

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

JESSE NOBLES
730 EAST 127th STREET
CLEVELAND, OHIO 44108

PLAINTIFF

vs.

FAITHIA JOHNS
927 EAST 141st, Apt 3
CLEVELAND, OHIO 44110

DEFENDANT

) CASE NUMBER 91 CVG 28244

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) LANDLORD-TENANT

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) REFEREE'S REPORT AND
RECOMMENDATION

This case came to be heard on February 10, 1992, before Referee Barbara A. Reitzloff, to whom this case was assigned by Judge William H. Corrigan pursuant to Ohio Civil Rule 53, to take evidence on all issues of law and fact, regarding plaintiff's claim for unpaid rent and defendant's counterclaim.

Plaintiff in court without counsel.

Defendant in court without counsel.

FINDINGS OF FACT:

Several of the facts in this case are undisputed:

1. In approximately December 1990 plaintiff's mother, Mrs. Chapman, and defendant entered into an oral month-to-month rental agreement for lease of the residential rental premises owned by plaintiff and located at 927 East 141 Street, Apartment 3, Cleveland, Ohio at the rate of One Hundred Fifty Dollars (\$150.00) per month. Defendant did not pay a security deposit.

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2. In approximately January 1991, plaintiff began to manage the rental premises himself. The premises is an upper unit in a four suite, two story building.

3. In early September 1991 plaintiff was performing repair work on the roof of the rental premises.

4. On September 3, 1991, plaintiff had repaired or replaced one half of the roof of the premises, over defendant's unit. The other half of the roof was to be repaired or replaced the next day.

5. On the afternoon and evening of September 3, 1991, a large thunderstorm hit the area, producing extensive amounts of rain. That evening, portions of the ceiling of defendant's apartment collapsed, due to rain which apparently flowed from the unrepaired side of the building, underneath the new roof, and into defendant's unit.

6. Both parties agreed that defendant's furniture and some clothing suffered some water damage. The extent of the damage is in dispute.

7. The parties agreed that defendant paid no rent to plaintiff for the month of September 1991, or any month thereafter.

8. Defendant did not return keys to the premises to the plaintiff.

9. Defendant vacated the premises some time after the September 3, 1991 incident.

10. On approximately October 10, 1991, plaintiff served defendant with a notice to vacate the premises. Defendant acknowledges receipt of that notice.

11. In addition to these undisputed facts, plaintiff testified that:

A. Defendant paid no rent to plaintiff for the month of August 1991.

B. Defendant left a number of items in the premises, including a living room set, mattress, some clothing and some papers.

C. Defendant has exaggerated the extent of the damage to her property.

D. Plaintiff admits that the living room set (couch, loveseat and chair) got wet, but maintains that the furniture was usable after it dried.

E. Plaintiff offered to let defendant remain in the premises rent free after the incident until the unit was cleaned and repaired. The unit has not yet been cleaned and repaired, and is currently vacant.

F. Plaintiff offered to compensate defendant for her losses, but the parties never discussed a specific amount of compensation.

12. In addition to the undisputed facts in paragraphs 1 through 10, defendant testified that:

A. When she arrived home on September 3, 1991 the majority of the items in the apartment were soaked, and the light fixtures were filled with water. The only room unaffected was the childrens' bedroom. She and her children, ages 2, 3, and 6 went to stay with a friend for the night, returning to the premises the morning. Upon inspection the next morning, defendant found that the plaster ceiling in the

children's room had deteriorated overnight, and had fallen into the childrens' beds.

B. Defendant testified that a number of items of furniture were damaged by the water. She testified that the approximate age, purchase price and condition of the items were as follows:

(1) loveseat, chair and sofa, 4 years old, \$1000 purchase price, destroyed by water damage; (2) television set and videocassette recorder, 1 1/2 years old, \$742 purchase price, destroyed by water; (3) radio, 1 1/2 years old, \$53 purchase price, destroyed by water; (4) queen size mattress 1 year old, \$75 purchase price, destroyed by water; (5) queen size box spring, 1 year old, \$75 purchase price, damaged by water; (6) telephone and answering machine, age unknown, \$119.00 purchase price, destroyed by water; (7) curtains, 1 1/2 years old, \$50 purchase price, permanently stained by water and debris; (8) 2 box springs and 2 mattresses, twin size, age unknown, \$287 purchase price, box springs stained by water, mattresses destroyed by water and debris; (9) black and white television set, \$49 purchase price, destroyed by water; (10) childrens clothing, various age, approximately \$500 purchase price, permanently stained by water and debris.

C. Defendant testified that, as a result of the September 3, 1991 incident, she was forced to seek lodging with her family elsewhere for a number of days, staying in shelters or with friends.

D. In late September 1991, defendant secured an apartment through the Cuyahoga Metropolitan House Authority.

E. Defendant testified that she retrieved the last of her belongings which were undamaged from the premises in October 1991. She did not return the keys to the premises to the plaintiff.

13. Defendant produced some 60 photographs of the damage to the premises, along with two documents from the City of Cleveland Department of Community Development, Division of Building and Housing in support of her testimony.

CONCLUSIONS OF LAW AND FACT

First, regarding plaintiff's claim for unpaid rent, the parties disagree regarding whether August 1991 rent was paid. Neither party has produced records or receipts to support their testimony. The inconsistencies of plaintiff's testimony on this point render defendant's testimony more credible. As a result, the court finds that defendant did pay August 1991 rent to plaintiff.

Regarding rent for the months of September 1991 and October 1991, these claims are disallowed, for several reasons. First, it is unclear whether defendant occupied the premises in October 1991. Second, the condition of the unit after the September 3, 1991 incident rendered the apartment unlivable, both in the estimation of the Division of Building and Housing and of this Court. Finally, plaintiff himself testified repeatedly that he had informed the defendant that she could occupy the premises after the September 3, 1991 incident without paying rent until the rent was cleaned and repaired. Plaintiff does not despite that the unit has not

yet been cleaned and repaired. Accordingly, plaintiff's claims for unpaid rent are denied.

Regarding defendant's counterclaim, Revised Code 5321.04 provides:

(A) A landlord who is a party to a rental agreement shall do all of the following:

(1) Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety;

(2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(3) Keep all common areas of the premises in a safe and sanitary condition.

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances and elevators, supplied or required to be supplied by him;

In the instant case, plaintiff, by his failure to properly maintain the roof of the premises, has failed to comply with these duties imposed by Ohio Law. Plaintiff's conduct constitutes both negligence and a breach of the rental agreement with defendant.

Defendant has testified and produced photographic evidence of the losses she sustained as a result of the collapse of the ceiling. While plaintiff maintains that only paint, and not plaster, fell from the ceiling, the photographs discredit plaintiff's testimony. Furthermore, plaintiff's statement

that defendant's living room furniture remained usable is simply not credible.

Accordingly, defendant has established by a preponderance of the evidence her entitlement to damages for the items lost or damaged. Defendant estimates the purchase price of the items lost is Two Thousand Seven Hundred Thirty-One Dollars (\$2,731.00). (sofa, etc. \$1,000; television and VCR \$724; radio \$53; queen size mattress \$75; telephone and answering machine \$119; curtains \$50; black and white television \$49; childrens' mattresses \$143 (1/2 of purchase price), and clothing (\$500). The items range in age from approximately one to two years. Accordingly, depreciation of 25% is reasonable, for an award of Two Thousand One Hundred Eighty-Five Dollars (\$2,185.00) on this claim.

In addition, defendant has established that three (3) box springs were also damaged. The box springs, purchased for approximately \$219, remain usable. As a result, an award of damages of 25% of the purchase price for the reduction in value is reasonable, for an award of Fifty-Five Dollars (\$55.00).

Finally, as plaintiff's conduct constitutes negligence, defendant is entitled to damages to compensate her for the inconvenience and distress of moving her family to a shelter, staying in the damp unit, etc. Defendant, as a result of plaintiff's conduct, was forced to endure these conditions for 22 days, until she was able to secure housing through CMHA. Defendant is entitled to damages in the amount of One Hundred

Dollars (\$100.00) per day, for a total of Two Thousand Two Hundred Dollars (\$2,200.00) (\$100 x 22) on this claim.

JUDGMENT

1. Judgment for defendant on plaintiff's first cause of action.
2. Judgment for defendant on her counterclaim in the amount of Four Thousand Four Hundred Forty Dollars (\$4,440.00), plus costs and interest from date of judgment.
3. Plaintiff to pay costs.

RECOMMENDED: *Barbara A. Reitzloff*

BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

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 the Plaintiff, Jesse Nobles, 730 East 127th Street, Cleveland, Ohio 44108 and to the Defendant, Faithia Johns, 4200 Central Avenue, Apartment 2613, Cleveland, Ohio 44104 this 25th day of March 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*

BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

APPROVED: *William H. Corrigan*

JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION