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IN THE SHAKER HEIGHTS MUNICIPAL COURT

CUYAHOGA COUNTY, OHIO

JOHN A. HOWARD Plaintiff -vs- STEVEN SIMON Defendant	)	CASE NO. 82 CI G10516 JUDGE PAUL R. DONALDSON OPINION AND JUDGMENT

This cause came on for hearing before the Court on July 26, 1983 upon the following stipulations:

1) Defendant was a tenant of plaintiff from September 1, 1980, to August 31, 1982.
2) A thirty-day notice of intention of the plaintiff to terminate the tenancy of defendant was given to the defendant on July 1, 1982.
3) A three-day notice to vacate the premises was given to defendant by plaintiff on July 27, 1982.
4) The July 1982 rent of $475 was paid.
5) The lease offered "air" meaning central air conditioning.
6) There were three forms of lodging complaints that tenants could use:
   A) Telephone
   B) In person
   C) By writing same on a laundry room bulletin board sheet placed there for that purpose by landlord.
7) There was communication on July 1, 1982, between plaintiff as landlord and defendant as tenant regarding air conditioning.
8) Landlord received a letter from defendant's attorney about the air conditioning complaint and the thirty-day notice given to tenant. (Defendant's Exhibit D).

During trial the following exhibits were admitted into evidence:

Plaintiff's Exhibits:

2) Photograph of central air conditioning unit on garage.
3) Photograph of central air conditioning unit, closer view.
4) Photograph of central air conditioning unit's controls.
5) National weather service local climatological data for June 27, 1982, to July 3, 1982.
6) ASHRAE Scale

Defendant's Exhibits:

A) Photocopy of newspaper advertisement dated August 24, 1980, advertising defendant's suite with "air."

B) Photocopy of three-day eviction notice.
C) Photocopy of defendant's check #263 dated July 6, 1982 in the sum of $475.
D) Photocopy of letter to plaintiff from defendant's counsel, John Lawson, undated.
E) Photocopy of thirty-day notice to leave premises.
F) Copy of defendant's bill of lading dated August 26, 1982.
G) Letter from Dr. Steven B. Sorin addressed "To whom it may concern" dated July 12, 1983.
H,I,& J) Photocopies of unsigned complaints received by the City of Shaker Heights Building Department relative to the premises at 15500 Van Aken Blvd., Shaker Heights, Ohio.

The parties first appeared in court August 12, 1982 on a complaint in forcible entry and detainer. At that time, the parties agreed in open court that plaintiff was entitled to possession, that a Writ of Restitution would issue August 21, 1982, that defendant would pay August, 1982, rent forthwith and that plaintiff would refund the full security deposit and prorate for the unused portion of the August rent. On August 26, 1982, defendant vacated said premises.

The causes now before the Court are four counterclaims filed by the defendant. The first alleges a violation of O.R.C.§5321.02 which prohibits retaliatory eviction. The Court finds this claim unfounded. Instead of defendant's complaints prompting the eviction action which might then be characterized as retaliatory, the action arose from defendant's manner of complaint on July 1, 1982. Earlier complaints prompted no such action from plaintiff. Defendant's behavior on July 1, however, made plaintiff "afraid if he (defendant) remained a tenant some violence would occur." Damages on this counterclaim are denied.

Defendant's second counterclaim that plaintiff attempted to recover possession of the premises at issue by means other than those provided by Chapters 1923, 5303 and 5321 of the Ohio Revised Code is also unfounded. In fact, defendant agreed to the issuance of the Writ of Restitution as of August 1, 1982. This second counterclaim is denied.

Defendant's third counterclaim relates to his right to the peaceful and quiet enjoyment and possession of the premises without hindrance or interference from plaintiff. This claim is well taken. Although the plaintiff replaced the central air conditioning system in June of 1973, he did, in fact, turn the entire system off at times when he felt the weather outside did not warrant the use of air conditioning. He did not, however, take into account the comfort and needs of individual tenants, that some suites were warmer than others due to exposure to the sun, that some tenants prefer a cooler temperature than others, that some may have medical problems or other conditions which require less humidity and lower heat. Half of this building has individual through-the-wall air conditioning units which each tenant may control to his own satisfaction. Defendant's air conditioning was controlled by a central unit which covers half of the building and which operates either on heat or cooling. An expert witness testified that this type of unit is not the state of the art but is workable. Although it is more complicated than newer units, it is all right when everything is working. He indicated the industry standard is to switch this type of unit from heating to cooling about May 15th of each year and back again to heating about October 15th. Since the unit cannot readily be switched back and forth between heating and cooling, there will be some discomfort to tenants on warm days prior to the switch over date in May, which the plaintiff testified was about May 30th, and again on warm days after October 1st when the plaintiff switched back to heat. The Court finds that this type of discomfort is unavoidable with the type of system in use, and further is not objectionable as is the discomfort of the very hot and humid days found during the summer in this general area.

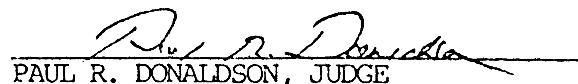
When the plaintiff turned the unit off during the summer months not for repair but in order to conserve electricity, he took away the decision for an

individual tenant to control the temperature of his suite to his own choice. Even though the temperature outside was only 71° at 4:30 p.m. on July 1, 1982, it was a great deal warmer in defendant's suite. The expert witness testified that the outside temperature needed to be 55° to adequately cool defendant's suite. Plaintiff advertised the suite with "air" and claimed to furnish "air" to all the suites, but by turning the unit off, he failed to provide that "air" which he advertised, and therefore interfered with the peaceful and quiet enjoyment of the premises without hindrance or interference. Defendant occupied the suite for one month of summer weather in 1981 and three months in 1982. It is admitted that the air conditioner was on much of that time so that the breach of the lease did not occur on every day or every hour of every day during the four months. The reasonable value of this breach is $500.

Defendant's fourth counterclaim relates to his not receiving the full value of his rental agreement by not having air conditioning when he wanted it. This claim is well taken and the Court finds the reasonable loss of value to be $90 per month for each of the four months during 1981 and 1982 that defendant occupied the premises.

It is therefore ordered judgment for plaintiff on defendant's first and second counterclaims. Judgment for defendant on his third counterclaim in the sum of $500 plus interest at 10% per annum from the date of judgment, and on the fourth counterclaim in the sum of $360 plus interest at 10% per annum from the date of judgment, plus costs. The Court does not award attorney fees to defendant since the actions of plaintiff were not retaliatory and were not directed solely at defendant.

SO ORDERED THIS 10th DAY OF SEPTEMBER, 1983.



PAUL R. DONALDSON, JUDGE

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