

IN THE CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO  
HOUSING DIVISION

MARTIN JORDAN, DBA	)	CASE NUMBER 91 CVG 20057
JORDAN & JORDAN PROPERTIES	)	
13145 EUCLID AVENUE	)	
EAST CLEVELAND, OHIO 44112	)	
	)	
PLAINTIFF	)	
	)	
VS.	)	<u>LANDLORD-TENANT</u>
	)	
JEWELL McSHAN	)	
2972 E. SOUTH MORELAND	)	
SHAKER HEIGHTS, OHIO 44120	)	
	)	
and	)	
	)	
CAROL McSHAN	)	
23951 LAKESHORE BLVD.	)	
EUCLID, OHIO 44123	)	<u>REFEREE'S REPORT AND</u>
	)	<u>RECOMMENDATION</u>
DEFENDANTS	)	

This case came to be heard on February 24, 1992, before Referee Barbara A. Reitzloff, to whom this case was assigned by Judge William H. Corrigan pursuant to Civil Rule 53, to take evidence on all issues of law and fact, regarding plaintiff's second cause of action for unpaid rent.

Plaintiff in court with counsel.

Defendants in court without counsel.

FINDINGS OF FACT

1. It is undisputed that in approximately August 1986, defendants began to occupy the residential rental premises located at 2843 Hampton Road, Apartment 4, Cleveland, Ohio as tenants of the owner of the premises. Defendants paid the owner of the premises a security deposit of Three Hundred Ninety Dollars (\$390.00).

2. The parties agree that in approximately 1988 plaintiff purchased

the premises, and became defendants' landlord. As defendants' lease with the prior owners had expired, defendants occupied the premises as month to month tenants of the plaintiff.

3. It is undisputed that plaintiff last received rent for the premises for the month of May 1991.

4. Plaintiff testified that his contract to purchase the premises from the prior owner included a provision for transfer of defendants security deposit. Plaintiff, however, denies that the deposit was transferred pursuant to the contract.

5. Defendant Carol McShan testified that she vacated the rental premises in approximately August 1989.

6. Plaintiff testified that he was not aware that defendants had vacated the premises until September 16, 1991, at the originally scheduled default hearing on plaintiff's second cause of action.

7. Defendants testified that Jewel McShan vacated the premises in August 1991, but acknowledged that she did not return the keys or notify plaintiff that she had vacated the premises until September 16, 1991. Defendants testified that plaintiff should have been aware that the premises was vacated in August 1991, as plaintiff observed defendants moving items from the premises.

8. Plaintiff alleges that defendants caused damage to the rental premises, and testified regarding said damage.

9. Plaintiff's amended complaint does not contain a claim for property damage. Plaintiff did not notify defendants of any claim for property damage before or after filing his complaint.

10. Defendants testified to numerous defective conditions in existence at the premises, which led to defendants' refusal to pay rent in June 1991.

CONCLUSIONS OF LAW AND FACT

Plaintiff, in his second cause of action, seeks damages for unpaid rent and late charges in the amount of One Thousand Seven Hundred Sixty Dollars (\$1,760.00), plus court costs.

Before determining the amount of compensation to which plaintiff is entitled, it is necessary to determine whether Carol McShan is a proper defendant in this action. Jewel and Carol McShan occupied the premises pursuant to an oral, month to month rental agreement with plaintiff. Carol McShan testified credibly that she vacated the premises in approximately August 1989. That plaintiff, as landlord, was unaware of this for over two years is simply not credible. As Carol McShan had not occupied the premises for nearly two years when the default in rent occurred, plaintiff has no claim against Carol McShan.

Regarding plaintiff's claim against Jewel McShan, it is undisputed that Ms. McShan last paid rent to plaintiff for the month of May 1991. Although Ms. McShan may have occupied the premises only until August 1991, her failure to return the keys to plaintiff or to notify him that she had vacated the premises until September 16, 1991, effectively denied plaintiff use of the premises until that date. Accordingly, defendant Jewel McShan is liable to plaintiff for unpaid rent for the months of June, July and August 1991, and the period from September 1, 1991 through September 16, 1991, for a total of One Thousand Four Hundred Thirty One Dollars. ( $\$405. \times 3 \text{ months} = \$1, 215. + \$216.$ ). Plaintiff also raises a claim for unpaid late charges. Late charges, however, are, as the name implies, charges assessed when a landlord chooses to accept late rent, presumably to compensate the landlord for the inconvenience of processing late payments. In this case, however, rent was simply unpaid. To assess a late charge of Thirty Five Dollars (\$35.00) for each of those

months that rent was unpaid would be tantamount to granting plaintiff a rent increase of Thirty Five Dollars (\$35.00) for each of those months. The court is unwilling to do so. Accordingly, plaintiff's claim for unpaid late charges is denied.

One of two remaining issues is whether defendant is entitled to credit for her security deposit against the unpaid rent. While plaintiff testified that defendants damaged the rental premises, plaintiff did not notify defendants, either in his complaint or otherwise, of the damage claim against them. Having failed to notify defendants of this claim, plaintiff will not be permitted to deduct these damages from defendants' deposit. In addition, plaintiff argues that defendants are not entitled to credit for the deposit because plaintiff did not receive the deposit from prior owner. As the contract between plaintiff and the prior owner provided for transfer of the deposit, and as defendants did not receive the deposit from the prior owner, defendants will not be punished for plaintiff's failure to enforce his contract with the prior owner, and defendants will receive credit for the Three Hundred Ninety Dollars (\$390.00) deposit.

The remaining issue is that of defendants' complaints regarding the condition of the rental premises. Defendants' testimony regarding plaintiff's failure to maintain the premises is credible; however, defendants have pled no counterclaim against plaintiff which would entitle them to money damages.

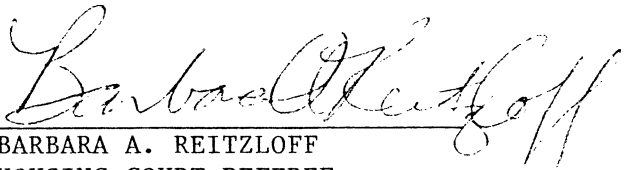
In conclusion, plaintiff has established his entitlement to damages from defendant Jewel McShan in the amount of One Thousand Forty One Dollars (\$1,041.00). (\$1,431. - \$390.).

#### JUDGMENT

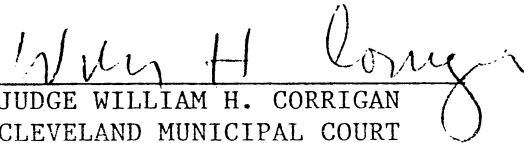
Judgment for plaintiff on his second cause of action as to defendant Jewel McShan against Jewel McShan in the amount of One Thousand Forty

One Dollars (\$1,041.00), plus costs and interest from date of judgment.  
Judgment for defendant Carol McShan on plaintiff's second cause of  
action as to Carol McShan.

RECOMMENDED:

  
BARBARA A. REITZLOFF  
HOUSING COURT REFEREE  
CLEVELAND MUNICIPAL COURT

APPROVED:

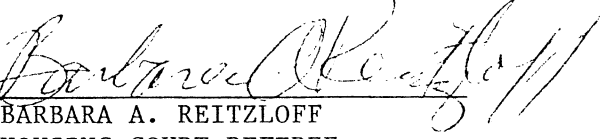
  
JUDGE WILLIAM H. CORRIGAN  
CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION

SERVICE

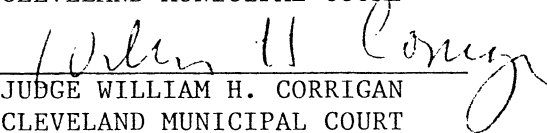
A copy of the Referee's report was sent by ordinary United States  
mail to the Plaintiff's Attorney, Pippa L. Henderson, 1950 Lee Road,  
Cleveland Heights, Ohio 44118 and to the Defendants Jewel McShan,  
2972 E. South Moreland, Shaker Heights, Ohio 44120 and Carol McShan,  
23951 Lakeshore Blvd., Euclid, Ohio 44123 this 7<sup>th</sup> day of April 1992.

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  
HOUSING COURT REFEREE  
CLEVELAND MUNICIPAL COURT

APPROVED:

  
JUDGE WILLIAM H. CORRIGAN  
CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION