axiomatic that use of the permissive word 'may' in a statute indicates a trial court is not required to act, but may do so within its discretion." *Wolfe v. Eagle Ridge Holding Co., LLC.*, 869 N.E.2d 521, 529 (Ind. Ct. App. 2007). Given the lack of language indicating that an award of attorney fees is mandatory, the award of attorney fees is left to the trial court's discretion.

[19] Under Indiana Code Section 32-31-8-6(d), the trial court could award Welch attorney fees "if appropriate under the circumstances." The trial court denied Welch's request for attorney fees without explanation. Welch, however, contends that the trial court was required to hold a hearing to consider the issue and was required to issue findings on the issue. In support of the argument, Welch relies upon *Husainy* and *Rainbow Realty*. In both cases, the trial court

awarded attorney fees to a tenant, but the fees were significantly less than the amount requested by the tenant. In both cases, we concluded that the trial court abused its discretion by limiting the attorney fee award. *Rainbow Realty*, 131 N.E.3d at 178-79 (reversing and remanding for the trial court to recalculate the award of attorney fees); *Husainy*, 132 N.E.3d at 499 ("We also agree with Husainy's contention that the trial court abused its discretion in limiting the fee award based on counsel's requested verdict."). Our Supreme Court noted in *Rainbow Realty* that "[a] court's exercise of discretion to award fees should be supported by appropriate findings." *Rainbow Realty*, 131 N.E.3d at 178.

[20] We conclude that *Husainy* and *Rainbow Realty* are distinguishable. In those cases, having determined that fees were warranted, the trial court was required to issue findings to support the attorney fee award. Here, however, the trial court determined that fees were not warranted. The trial court made findings awarding the Trust possession of the property and unpaid rent and awarding Welch damages for repairs that he made to the property. Both parties at least partially prevailed on their actions. Under such circumstances, Welch has failed to demonstrate that a hearing or additional findings were required. Although we might have reached a different conclusion than the trial court regarding attorney fees, we are unable to say that the trial court abused its discretion.

II. Cross-Appeal Regarding the Trust's Claim for Attorney Fees

[21] The Trust cross-appeals regarding its request for attorney fees. The Trust contends that it is entitled to attorney fees pursuant to the Agreement, which

provides: "In the event of default by either party, of any of the terms herein contained, the non-defaulting party shall be entitled to all remedies under law, reasonable attorney's fees and court costs." Ex. Vol. III p. 8.

[22] First, we question whether the Trust was a "non-defaulting party" given its inclusion of provisions that violated Indiana Code Section 32-31-8-5 and its failure to remedy significant defects in the residence. Moreover, Welch contends that the Agreement was void and, thus, the Trust was not entitled to attorney fees under the Agreement.

[23] A court may refuse to enforce a contract that: "(1) contravenes a statute, (2) clearly tends to injure the public in some way, or (3) is otherwise contrary to the declared public policy of this State." *WellPoint, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 29 N.E.3d 716, 724 (Ind. 2015), *opinion modified on reh'g*, 38 N.E.3d 981 (Ind. 2015). "As a general matter, . . . where a contract goes beyond mere contravention of declared public policy and actually contravenes a statute, the court's responsibility is to declare the contract void . . . ." *Cont'l Basketball Ass'n, Inc. v. Ellenstein Enterprises, Inc.*, 669 N.E.2d 134, 140 (Ind. 1996). "[B]ecause we value the freedom to contract so highly, we will not find that a contract contravenes a statute unless the language of the implicated statute is clear and unambiguous that the legislature intended that the courts not be available for either party to enforce a bargain made in violation thereof." *Id.* "The legislature has made clear and unambiguous its intent that certain types of contracts not be enforced by declaring them 'void' or 'unenforceable' in so many words." *Id.*

[24] For example, our Supreme Court concluded in *Cont'l Basketball Ass'n*, based upon the "legislature's failure to use words like 'void' or 'unenforceable' in the statute and its inclusion of remedial provisions to be invoked in the event of violations, that the legislature did not intend that every contract made in violation of the [statute] be void." *Id.* Rather, the Court applied a balancing approach and considered the following factors:

> (i) the nature of the subject matter of the contract; (ii) the strength of the public policy underlying the statute; (iii) the likelihood that refusal to enforce the bargain or term will further that policy; (iv) how serious or deserved would be the forfeiture suffered by the party attempting to enforce the bargain; and (v) the parties' relative bargaining power and freedom to contract.

Id.

[25] Here, Indiana Code Section 32-31-8-4 provides: "A waiver of the application of this chapter by a landlord or tenant, by contract or otherwise, is void." The chapter at issue does not provide that the contract itself is void. Rather, Indiana Code Section 32-31-8-4 merely renders void a contractual waiver of the rights provided by the chapter. "[T]he statute leaves it to the trial court to determine whether voiding the contract," as opposed to merely the waiver contained therein, "is an appropriate remedy." *Paul v. Stone Artisans, Ltd.*, 20 N.E.3d 883, 888 (Ind. Ct. App. 2014). Accordingly, to find that the entire contract was void, we would be required to address and balance the factors noted in *Cont'l Basketball Ass'n.*

[26] We need not decide whether the Agreement is void, however, because the statute provides other remedies to a tenant under Indiana Code Section 32-31-8-6. Those remedies include "[a]ny other remedy appropriate under the circumstances." I.C. § 32-31-8-6(d)(3). Given the Trust's inclusion of void provisions in the Agreement and refusal to remedy significant defects in the residence, the trial court was within its discretion to deny the Trust's request for attorney fees as another "remedy appropriate under the circumstances." Accordingly, we cannot say the trial court abused its discretion by refusing to grant the Trust's request for attorney fees under the Agreement's provisions.

III. Cross-Appeal Regarding Late Fees

[27] The Trust next argues that the trial court erred by denying the Trust's request for late fees on Welch's rent payments. The Agreement provided: "There will be a $50 late fee if the payment was received in full on or after 8th of each month and an additional fee of $5.00 per day (start 9th of every month) shall be added until the full balance of the Rental and all previous Late fees are paid." Ex. Vol. III p. 5 (errors in original).

[28] The trial court, however, denied the Trust's claim for late fees and found:

> 25. Welch's payments total $27,100, per Plaintiff's records with a balance due of 11,900.00 in rent and $7,050.00 in late fees. *See Id*.
>
> 26. Welch paid the monthly payment at times in multiple installments and Plaintiff regularly accepted such payments. *See Id.*

> 27. Plaintiff produced no written notices of balance due about alleged late payments and the payment ledger shows Plaintiff accepted subsequent rent payments repeatedly even when a balance was allegedly owed at the time.
>
> 28. Plaintiff did not file an eviction action against Welch any time prior to the 2020 action.
>
> * * * * *
>
> 77. The Plaintiff has waived any claim for late fees by failing to provide notice to the Defendant and accepting rent late.

Appellant's App. Vol. II pp. 19, 27.

[29] We again note that Indiana Code Section 32-31-8-6 provides multiple remedies available to tenants when landlords violate Indiana Code Chapter 32-31-8. Those remedies include "[a]ny other remedy appropriate under the circumstances." I.C. § 32-31-8-6(d)(3). Given the Trust's multiple statutory violations, failure to remedy the many defects in the residence, and regular acceptance of late payments, we cannot say the trial court erred by denying the Trust's request for late fees.

IV. Cross-Appeal Regarding Notice of Noncompliance

[30] Next, the Trust argues that Welch's counterclaim should have failed because Welch did not provide notice of the Trust's noncompliance, which is statutorily required. Indiana Code Section 32-31-8-6(b) provides:

> A tenant may not bring an action under this chapter unless the following conditions are met:
>
> (1) The **tenant gives the landlord notice** of the landlord's noncompliance with a provision of this chapter.
>
> (2) The landlord has been given a reasonable amount of time to make repairs or provide a remedy of the condition described in the tenant's notice. The tenant may not prevent the landlord from having access to the rental premises to make repairs or provide a remedy to the condition described in the tenant's notice.
>
> (3) The landlord fails or refuses to repair or remedy the condition described in the tenant's notice.

(Emphasis added).

[31] The Trust contends that: (1) Welch failed to provide notice; (2) Welch failed to provide evidence that the Trust did not remedy the conditions in a reasonable amount of time; and (3) Welch failed to submit competent evidence that the heating system was noncompliant with the habitability statutes. The Trust complains that Welch's testimony was insufficient, that documentary evidence and/or expert testimony was required, and that Welch's testimony regarding the gas company's statements was hearsay. The Trust, however, did not object to Welch's testimony at issue regarding the conditions at the residence, his interactions with Falp, or his conversations with the gas company's representatives. The "[f]ailure to object at trial to the admission of the evidence results in waiver of the error." *Raess v. Doescher*, 883 N.E.2d 790, 796 (Ind. 2008).

[32] Although the Trust does not specifically challenge any of the trial court's findings, we note that the trial court found the following:

> 19. Plaintiff had actual knowledge or was on notice as to the Traub premises need for repairs as of October 6, 2016, including the lack of an operable heating system. . . .
>
> 20. Additionally, Welch requested Plaintiff to make repairs to the Traub premises multiple times about multiple issues. The Plaintiff taking no action, other than responding to Welch that he was responsible for repairs and maintenance.
>
> 21. Welch requested Plaintiff to address the lack of heat at least once per year during the colder months, with the Plaintiff taking no action.
>
> 22. The Traub house continues to have no operable heating system or gas service. . . .
>
> 23. Welch did not deny Plaintiff access to the Traub premises during the time period relevant to the complaint.

Appellant's App. Vol. II pp. 18-19.

[33] Indiana Code Section 32-31-8-5(4)(D) required the Trust to provide "[a] heating system . . . sufficient to adequately supply heat at all times." Welch testified that he repeatedly contacted Falp about repairs to the property, and Falp "always" told Welch that "it was [his] responsibility." Tr. Vol. II p. 43. Welch texted Falp "a lot about the heat." *Id.* at 111. Every time Welch asked Falp to "do something," she told him to "have [his] people do it." *Id.* Welch testified

that there had "never" been heat in the residence except for his space heaters. *Id.* at 88.

[34] Welch presented evidence that he repeatedly complained to Falp regarding the conditions in the residence, especially the lack of heat, and that the Trust failed to make repairs. The Trust's argument is merely a request that we reweigh the evidence, which we cannot do. Accordingly, the Trust's argument regarding Welch's notice of noncompliance to the Trust fails.

V. Cross-Appeal Regarding Jurisdiction

[35] Finally, the Trust argues that the trial court's award to Welch on his counterclaim "exceed[s] the $8,000 jurisdictional limit of the small claims court . . . ." Appellee's Br. p. 26. At the time this action was brought, Indiana Code Section 33-34-3-2, which applies to Marion County Small Claims Courts, provided that the small claim court "has original and concurrent jurisdiction with the circuit and superior courts in all civil cases founded on contract or tort in which the debt or damage claimed does not exceed eight thousand dollars ($8,000), not including interest or attorney's fees."[3] Once transferred to the Marion Superior Court, however, the $8,000 jurisdictional limit was inapplicable. Accordingly, any award by the Superior Court greater than $8,000 did not result in a jurisdictional concern.

[3] The statute was later amended to include a cap of $10,000.00. *See* Pub. L. No. 125-2021, §4 (eff. July 1, 2021).

[36] The Trust, however, complains that the Small Claims Court did not have authority to transfer the case to the Superior Court after Welch missed the deadline to transfer the case under Small Claims Rule 4(c). The Small Claims Court, however, transferred the case because the matter involved a "Rent to Buy" contract, "which is not a rental agreement." Appellant's App. Vol. II p. 3. In addition to Indiana Code Section 33-34-3-2, quoted above, the Small Claims Court also has "original and concurrent jurisdiction with the circuit and superior courts in **possessory actions between landlord and tenant** in which the past due rent at the time of filing does not exceed eight thousand ($8,000)"[4] and "original and concurrent jurisdiction with the circuit and superior court in **emergency possessory actions between a landlord and tenant** under IC 32-31-6." I.C. § 33-34-3-3, I.C. § 33-34-3-4 (emphasis added).

[37] The Small Claims Court recognized that the nature of the Agreement was problematic and involved a more complex relationship than that of a simple rental agreement. If the trial court determined that the Agreement involved a landlord and tenant dispute, then the Small Claims Court had jurisdiction to address the Trust's claim for possession of the property. If, however, it was later determined that the Agreement did not involve a landlord and tenant dispute, the Small Claims Court did not have authority to award possession of the property. *See, e.g., Olympus Properties, LLC v. Plotzker*, 888 N.E.2d 334, 337

[4] This statute was later amended to include a cap of $10,000.00. *See* Pub. L. No. 125-2021, §5 (eff. July 1, 2021).

(Ind. Ct. App. 2008) (holding that the small claims court had jurisdiction to consider the breach of a lease but did not have jurisdiction to award injunctive relief because the defendant was not a tenant); *Vic's Antiques & Uniques, Inc. v. J. Elra Holdingz, LLC*, 143 N.E.3d 300, 309 (Ind. Ct. App. 2020) (holding that "the action was not a possessory action between a landlord and a tenant, and the small claims court did not have jurisdiction to hear" the matter). Trial courts are required to raise the lack of subject matter jurisdiction sua sponte. *Stewart v. Kingsley Terrace Church of Christ, Inc.*, 767 N.E.2d 542, 544 (Ind. Ct. App. 2002). Given the complex nature of the Agreement and the limited jurisdictional remedies available to the Small Claims Court, we conclude that the Small Claims Court was within its discretion to transfer the matter to the Superior Court.

Conclusion

[38] We conclude that the trial court did not abuse its discretion by denying Welch's and the Trust's requests for attorney fees. Moreover, the trial court did not abuse its discretion by denying the Trust's request for late fees or by granting Welch's counterclaim, and the Small Claims Court did not abuse its discretion by transferring the matter to the Superior Court. Accordingly, we affirm.

[39] Affirmed.

Altice, C.J., and Brown, J., concur.