

IN THE CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO  
HOUSING DIVISION

DEBORAH KATCHMER  
435 EAST 146TH STREET  
CLEVELAND, OHIO 44110

PLAINTIFF

VS.

LAURA ELAINE BISHOP  
433 EAST 146TH STREET  
CLEVELAND, OHIO 44110

DEFENDANT

)CASE NUMBER 90 CVG 34263

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)LANDLORD-TENANT

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)REFEREE'S REPORT AND RECOMMENDATION

This matter came under consideration without a hearing based upon objections to the Referee's Report and Recommendation which were filed by the defendant on August 1, 1991. This case was referred to Referee Barbara A. Reitzloff by Judge William H. Corrigan pursuant to Civil Rule 53 for review.

The Journal Entry of July 12, 1991 predicated upon the Referee's Report and Recommendation which established judgment for the plaintiff against the defendant in the amount of Seven Hundred Eighty-Eight Dollars and Eighty-Three Cents (\$788.83), costs and interest from the date of judgment, and attorney fees is incorporated herein by reference.

Defendant filed objections to the Referee's Report and Recommendation on August 1, 1991, alleging that the court erred as follows:

- A. Referee erred in failing to grant defendant a continuance;
- B. Referee erred in failing to require from plaintiff proof of ownership of rental premises.
- C. Referee erred in basing decision solely on plaintiff's testimony.
- D. Referee erred in granting judgment for damages which existed prior to the time of defendant's rental of the premises.

E. Referee erred in granting attorney fees.

Defendant objections are not supported by transcript or affidavits. Each of the defendant's objections will be considered in turn.

CONCLUSIONS OF LAW

The Referee's Report and Recommendation to which defendant objects was issued pursuant to Civil Rule 53. The court, in reviewing defendant's objections, may adopt any finding of fact contained in the referee's report without further consideration unless the party who objects to the finding supports the objection with a copy of all relevant portions of the transcript from the referee's hearing, or an affidavit about evidence submitted to the referee if no transcript is available. Civil Rule 53(E)(6). In deciding whether to adopt a referee's finding of fact, the court may disregard any evidence which was not submitted to the referee unless the complaining party demonstrates that with reasonable diligence he or she could not have discovered and provided that evidence for the referee's consideration. Civil Rule 53(E)(6).

The defendant's first objection addresses the referee's alleged denial of due process due to his failure to grant defendant a continuance of the trial on plaintiff's second cause of action held on June 20, 1991. Defendant sought a continuance based upon defendant's alleged failure to receive notice of the trial. A review of the court's file and other records indicates that notice of the trial was sent to the parties and/or their attorneys. The appearance of defendant's counsel at trial further supports receipt of the trial notice by counsel. Absent further evidence regarding the defendant's alleged failure to receive notice of the trial date. Defendant's objection to the referee's failure to grant a continuance is overruled.

Defendant also objects to the court's failure to elicit proof of ownership of the rental premises by plaintiff. Proof of ownership of the premises is not

necessary, as plaintiff need only be a landlord as defined in Revised Code 5321.01(B) and Revised Code 1923.01(B)(2) to maintain an action against the defendant. The right to possession as opposed to ownership is the requisite criterion in forcible entry detainer cases. Furthermore, defendant, in her objections, neither denies that plaintiff is the owner of the property nor provides any evidence to dispute ownership. Accordingly, defendant's objection is overruled.

Defendant's third objection is that (1) The rental premises is over 70 years old and (2) Plaintiff's case was supported solely by plaintiff's "self-serving" statements. First, defendant does not explain the relevance of the age of the rental premises. Second, parties, as a rule, offer testimony which benefits their case and so could be termed "self-serving". The interest of a witness or party in the outcome of a case is considered by the referee in evaluating the credibility of the witness. The interest of the plaintiff in the outcome of this case is not a sufficient ground to disregard her testimony. Accordingly, defendant's objection is overruled.

Defendant also objects to the referee's finding that defendant caused certain damage to the rental premises. Defendant, however, does not offer an affidavit of evidence presented to the referee which contradicted the referee's finding, nor demonstrate that with reasonable diligence she could not have discovered and produced evidence for the referee's consideration. Civil Rule 53(E). Accordingly, defendant's objection is overruled.

Finally, defendant disputes plaintiff's entitlement to fees. The referee determined that defendant violated Revised Code 5321.05. As a result, plaintiff is entitled to attorney fees pursuant to Revised Code 5321.05(C).

JUDGMENT

Defendant's objections to the Referee's Report are overruled. Prior decision of July 12, 1991 is affirmed.

RECOMMENDED: Barbara A. Reitzloff  
BARBARA A. REITZLOFF  
HOUSING COURT REFEREE

APPROVED: William H. Corrigan  
JUDGE WILLIAM H. CORRIGAN  
CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION

SERVICE

A copy of the Referee's Report was sent by ordinary United States mail to Plaintiff's Attorney, Joan Butler Horkay, 11510 Buckeye Road, Cleveland, Ohio 44104 and to the Defendant's Attorney, Jerome S. Berkeley, One Erieview Plaza, Suite 1200, Cleveland, Ohio 44114 this 20th day of September 1991.

IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE REFEREE'S REPORT MUST BE IN WRITING WITHIN FOURTEEN (14) DAYS OF FILING AND MUST COMPLY WITH THE OHIO RULES OF PROCEDURE AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

RECOMMENDED: Barbara A. Reitzloff  
BARBARA A. REITZLOFF  
HOUSING COURT REFEREE

APPROVED: William H. Corrigan  
JUDGE WILLIAM H. CORRIGAN  
CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION