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IN THE  
COURT OF APPEALS OF INDIANA

Clarence L. White  
Folabi E. Oshinubi, and  
Denzel Lewis,

*Appellants-Defendants,*

v.

Krys Szalasny,  
*Appellee-Plaintiff*

June 20, 2022

Court of Appeals Case No.  
21A-CC-2063

Appeal from the  
Tippecanoe Circuit Court

The Honorable  
Sean Persin, Judge

Trial Court Cause No.  
79C01-2002-CC-165

## Case Summary

- [1] Krys Szalasny (“Landlord”) sued his three former tenants, Clarence L. White, Folabi E. Oshinubi, and Denzel J. Lewis (“Tenants”), for breach of contract. Tenants brought a counterclaim under the Indiana Security Deposit Statute, ultimately prevailed on that claim, and later asked for attorney’s fees under a fee-shifting provision in the statute. The trial court awarded Tenants fees for work done on the claims but denied fees for work preparing and prosecuting the fee petition. Tenants now appeal, arguing fees relating to the fee petition are permissible under the statute and should have been awarded here. We agree that the Indiana Security Deposit Statute does not limit a fee award to certain stages of the proceeding and that an award of fees relating to the fee petition is reasonable here. Therefore, we reverse and remand.<sup>1</sup>

## Facts and Procedural History

- [2] Landlord and Tenants entered into a residential lease for a house in West Lafayette from August 2018 to July 2019. In February 2020, Landlord sued Tenants for breach of contract, alleging they caused over \$30,000 in damage to

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<sup>1</sup> We held oral argument on May 20, 2022, in Crown Point. We thank the Leadership Development Academy of the Indiana State Bar Association for its hospitality in hosting the argument and counsel for their helpful advocacy.

the property. The case was continued several times while Tenants sought counsel. In December, Tenants secured counsel and countersued Landlord for failing to keep the property in good and safe working condition, violating the Indiana Security Deposit Statute (ISDS) for not returning their \$1,850 security deposit, and breaching their contract for not returning the security deposit. In March 2021, Landlord voluntarily dismissed his breach-of-contract claim against Tenants. Later that month, the parties came to an agreement in which Landlord stipulated to “judgment in favor of the Tenants” on their ISDS and breach-of-contract claims and Tenants dismissed their remaining claim. Appellants’ App. Vol. II p. 75. The parties also agreed that a hearing would be held on the issue of Tenants’ attorney’s fees.

[3] The trial court accepted the agreement. Tenants submitted fee petitions that included work from two attorneys—Attorney Duran Keller, who billed at \$400 an hour, and Attorney Alexander Burns, who billed at \$200 an hour. The petition stated the attorneys had collectively logged 60.28 hours, including 45.29 hours on the claims and 14.99 hours on the fee petition, which with other costs totaled \$21,467.56. Both parties submitted briefs on the fee issue, with Landlord arguing in part that the trial court should follow “precedent” and “preclud[e] [Tenants’ attorneys] from recovering fees on time spent to recover [their own] fees.” *Defendant’s Argument on Attorney’s Fees*, No. 79C01-2002-CC-

65 (April 22, 2021).<sup>2</sup> A hearing was held on the fee issue. At the end of the hearing, the trial court stated,

I think we're trying to get away from massive trials on the issue of fees. I do think that these cases will get easier the more we do. I mean at some point we're going to have a court of appeals on this giving us some guidance about what's appropriate.

Tr. Vol. II p. 21.

[4] After the hearing, the trial court issued an order on attorney's fees. In doing so, the trial court referenced many of the reasonableness factors enumerated in Indiana Professional Conduct Rule 1.5, including that the case was not "factually complex," was resolved quickly, and did not prevent the attorneys from accepting other cases, and that the attorneys were experienced, in "high demand," and won substantial relief for Tenants. Appellants' App. Vol. II p. 13. The trial court ultimately awarded Tenants fees only for 45.29 hours, at rates of \$300 an hour for Attorney Keller and \$200 an hour for Attorney Burns, which along with paralegal services and other costs totaled \$13,666.31. The trial court denied fees for the 14.99 hours incurred calculating the attorney fees, briefing the fee issue, and attending the contested fee hearing, stating in its order it was "den[ying] the request to award attorney's fees for time spent collecting attorney's fees." *Id.* at 14.

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<sup>2</sup> Tenants failed to provide this document for our review. We therefore cite the documents found in the Odyssey Case Management System.

[5] Tenants now appeal.

## Discussion and Decision

[6] Tenants argue the trial court erred in denying them full attorney's fees under the fee-shifting provision in the ISDS. When a matter turns on a question of statutory interpretation, we employ a de novo standard of review. *Lake Imaging, LLC v. Franciscan All., Inc.*, 182 N.E.3d 203, 206 (Ind. 2022). But a trial court's decision about the amount of an attorney's fee award is reviewed under an abuse-of-discretion standard. *Hill v. Davis*, 850 N.E.2d 993, 996 (Ind. Ct. App. 2006). An abuse of discretion occurs when the trial court's award is clearly against the logic and effect of the facts and circumstances before the court. *Id.* When determining the reasonableness of a fee, our Rules of Professional Conduct provide a non-exhaustive list of factors to be considered, including:

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

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by 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.

Ind. Professional Conduct Rule 1.5.

[7] Here, the trial court awarded Tenants attorney’s fees for all the hours worked on the claims but denied all hours relating to the work to obtain an award of attorney’s fees. Tenants argue, and Landlord does not dispute, that the ISDS “allows for recovery of any fees reasonably incurred” and does not preclude awards relating to the recovery of attorney’s fees. Appellants’ Br. p. 9.

[8] The ISDS provides that, upon termination of a rental agreement, the landlord “shall return to the tenant the security deposit” unless certain conditions apply. Ind. Code § 32-31-3-12(a). The statute also states that if a landlord fails to return the deposit as required, “a tenant may recover all of the security deposit due the tenant **and reasonable attorney’s fees.**” I.C. § 32-31-3-12(b) (emphasis added). The statute’s “primary aim is to provide for the timely return of the security deposit and to protect a tenant from wrongful withholding by the landlord.” *Smith v. Laurenz Place LLC*, 127 N.E.3d 1250, 1254 (Ind. Ct. App. 2019).

[9] We agree with Tenants that the statute’s language “does not limit [fee] recovery to any specific phase of the proceedings.” Appellants’ Br. p. 9. And while this Court has not addressed whether the ISDS’s fee-shifting provision allows for the recovery of attorney’s fees for preparing and prosecuting a fee petition, in *Walton v. Claybridge Homeowners Association, Inc.*, 825 N.E.2d 818, 825 (Ind. Ct. App. 2005), we held such recovery is permitted under a contractual fee-shifting provision. In doing so, we noted that “the overriding concern in determining whether a fee-shifting provision should be upheld is whether enforcement makes the prevailing party whole,” and that “[r]equiring the [prevailing party] to absorb any fees or costs its attorneys incurred in establishing the fees would not fully compensate it for enforcing its rights.” *Id.*

[10] The same can be said under the ISDS’s fee-shifting provision. Denying attorney’s fees for time spent on fee claims dilutes the value of the fee award and does not fully compensate the wronged tenant. This circumvents one of the main aims of the statute—protecting tenants. In the event of wrongful withholding, a full award of fees ensures tenants are fully compensated for having to bring suit. Additionally, the possibility of a full fee award discourages landlords from wrongfully withholding a tenant’s security deposit in the first place. If landlords know they may have to pay not only their own attorney’s fees, but also **all** the fees incurred by the tenant, they will hopefully think twice before wrongfully withholding a security deposit.

[11] And importantly, an expansive reading of the fee-shifting provision of the ISDS provides relief to indigent tenants. “Access to justice” is an empty phrase

without the help of an attorney. And although many attorneys generously provide free or reduced legal services, there remains a crisis in the representation of indigent civil litigants. Relief under statutes, such as the ISDS, that encourage attorneys to represent the indigent by providing attorney's fees to successful parties should be liberally applied. *See Husainy v. Granite Mgmt., LLC*, 132 N.E.3d 486, 499 (Ind. Ct. App. 2019) (noting fee awards that do not fully compensate the successful party “discourage attorneys from representing parties without financial means to pay attorney’s fees, even where the legislature created a remedy for the same”) (citation omitted).

[12] Landlord does not dispute that a trial court may award such fees. Instead, he argues the trial court’s failure to do so here was not an abuse of discretion. We agree that the statute is permissive—“may” rather than “shall”—and the decision of whether to award fees is within the trial court’s discretion. Here, however, the record shows the trial court was unaware it had the discretion to award such fees. Landlord argued “precedent” prohibits fees related to securing the award of attorney’s fees. Later, the trial court noted on the issue of fees that “at some point we’re going to have a court of appeals on this giving us some guidance about what’s appropriate.” And although the trial court’s order shows it carefully considered many factors in Rule 1.5 with respect to the fees for the claim, there is no reference to the post-stipulation work in that analysis. Instead, the court merely stated it was “den[ying] the request to award attorney’s fees for time spent collecting attorney’s fees.” Thus, it does not appear the trial court



determined such fees were unreasonable; it determined such fees could not be awarded under the ISDS.

[13] Given this record, we believe fees for time spent on the fee petition are reasonable. The fee issue alone demanded briefing and a hearing. And as the trial court noted, Attorneys Keller and Burns won substantial relief for their clients in this case—within months of being hired Landlord dismissed his \$30,000 claim for damages and stipulated to liability on Tenants’ claims. Besides being experienced and in high demand, the record shows the attorney services were exceptionally valuable here, given that Tenants had a difficult time finding counsel willing to represent them.

[14] For these reasons, we conclude attorney’s fees for time spent on fee recovery are warranted here. We therefore reverse the denial of those fees and remand this matter to the trial court with instructions to award Tenants an additional \$3,937 in attorney’s fees to compensate for their time on the fee claim.<sup>3</sup>

[15] Reversed and remanded.

Mathias, J., and May, J., concur.

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<sup>3</sup> Tenants’ fee petitions reflect that the trial court denied 14.99 hours—9.39 hours by Attorney Keller charging \$400 an hour and 5.6 hours by Attorney Burns charging \$200 an hour. But the trial court held a reasonable hourly rate for Attorney Keller is \$300, and Tenants do not appeal that decision. Thus, we award \$3,937 in attorney’s fees to Tenants—9.39 hours by Attorney Keller at \$300 an hour and 5.6 hours by Attorney Burns at \$200 an hour.