

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

ELEANORE AND CLARENCE DEES)	CASE NUMBER 91 CVG 24751
3886 EAST 131ST, DOWN)	
CLEVELAND, OHIO 44120)	
)	
PLAINTIFF)	
)	
VS.)	<u>LANDLORD-TENANT</u>
)	
DARYL ABRAMS, ET. AL.)	
3886 EAST 131ST)	
CLEVELAND, OHIO 44120)	
)	
DEFENDANT)	<u>REFEREE'S REPORT AND</u>
)	<u>RECOMMENDATION</u>

This matter came before the court on November 18, 1991 on plaintiff's complaint in forcible entry and detainer, plaintiff's second cause of action and defendant's counterclaim pursuant to Revised Code 1923.061 (B). This case was assigned to Referee Barbara A. Reitzloff by Judge William H. Corrigan pursuant to Civil Rule 53, to take evidence on all issues of law and fact.

Plaintiffs in court without counsel.

Defendants in court without counsel.

FINDINGS OF FACT

1. It is undisputed that in April 1991, plaintiffs (landlords) and defendants (tenants) entered into a one year written rental agreement (Plaintiff's Exhibit A) for lease of the residential rental premises located at 3886 East 131st, Apt, 2, upstairs, Cleveland, Ohio at the rate of Three Hundred

Dollars (\$300.00) per month, for the period from March 15, 1991 through March 14, 1992. Plaintiff have retained a security deposit from defendants in the amount of Three Hundred Dollars (\$300.00).

2. On September 12, 1991, plaintiffs filed this action against defendants. Plaintiffs' complaint included a first cause of action in forcible entry and detainer and a second cause of action for unpaid rent.

3. On October 3, 1991, this court granted defendants permission to deposit their rent with the court pursuant to Revised Code 1923.061(B). Defendants have deposited rent with the court as follows:

\$610.00	deposited 10-9-91
300.00	deposited 10-15-91
300.00	deposited 11-15-91

4. On October 11, 1991, defendants filed their counterclaim for money damages against plaintiffs.

5. It is undisputed that defendants last paid plaintiffs rent in the amount of Two Hundred Seventy Dollars (\$270.00) on or about July 8, 1991, to be applied toward the period from July 15, 1991 through August 14, 1991. Plaintiffs admit that they waived any late fee for that period.

6. Plaintiffs served defendants a three day notice to vacate under Revised Code 1923.04 on August 27, 1991. Defendants acknowledge receipt of the notice.

7. Defendant Abrams, in support of defendants' counterclaim testified regarding the existence of the

following defective conditions at the rental premises: (1) insufficient and irregular heat; (2) chipping and peeling paint; (3) rodent infestation; (4) uncovered electrical sockets; and (5) an uncovered doorbell which functions intermittently.

8. Defendant Abrams testified that on or about October 12, 1991, plaintiff entered the rental premises and remedied some of the above-described conditions. Plaintiff covered the open electrical outlets, scraped peeling paint, and exterminated the premises. Defendant Abrams testified that the problem with the lack of heat to the premises continues to exist at the present time, causing the defendants' family to sleep in their clothes.

9. Plaintiff Clarence Dees testified that repairs were made as described by defendant Abrams on or about October 12, 1991. Plaintiff also testified that the electrical outlets were without covers from approximately June 1991, when plaintiff did some work at the premises, through October 12, 1991. Plaintiff testified that he was unaware of problems with the heat at the premises. Plaintiff produced in support of his testimony an invoice for the extermination services and an inspection report from the City of Cleveland Department of Community Development, Division of Building and Housing which indicated that no code violations were present when the building was inspected on approximately October 15, 1991.

CONCLUSIONS OF LAW AND FACT

Ohio Revised Code 1923.061 states: (Defenses and counterclaims)

(A) Any defense in an action under Chapter 1923. of the Revised Code may be asserted at trial.

(B) In an action for possession of residential premises based upon non-payment of rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount may be recover under the rental agreement or under Chapter 37733. or 5321. of the Revised Code. In that event, the court from time to time may order the tenant to pay into court all or part of the past due rent and rent becoming due during the pendency of the action. After trial and judgment, the party to whom a net judgment is owed shall be paid first from the money paid into court, and any balance shall be satisfied as any other judgment. If no rent remains due after application of this division, judgment shall be entered for the tenant in the action for possession. If the tenant has paid into court an amount greater than that necessary to satisfy a judgment obtained by the landlord, the balance shall be returned by the court to the tenant.

In this case, the two most serious problems alleged by the defendants are the lack of sufficient heat and the uncovered electrical outlets.

Regarding the electrical outlets, the parties agree that the exposed electrical outlets existed at the rental premises

for approximately five months. Apparently these outlets became exposed when the plaintiff removed the covers to do work at the premises, then failed to replace them for five months.

Regarding the lack of heat, defendant Abrams has testified that the heat in the unit is insufficient, causing his family to sleep in their clothes. Plaintiff has testified that he is unaware of the existence of a heating problem, and has produced an inspection report which states that the defendants' complaint regarding lack of heat is not valid.

A landlord who is a party to a rental agreement must comply with the requirements of all applicable building, housing, health and safety codes that materially affect health and safety. Revised Code 5321.04(A)(1). The landlord must also maintain in good and safe working order all electrical fixtures supplied by him. Revised Code 5321.04 (A)(4). The landlord must also supply reasonable heat to the premises. Revised Code 5321.04 (A)(6).

Plaintiffs have established by a preponderance of the evidence that defendants currently owe plaintiffs back rent in the amount of One Thousand Two Hundred Forty Dollars (\$1,240.00), calculated as follows: \$30 balance for the period from July 15, 1991 through August 14, 1991 ("July"); \$300 each for the months of August, September, October and November 1991; and late charges of \$5 each for the months of August and September 1991 (See lease, paragraph 4.1).

Defendants have established by a preponderance of the evidence that an electrical hazard in the form of open, uncovered outlets existed at the rental premises in violation of Revised Code 5321.04(A)(4) for approximately five months. In addition, defendants have established that peeling paint existed at the premises, in violation of Revised Code 5321.04(A)(2). Defendants have not established by a preponderance of the evidence the existence of other conditions at the premises in violation of the landlord's duties as imposed by Revised Code 5321.04.

Defendants in their counterclaim pray for damages in the amount of Twenty-Five Thousand Dollars (\$25,000.00). This is clearly excessive. The value of the rental premises was diminished, however, as a result of the plaintiff's violation of Revised Code 5321.04(A)(2) and (4). A reduction in value of Twenty Dollars (\$20.00) per month for each of the five months that the condition existed is reasonable, for a total of One Hundred Dollars (\$100.00) damages on defendants' counterclaim.

Pursuant to Revised Code 1923.06(B), it is necessary to set off the damages recovered by defendants against damages recovered by plaintiffs. In this case, the result is a net judgment for the plaintiff in the amount of One Thousand One Hundred Forty Dollars (\$1,140.00) (\$1,240 less \$100). There is currently on deposit the sum of One Thousand Two Hundred Ten Dollars (\$1,210.00). Because defendants have prevailed on this counterclaim, and have deposited with the court an amount greater than the net judgment owed to plaintiffs, judgment is

entered in favor of defendants on plaintiffs' first cause of action. Defendants may remain in the premises.

JUDGMENT

(1) Judgment for defendants on plaintiff's first cause of action.

(2) Judgment for plaintiffs on plaintiffs' second cause of action and defendants' counterclaims in the amount of One Thosuannd One Hundred Forty Dollars (\$1,140.00).

(3) Clerk of Courts to release rent on deposit as follows:

\$1,140.00 to plaintiffs.

70.00 to defendants.

(4) Rent deposit with Clerk of Courts is dissolved.

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 Plaintiffs, Eleanore and Clarence Dees, 3886 East 131st Street, Down, Cleveland, Ohio 44120 and to the

Defendants, Daryl Abrams and Teresa Carnes, 3886 East 131st,
up, Cleveland, Ohio 44120 this 3rd day of December 1991.

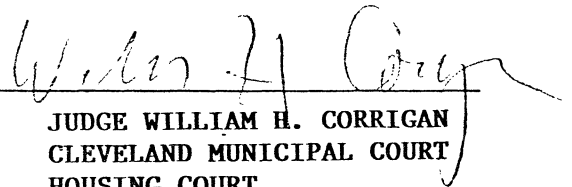
IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE REFEREE'S
REPORT MUST BE IN WRITING FOURTEEN (14) DAYS OF FILING AND
MUST COMPLY WITH THE OHIO RULES OF PROCEDURE AND THE LOCAL
RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE
ABOVE RULES OR SEEK LEGAL COUNSEL.

RECOMMENDED:



BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

APPROVED:



JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING COURT