

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

E. FURMAN KORB, DBA
KORB ENTERPRISES
3545 WEST 52ND STREET
CLEVELAND, OHIO 44102

PLAINTIFF

VS.

SHELLY DOERING
JULIE NICHOLS
2557 WEST 52ND STREET
CLEVELAND, OHIO 44102

DEFENDANT

)CASE NUMBER 91 CVG 4948

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)LANDLORD-TENANT

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)REFEREE'S REPORT AND RECOMMENDATION

This matter came before the court on March 27, 1991 on Plaintiff's Forcible Entry and Detainer complaint & defendant's counterclaim per Ohio Revised Code 1923.061. The case was assigned to Referee/Magistrate Paul J. Tuffin by Judge William H. Corrigan pursuant to Rule 53.

Plaintiff in court with counsel.
Defendants in court pro se.

REFEREE FINDS:

1. Plaintiff (Landlord) and defendants entered into a one (1) year written agreement commencing December 1, 1989 for occupancy of premises located at 3557 West 52nd Street, Down, at the rate of Two Hundred Seventy-Five Dollars (\$275.00) per month, at which time a security deposit of Two Hundred Seventy-Five Dollars (\$275.00) was paid.

2. Judgment Entry of February 20, 1991 in Case Number 90 CVG 31971 which ordered abatement of rent to One Hundred Dollars (\$100.00) per month beginning September 10, 1990 until defendants vacate the premises or the date of correction of certain housing code violations is incorporated herein by reference.

3. Plaintiff filed a Forcible Entry and Detainer complaint on February 21, 1991 alleging non-payment of rent and expiration of lease. Defendant's filed answer and counterclaim on March 14, 1991 alleging, inter-alia, failure to make necessary repairs.

4. Plaintiff, defendant, and Housing Court Specialist testified at hearing on March 27, 1991. Plaintiff introduced into evidence rental agreement and letter to defendants. Defendants submitted a summary of expenses incurred.

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 he may recover under the rental agreement or under Chapter 3733. 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.

Housing Specialist testimony and other evidence disclosed exposed wiring, rodents, ceiling leak and debris in basement had not been corrected. Accordingly, rent abatement to One Hundred Dollars (\$100.00) per month remains in effect.

The evidence shows that defendants deposited a total of One Thousand One Hundred Dollars (\$1,100.00) from September 1990 to December 1990 with Clerk of Court. On February 27, 1991, Four Hundred Dollars (\$400.00) was released to plaintiff and Seven Hundred Dollars (\$700.00) to defendant pursuant to court order. (rent deposit Case Number 90 RD 93).

Viewed longitudinally, the evidence shows that the abatement of rent to One Hundred Dollars (\$100.00) monthly should remain in effect. During this period, defendants made a net deposit of rent of Four Hundred Dollars (\$400.00) (\$1,100-\$700). The rent due for this period was Seven Hundred Dollars (\$700.00). However, the defendant complied promptly when notified of a court ordered deposit of rent. Nonetheless, a rent payment deficit of Three Hundred Dollars (\$300.00) exists through March 1991. An additional One Hundred Dollars (\$100.00) is due for April 1991.

Ohio Revised Code 5321.02 states:

(A) Subject to section 5321.03 of the Revised Code, a landlord may not retaliate against a tenant by increasing the tenant's rent, decreasing services that are due to the tenant, of bringing or threatening to bring an action for possession of the tenant's premises because:

(1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety;

(2) The tenant has complained to the landlord of any violation of section 5321.04 of the Revised Code;

(B) If a landlord acts in violation of division (A) of this section the tenant may:

(1) Use the retaliatory action of the landlord as defense to an action by the landlord to recover possession of the premises;

(2) Recover possession of the premises; or

(3) Terminate the rental agreement.

In addition, the tenant may recover from the landlord any actual damages together with reasonable attorneys' fees.

It has been established by a preponderance of the evidence that plaintiff retaliated against defendant by bringing eviction due to defendant's complaint to housing agency regarding failure to make repairs.

Damages must be founded on evidence. Lovelady v. Rheinlander 66 OA 409, 20 O OPS 342, 34 NE 2nd 788.

Defendants sought damages on counterclaim in the amount of Two Thousand Seven Hundred Forty-Four Dollars and Eighty-Two Cents (\$2,274.82). However, defendants submitted into evidence a summary of expenses incurred which totals: One Thousand Five Hundred Thirty-Four Dollars and Seventy-Six Cents (\$1,534.76). These include lost wages, court filing fees, food loss due to rodents, plumbing problems and increased heating bills due to heat loss due to faulty windows. Accordingly, damages are set at One Thousand Five Hundred Thirty-Four Dollars and Seventy-Six Cents (\$1,534.76) on counterclaim based on retaliation.

JUDGMENT

(A) Judgment for defendants on plaintiff's complaint for eviction.

(B) Judgment for defendants against plaintiff of One Thousand Five Hundred Thirty-Four Dollars and Seventy-Six Cents (\$1,534.76) plus costs and interest from date of judgment on counterclaim.

(C) Defendants are ordered to deposit rent with Clerk of Court of Five Hundred Dollars (\$500.00) beginning May 1, 1991, One Hundred Dollars (\$100.00) the 1st of each month thereafter until further order of court.

(D) In the event defendants vacate the premises, the property shall not be re-rented until all housing code violations are corrected.

RECOMMENDED: Paul J. Tuffin
PAUL J. TUFFIN
HOUSING COURT REFEREE/MAGISTRATE

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

SERVICE

A copy of the Referee's Report was sent by ordinary United States mail to the Plaintiff's Attorney, Susan M. Weaver, 1370 West 6th Street, 212, Cleveland, Ohio 44113-1308 and to the Defendant, Shelly Doering, et. al. 3557 West 52nd Street, Cleveland, Ohio 44102 this 9th of April 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: Paul J. Tuffin
PAUL J. TUFFIN
HOUSING COURT REFEREE /MAGISTRATE

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