

IN THE MIAMI COUNTY MUNICIPAL COURT
MIAMI COUNTY
TROY, OHIO

KIM PETERSON

Plaintiff

vs.

WILLIAM SUPINGER

Defendant

CASE NO. 90-CV-H-T-279

ALAN J. BRAUN, JUDGE

ENTRY

This matter came on for hearing on Defendant's Motion for Hearing on Attorney Fees as well as the parties' briefs in support of their respective position.

The Defendant claims the Court awarded attorney fees after time to perfect appeal. The court rejects this notion. The Court's Decision/Entry of March 13, 1991 was not a final appealable order since the court retained the question regarding damages and attorney fees pending a further hearing on these matters.

The hearing on damages and attorney fees was held on April 19, 1991. While the Defendant was notified, he was not represented at said hearing. The Judgment Entry regarding damages and attorney fees was filed on May 1, 1991, and the matter may then have been in a posture for appeal.

The Defendant also argues that the Court did not make an explicit finding of wrongful conduct on the part of the Defendant. Vardeman v. Llewellyn (1985), 17 Ohio St. 3rd 24. The Court must also reject this argument.

As the Plaintiff pointed out in her brief, Smith v. Padgett (1987), 32 Ohio St. 3rd 344 says it all. It is interesting to note that Justice Douglas, in a concurring opinion in the Smith case, remarked that many of the problems created in Vardeman have been corrected.

2.

The Court finds that it did comply with the requirements of R.C. 5321.16 as set forth by Smith (supra) and thus OVERRULES Defendant's Motion.

ALAN J. BRAUN

ALAN J. BRAUN, JUDGE

AJB:vlb

cc: W. McGregor Dixon and Gary Nasal, Attorney's for Plaintiff, 12 S. Plum St., Troy, OH 45373

J. Richard Gaier and Todd Cyster, Attorney's for Defendant, 111 W. Ash St., Piqua, OH 45356

FILED
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IN THE MUNICIPAL COURT OF MIAMI COUNTY, OHIO

KIM PETERSON

PLAINTIFF

VS.

WILLIAM SUPINGER

DEFENDANT

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JUDGE ALAN J. BRAUN

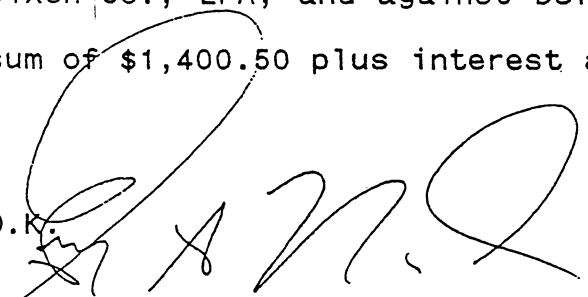
JUDGMENT ENTRY

This matter came on for hearing on April 19, 1991 for a determination of the amount of attorney's fees to be awarded in the above-captioned matter pursuant to this Court's Decision/Entry of March 13, 1991. Counsel for the Plaintiff was present. Neither Defendant nor his attorney appeared despite having been served with notice of said hearing by regular mail on April 3, 1991. Upon presentation of evidence by Plaintiff's counsel, the Court finds that the reasonable and necessary attorney's fees and costs advanced for the prosecution of this matter were \$1,400.50, WHEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be rendered in favor of Plaintiff's counsel, Shipman, Utrecht & Dixon Co., LPA, and against Defendant William Supinger, in the sum of \$1,400.50 plus interest at the legal rate.

ALAN J. BRAUN

JUDGE ALAN J. BRAUN

O.K. 

GARY A. NASAL
SHIPMAN, UTRECHT & DIXON CO., LPA
Attorney for Plaintiff

Read but refused to sign

TOD CYSTER
Attorney for Defendant

HIPMAN, UTRECHT
& DIXON CO., L.P.A.
LAWYERS
5 WEST WATER STREET
TROY, OHIO

IN THE MIAMI COUNTY MUNICIPAL COURT
MIAMI COUNTY
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FILED
MIAMI COUNTY
MUNICIPAL COURT

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VIRGINIA J. ...
CLERK OF COURT

KIM PETERSON

Plaintiff

vs.

WILLIAM SUPINGER

Defendant

CASE NO. 90-CV-H-T-279

ALAN J. BRAUN, JUDGE

DECISION/ENTRY

This matter came on for trial before the court the 28th day of January, 1991.

The facts basically revealed that the Plaintiff KIM PETERSON (Peterson) rented a house located at 525 East Street, Piqua, Ohio, from the Defendant WILLIAM SUPINGER (Supinger). Peterson moved into the house in March, 1988, and spent some time cleaning the house both inside and out. The house was approved by the Miami Metropolitan Housing Authority (M.M.H.A.) for subsidized rent in August, 1988. The rent was \$300.00 per month with a \$235.00 security deposit.

On June 9, 1989, an electrical fire broke out in the kitchen of Peterson's residence causing extensive damage. On June 13, 1989, Scott Tobias, Housing Inspector for M.M.H.A., inspected the house and found it to be unfit for occupancy. On June 16, 1989, Tobias gave Peterson an official notice to move from the premises (Plaintiff's Exhibit 1).

Also on June 16, 1989, Notice of Cancellation from the M.M.H.A. program, because of the fire damage, was mailed to Peterson with a copy sent to Supinger (Plaintiff's Exhibit 2).

On August 10, 1989, M.M.H.A. sent a claim form to Supinger in order for him to seek recovery from M.M.H.A. for the fire loss (Plaintiff's Exhibit 3). Supinger did not reply.

Also, on June 16, 1989, Peterson claimed to have sent notice to Supinger that she was moving from the house (Plaintiff's Exhibit 5). The notice was mailed from the M.M.H.A. office. The notice included her new address. Supinger claims it was never received.

On September 26, 1989, Peterson claimed to have sent a letter to Supinger requesting the return of her Security Deposit. In the letter Peterson recognized that she held over six days into the month of July, 1989, and thus was only seeking \$175.00 of her \$235.00 security deposit (Plaintiff's Exhibit 6). Supinger claimed he did not receive the notice.

Peterson filed this action to recover the balance of her security deposit plus an equal amount as damage pursuant to Revised Code 5321.16(E) and attorney fees. Supinger filed a counter claim seeking to recover \$179.50 he claimed to have incurred in damages and cleanup to the property.

Peterson argues that she fully complied with Revised Code Section 5321.17 and that she is entitled to a return of her Security Deposit, equal damage and attorney fees as provided under R.C. 5321.16.

Supinger argues that he received neither Peterson's notice of termination (Plaintiff's Exhibit 5), nor her request for the return of her security deposit (Plaintiff's Exhibit 6). In addition, Supinger claims that he sustained \$114.50 in cleanup and damages to the house involved (Defendant's Exhibit A). However, the court notes that said claim does not identify the Peterson residence but is merely an invoice mailed to Supinger covering certain trash hauling, labor and material without mention of any location.

There is something to be said about the fire damage to Peterson's residence. It would seem that both the M.M.H.A. and Peterson took appropriate steps to inform Supinger regarding the damages to the property, but Supinger failed to follow up. Supinger could have been more understanding of Peterson's dilemma instead of turning his back on the problem.

Supinger relies on the holding in Albrecht v. Chen, (1983), 17 Ohio App. 3rd 79 and Bowman v. Community Management Corp., (1984), 14 Ohio App. 3rd 31 on claiming his right to retain the security deposit as provided under Revised Code Section 5321.16 (B). However this section also required Supinger to send an itemized statement to Peterson setting forth any deductions claimed. No such written statement was sent to Peterson. Supinger's failure "triggered the penalties" set forth in Revised Code Section 5321.16 (C) Albrecht v. Chen, supra.

The court finds that Supinger failed to abide by the requirements of Revised Code Section 5321.16 (B) and that Peterson is entitled to the money due her. Since Peterson admitted holding over six days into July, 1989, it is ordered that plaintiff, Kim Peterson recover the sum of \$175.00 due on her security deposit, plus \$175.00 in damages for a total of \$350.00 from defendant, William Supinger. It is further ordered that plaintiff, Kim Peterson, recover reasonable attorney fees which matter will be set down for hearing.

ALAN J. BRAUN

ALAN J. BRAUN, JUDGE

AJB:vlb

cc: W. McGregor Dixon and Gary Nasal, Attorney's for Plaintiff, 12 S. Plum St., Troy, OH 45373

J. Richard Gaier and Todd Cyster, Attorney's for Defendant, 111 W. Ash St., Piqua, OH 45356