

IN THE COURT OF COMMON PLEAS, JACKSON COUNTY, OHIO

MARY MEACHAM,

PLAINTIFF

-VS.-

TO THE CLERK:

ROBERT S. HUGHES, Clerk
DEPUTY

DEC 24 1990

CASE NO. 90-CIV-56

PAUL MILLER, PLEASE SERVE THIS JUDGMENT UPON
ALL PARTIES NOT IN DEFAULT, AND
DEFENDANT, NOTE SERVICE IN THE DOCKET BOOK.
SEE CIVIL RULE 58(B).

DECISION AND JUDGMENT ORDER

* * * * *

This case came before the Court on October 31, 1990, for bench trial. Present were the parties and their respective attorneys, who offered testimony, exhibits, and oral argument.

I. FACTS

On August 25, 1989, the Plaintiff entered into an oral month-to-month tenancy with the Defendant, by which the Defendant leased to Plaintiff the upstairs apartment at 169 1/2 West Street, Jackson, Ohio. The Plaintiff on that day gave the Defendant her check for \$400, which represented one month's rent plus a security deposit for \$75.

The Plaintiff and her young child proceeded to reside in the upstairs apartment. She paid her monthly rent by check, on dates ranging from the twenty-fourth of the month to the twenty-sixth. The Defendant accepted rent payments attributable to the period from August 25, 1989, through February 24, 1990.

Fred Stiffler, the downstairs tenant, was able to hear through his ceiling much of what went on upstairs. He could hear the upstairs toilet flushing, or the shower running, or water being drawn to wash dishes, or the like. On one occasion he heard someone running around upstairs, and this went on for ten to fifteen minutes. Mr. Stiffler did not know whether or not the

person running around the upstairs apartment was the Plaintiff's five or six year old child.

On Sunday, February 25, 1990, the Defendant returned from an extended visit to Florida. He talked to Fred Stiffler and a neighbor, Cathy Hodges, and as a result of the conversations concluded that the Plaintiff had been committing immoral behavior in the upstairs apartment.

That same day the Defendant arranged for the Plaintiff to meet with him in his home. During the meeting he complained to the Plaintiff about noise and running water late at night. He told the Plaintiff he wanted her to move out, and that he was charging her \$15.00 per day rent until she moved out.

The Plaintiff was prepared to pay her rent that day, but she did not do so.

When the Plaintiff went to her apartment after being out on Thursday, March 1, she found that the electricity and hot water in the apartment had been turned off. Because the refrigerator had warmed, she lost groceries worth \$70.00.

She went to her job that evening as a waitress at the Jolly Lounge. She was distraught, and she spent that night after work at a female co-worker's home.

When she returned to the apartment on Friday, March 2, she found that the lock on her apartment door had been changed. There was a "keep out" sign on the door. The Defendant had left a note on the door with the message, "See Fred Stiffler Odis Prater 286-4362 Paul Miller."

The Plaintiff contacted legal counsel. Later that day, March 2, at about 3:30 p.m. the Plaintiff and her father met with the Defendant at the apartment. The Defendant let her in to the

apartment. She found that almost all of her belongings had been placed in boxes, and the boxes placed in the front room. The Plaintiff tendered one month's rent to the Defendant, but he declined to accept the rent.

That evening the Plaintiff stayed with her boyfriend. The next night, Saturday, she stayed in a motel room at a cost of \$37.06. On Sunday night she stayed with her mother.

On Monday, March 5, the Plaintiff and her legal counsel went to Municipal Court and obtained an order enabling the Plaintiff to move back into the apartment. She did move back in. That day the Plaintiff lost a day's pay, which amounted to \$23.45 (\$3.35 per hour for seven hours) plus an estimated \$20.00 in tips, for a total of \$43.45.

Plaintiff moved out of the apartment during the first week of April.

The Defendant admitted having entered the Plaintiff's apartment without permission on March 1 and again on March 2. He admitted responsibility for boxing the Plaintiff's belongings on March 2, and changing the locks, and placing the "Keep Out" sign and the note on the front door.

The Defendant hinted that Plaintiff had committed immoral behavior in the apartment, but he presented no evidence of any lewd or lascivious behavior. He did offer suggestions and innuendoes. The Plaintiff did receive her boyfriend in her home, and he did remain overnight on one occasion, but there had been no tenancy restrictions upon visitors.

No one, either the landlord or the downstairs tenant, had ever prior to February 25 complained to the Plaintiff about noise, or about running water, or about the sounds of running feet, or, for that matter, about immoral behavior.

As a result of all this, the Plaintiff suffered deep emotional upset and humiliation, but she never sought any treatment for emotional illness, depression, or the like arising from these events. She did feel that her privacy had been violated, and was fearful for a while that someone else would break into her apartment and meddle with her private possessions.

At no time had the Defendant as landlord ever sought or received a Court order authorizing him to take possession of the apartment. There was no emergency or other legitimate excuse for his entry on two separate occasions into the Plaintiff's apartment. The Defendant gave the Plaintiff no notice at all either of his intent to enter her apartment, or of his actual entries into the apartment.

The Plaintiff on June 22, 1990, filed an Amended Prayer for Relief, which contains the following claims:

- a. Compensatory damages in the amount of \$2,500.00 for the Defendant's violation of Ohio Revised Code Section 5321.15, relating to wrongful eviction, plus reasonable attorney fees;
- b. Damages, in the amount of \$325.00 for each illegal entry for the Defendant's violation of O.R.C. Section 5321.04(B), relating to unlawful entries, plus reasonable attorney fees;
- c. Damages in the amount of \$1,000.00 for conversion of her possessions, to include mental and emotional distress, plus reasonable attorney fees;
- d. Damages in the amount of \$2,500.00 for tortious invasion of privacy, to include mental and emotional distress; and
- e. Punitive damages in the amount of \$2,500.00.

The Defendant counterclaimed against the Plaintiff for unpaid rent during the time that the Plaintiff had possession of the premises from February 24, 1990, until the time she moved out in the first week of April.

II. DISCUSSION OF LEGAL ISSUES.

A. Did the Defendant violate the Landlord-Tenant statute?

In this Court's view, Chapter 5321 of the Ohio Revised Code, the Landlord-Tenant statute, was enacted to prevent or penalize precisely the behaviors which the Defendant committed in this case. The statute requires the landlord to give reasonable notice before entering the premises, and then to enter only at reasonable times.¹ Here the landlord not only failed to give the tenant notice, and not only failed to enter at a time when the tenant was present, he also unlawfully entered the premises on two separate occasions. For the landlord to claim an excuse of emergency is, to be charitable, unproven.

If the landlord violates the no-entry statute, the tenant may recover actual damages plus reasonable attorney fees. As a direct result of these unlawful entries, the tenant lost \$70.00 worth of groceries left in the refrigerator when the electricity was turned off. The issue of attorney fees will be considered later in this Decision and Judgment Order.

In addition, the statute provides in part that no landlord "shall initiate any act, including termination of utilities or services, exclusion from the premises...against a tenant...for the purpose of recovering possession of residential premises" other than as provided by law.² Here the premises were residential, and the Defendant's patent purposes in his unlawful activities were to dispossess the Plaintiff from the apartment and to take it over himself.

If the landlord violates the wrongful eviction statute, the tenant shall recover actual damages plus reasonable attorney fees. As a direct result of the Defendant's wrongful eviction of the Plaintiff in this case, the Plaintiff incurred damages totalling \$37.06 for the motel room and \$43.45 for lost wages.

This Court is aware of no authority allowing compensatory damages for emotional upset resulting from violations of the Landlord-Tenant statute.

B. Did the Defendant commit the tort of conversion of the Plaintiff's personal property?

Conversion is any exercise of dominion or control wrongfully exerted over the personal property of another under a claim inconsistent with her rights.³ Here the Defendant through his agents boxed up the Plaintiff's personal property in the course of ousting her from his apartment. He had no right to enter the apartment, let alone to meddle with the Plaintiff's belongings. He converted her property.

The Plaintiff recovered her belongings without suffering any harm to the property. This Court is not aware of any authority by which a plaintiff showing the tort of conversion can recover compensatory damages for mental anguish or emotional distress. Since no other injury has been shown to result from the conversion, the Plaintiff here may recover only a nominal amount of compensatory damages upon her conversion claim.

C. Did the Defendant commit the torts of invasion of privacy or trespass?

An actionable invasion of the right of privacy is the wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.⁴ In this case the Plaintiff had

a right to be let alone in her own home. That right to be let alone is of course subject, in an appropriate case, to the landlord's remedies provided by law. If the landlord overreaches his statutory remedies, however, he proceeds under the hazard of the tort law of Ohio. Here the landlord ignored his remedies under the Landlord-Tenant statute and instead pursued self-help to dispossess his tenant. In doing so he invaded her privacy. Because he entered her home without authority or excuse, he also committed the tort of trespass.

A plaintiff may recover compensatory damages for mental anguish if she proves invasion of privacy.⁵ Although a general rule disallows compensation for emotional distress and humiliation in the absence of contemporaneous physical injury or malice,⁶ the invasion of privacy tort is recognized as an exception to that rule.⁷

In this case the Plaintiff undoubtedly suffered severe and long-lasting humiliation and emotional distress as a direct result of the Defendant's unlawful invasions of her privacy. She felt so insecure in her own home that she began to wedge bits of paper against her door jamb so as to warn her if someone will have entered her home while she was gone. She remained upset for weeks, crying because she felt as if she had been punished for something she did not do. Under the facts of this case, the Plaintiff is entitled to compensation for her mental anguish.

D. Should punitive damages be assessed against the Defendant?

Punitive damages are not available for violations of the Landlord-Tenant statute, but may be available in cases of conversion⁸, invasion of privacy,⁹ and trespass.¹⁰ In tort, punitive damages may be awarded only for fraud, insult or malice.¹¹ Actual malice may take either the form of the defendant's express ill will, hatred or spirit of revenge, or the form of reckless, willful or wanton behavior which can be inferred

from surrounding circumstances; in either case, the defendant's actions must have been intentional and deliberate, or have the character of outrage frequently associated with crime.¹²

In one reported case, a creditor's employee entered the plaintiff's apartment without permission to repossess a television set. The trial court found the defendant liable in trespass and conversion, and awarded compensatory damages plus punitive damages in the amount of \$4,000.¹³

In a similar, unreported case, a telephone company representative trespassed into a home to recover two telephones. The telephone company defended by pointing out that the company's written policy justified the action. The reviewing court stated that "we find this policy constitutes an outrageous invasion of the rights to privacy and to be secure in one's home."¹⁴ The Court observed that in reaching out to touch someone, Ma Bell had reached too far, and affirmed a verdict of \$5,000 as compensation for mental distress and \$20,000 as punitive damages.

In this case the Defendant appears not to have acted in a spirit of ill will, hatred, or revenge. Rather, he acted with such willful arrogance that he supposed that his right to recover his premises by any means outweighed the Plaintiff's right to be secure in her own home. He acted with a deliberate purpose and blatant disregard for the Plaintiff's legal rights. He trampled upon the Plaintiff's privacy not just on one occasion, but twice. On the second occasion, he trespassed not just alone, but with three other people to help him convert the Plaintiff's intimate belongings temporarily to his own use.

Just as in the cases of the television and telephone repossession men, the landlord here richly deserves punitive damages. The amount of the punitive damage award is limited by the demand for judgment filed prior to trial.¹⁵

E. Should the Plaintiff be awarded a judgment for attorney fees?

Attorney fees may be recovered for violation of the unlawful entry statute¹⁶, and must be awarded for violation of the wrongful eviction statute.¹⁷ Attorney fees may also be awarded in a case where punitive damages are assessed.¹⁸

In this case the Plaintiff is entitled to reasonable attorney fees. From the file it appears that legal counsel diligently prepared the case for trial. Among other things, Plaintiff's counsel conducted three discovery depositions. Also, Plaintiff's counsel ably presented the Plaintiff's point of view at trial and in written argument after trial.

F. Should the Defendant recover anything on his counterclaim for rent?

The Defendant landlord had accepted rental payments for the period through February 24, 1990. He rejected the Plaintiff's tender of one month's rent. He dispossessed the Plaintiff for approximately five days. He retained the Plaintiff's security deposit in the amount of \$75.00. The Plaintiff moved out of the apartment in early April.

By spurning the tender and retaining the security deposit, the Defendant has received all the rent he is entitled to have.

III. CONCLUSIONS

For the reasons previously discussed, this Court finds that the Plaintiff is entitled to the following damage awards:

- a. Upon the claim for violation of O.R.C. Section 5321.04(A)(8), compensatory damages in the amount of \$70.00;

- b. Upon the claim for violation of O.R.C. Section 5321.15(A), compensatory damages in the amount of \$80.51;
- c. Upon the claim for conversion, compensatory damages in the amount of \$1.00;
- d. Upon the claims for invasion of privacy and trespass, compensatory damages in the amount of \$2,500.00;
- e. Upon the claim for punitive damages for conversion, invasion of privacy, and trespass, punitive damages in the amount of \$2,500.00; and
- f. Upon the violations of O.R.C. Sections 5321.04(A)(8) and 5321.15(A) and upon conversion, invasion of privacy, and trespass, compensation for attorney fees in the amount of \$2,500.00.

Accordingly this Court ORDERS as follows:

- 1. The Plaintiff Mary Meacham is GRANTED JUDGMENT against the Defendant Paul Miller in the amount of \$2,651.51 as compensatory damages.
- 2. In addition, the Plaintiff Mary Meacham is GRANTED JUDGMENT against the Defendant Paul Miller in the amount of \$2,500.00 as punitive damages.
- 3. In addition, the Plaintiff Mary Meacham is GRANTED JUDGMENT against the Defendant Paul Miller in the amount of \$2,500.00 as compensation for attorney fees.
- 4. The Plaintiff Mary Meacham is GRANTED JUDGMENT upon the Counterclaim of the Defendant Paul Miller.
- 5. The Defendant Paul Miller shall pay all court costs.

6. This Decision and Judgment Order shall constitute the final Order for purposes of entry upon Journal, so no further Entry of Judgment is necessary.

A handwritten signature in cursive script, appearing to read "William C. Martin", written over a horizontal line.

William C. Martin, Judge

Distribution:

Attorney Kern
Attorney Smith

FOOTNOTES

1. Ohio Revised Code Section 5321.04(A)(8).
2. O.R.C. Section 5321.15(A).
3. Ohio Tel. Equip. & Sales, Inc. vs. Hadler Realty Co., 24 Ohio App 3d 91 (C.A. Franklin Co., 1985).
4. Housh vs. Peth, 165 Ohio St. 35 (1956).
5. Ibid, at 40.
6. Columbus Finance vs. Howard, 42 Ohio St. 2d 178 (1975).
7. Ibid, at 185; Schultz vs. Barbertown Glass Co., 4 Ohio St. 3d 131 (1983), at 135-136; Buckley vs. Suttle, Case #288, C.A. Meigs Co., July 5, 1979 (Opinion by Grey, J.).
8. Massera vs. Gulf Oil Corp, 1988 Ohio App. LEXIS 5426, Case #54539, C.A. Cuyohoga Co., October 27, 1988 (Opinion by Markus, J.).
9. Housh vs. Peth, supra.
10. Kimble vs. Universal TV Rental, 65 Ohio Misc. 17 (Muni. Ct Franklin Co., 1980, Opinion by Crawford, J.).
11. Matthews vs. Ohio Bell Telephone Co., Case #E-82-8, C.A. Erie Co., October 15, 1982 (opinion by Douglas, J.)
12. Detling vs. Chockley, 70 Ohio St. 2d 134 (1982).
13. Kimble vs. Universal TV Rental, supra.
14. Matthews vs. Ohio Bell Telephone Co., supra.
15. Ohio Civil Rule 54(C).
16. O.R.C. Section 5321.04(B)
17. O.R.C. Section 5321.15 (C)
18. Housh vs. Peth, supra.

STATE OF OHIO, Jackson County, ss:
 I, CLARENCE J. HARRIS, Clerk of the Common Pleas Court, within and for said County, hereby do
 certify that the within and foregoing is a true and correct copy of the original of the
 same as the same is on file in my office.
CLARENCE J. HARRIS
 Clerk of the Court
 IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Court, at Jackson,
 Ohio, this 17 day of February, A.D. 1991
Clarence J. Harris, Clerk of Court
 By Clarence J. Harris