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THE CLERK OF THE COURT  
CHILLICOTHE, OHIO

BRADLEY FRANCIS,  
Plaintiff,

CASE NO: 05 CVG 1116

vs.

JENNIFER PETERS,  
Defendant.

MAGISTRATE'S DECISION  
Findings of Fact and  
Conclusions of Law

\* \* \* \* \*

The undersigned, pursuant to the Order of this Court appointing her Magistrate herein, submits the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. This matter came on for hearing on the Plaintiff's (Francis) second cause of action for money damages from a rental agreement with Defendant (Peters), and on the Counterclaim of Peters for damages. Francis was present and represented by Matthew Schmidt, Attorney. Peters was present and represented by Josaphine Babcox, Attorney and Melissa Benson, Attorney.
2. Francis first rented the home at 13007 Westfall Rd., Frankfort, Ohio, to Peters in July 1999. He purchased the house in May 1999 at a foreclosure sale and Peters was the first tenant. After purchase, Francis did some improvements to the house. He installed new front and side exterior steel doors, replaced broken windows, painted the whole inside and installed new carpet in the upstairs bedroom. He had the downstairs carpet cleaned professionally. He also bought a new sump pump and hot water tank for the basement. The house was equipped with an 100 amp circuit breaker and did not have air conditioning. The house was approved for Section 8 rent assistance with the rent being \$425.00 per month. Peters paid a security deposit of \$350.00. Francis told Peters that she could do any repairs that she wanted that did not exceed \$50.00, and he would credit her on the rent if she provided proper receipts. Peters was given permission to have one small dog.
3. Peters' Section 8 rent assistance stopped after the first three years and she continued to reside there on a month to month basis with the rent remaining at \$425.00 per month. An Eviction Order was granted by this court to Francis on July 25, 2006, on

the basis of failure to pay rent. The bailiff removed all remaining personal property pursuant to a Writ of Restitution on July 28, 2005. At that time Peters was behind in her rent for 5 months. Based on the agreed rental rate she owed \$2,125.00 for rent.

4. When Francis regained possession of the premises he discovered some damages that went beyond reasonable wear and tear, even for a six (6) year rental. Peters left personal property and trash that had to be hauled away by Francis at a cost of \$50.00 for fuel for a borrowed dump truck. (Pl. Ex. C and D). The upstairs bedroom carpet which was new when Peters moved in was completely ruined. It was very stained and dirty and damaged by animal feces and urine. The downstairs carpet was in similar condition and had to be removed. (Pl. Ex. K through Q). Francis presented estimates from Lowes for replacement of all of the carpet which totaled \$1,688.14. Based on the years of rental and the age of the downstairs carpet, Francis is only entitled to the depreciated value of the carpet, not the replacement value. The depreciated value of the carpet is found to be 50% of the replacement cost, or \$844.00.

5. During Peters' occupancy of the property, the two exterior doors were damaged and appeared to have been forced open. The door jams are damaged and the doors are cracked in places. These were new doors when Peters moved in. The estimate to replace them including labor is \$818.00. Francis is entitled to the depreciated cost of the doors based on their age of 6 years, which is found to be 50% or \$409.00. Three interior doors were also damaged during the rental by holes and hinges being broken off. The cost to replace based on an estimate from Lowes is \$498.00. The depreciated cost is found to be 50% of this amount or \$249.00.

6. Peters at one time had 7 dogs at the property as well as 7 cats and 2 kittens. Some but not all of these animals were inside the house. At least 2 dogs were kept outside and chained to trees in the yard. (Pl. Ex. T through X). At least 2 of the trees that they were chained to died due to the damage from the chains. The estimated cost to replace these trees is \$350.00. Peters is found to be liable for this cost.

7. Francis had evidence of other damages to the property including cleaning, holes in the drywall and damage to the wood floors, but he failed to present any estimates or receipts to establish the cost of these damages.

8. Francis retained the security deposit of \$350.00, which should be applied to the rent and damages.

9. Peters has filed a counterclaim alleging that the house was not fit for habitation and that she is entitled to a rent reduction and additional money damages.

10. Peters main complaints about the house concern the electrical problems, the flooding of the basement and the leaky back porch roof.

11. The basement of this property was unfinished and was used primarily to house the furnace, hot water heater and the circuit breaker. The basement had a history of water problems as evidenced by the fact that Francis installed a new sump pump when he bought the house. The first identifiable incident of flooding in the basement was in the winter of either 2000 by Peters' account or 2001 by Francis' account. Both agree that the flooding was caused when the water pipes in the basement froze and burst. Francis did come in a timely manner and pumped the water out and repaired the pipes. After this, Peters says that the basement flooded often, but Francis says he was not notified of this problem by Peters or anyone on her behalf. Francis admits that he did not check on the basement even though he had been at the property on occasion when it was raining. Peters says that she did have family members and her boyfriend call Francis about the basement but could not substantiate this claim. Peters says that she installed 5 additional sump pumps during her tenancy to keep the basement water pumped out. Peters presented receipts showing purchases of two sump pumps from Lowes for \$66.65 each, one dated 11/28/03 and one dated 1/4/05. Peters did not submit these receipts to Francis until one month before she was evicted. Peters had no proof of the purchase of any additional sump pumps. Peters is found to be entitled to be reimbursed for the cost of the two sump pumps in the amount of \$133.00. (See Def. Ex. 19 through 26, and 48).

12. In addition to the basement flooding, the electric service was not good. There was no working electric service in the bathroom for a substantial time. The circuit breaker often kicked off, causing a loss of all power to the house. Someone had to enter the basement, which often had standing water in it, to reset the circuit breaker. This caused the furnace and the hot water heater to go out frequently. In 2005, a kitchen outlet went out causing Peters to have to use an extension cord to plug her refrigerator into an outlet in another room. The 100 amp service, although typical for the age of this house, did not seem to be adequate for this house which was all electric, including the furnace and hot water heater. Francis rented it knowing that it would be

occupied by Peters and her 4 children. Testimony from Peters and her family proved that the electrical problems existed for at least the last 20 months of the tenancy and that Francis had some knowledge of the problems. (See Def. Ex. 1 through 8, and 10-11).

13. The electrical problems and the basement flooding caused the rental value of the property to be less than the agreed rate of \$425.00 per month. The reduced rental value is found to be \$300.00 per month for the last 20 months of the tenancy. Peters is entitled to a reduction in rent in the amount of \$2,500.00.

14. Peters seeks damages for replacement of appliances and other personal property. The evidence was not sufficient to prove the ownership, value or cause of loss of these items. Peters was reimbursed through a rent credit for the cost of the furnace replacement.

15. Testimony was presented at trial about the back porch roof leak. Peters and her boyfriend agreed to repair the roof if Francis supplied materials, which he did. The repairs did not stop the leak, but it was not clear that Francis had received notice of this. Peters also chose to leave her washer and dryer as well as a piece of furniture on the porch even though she was aware of the leaks. Francis is not responsible for any damage to these items.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties.
2. Peters owes back rent under her verbal contract in the amount of \$2,125.00.
3. Peters owes for damages that went beyond reasonable wear and tear. She owes \$50.00 for trash hauling fuel expense. Peters owes the depreciated cost of the carpet in the amount of \$844.00.
4. Peters owes for damage to the exterior doors in the amount of \$409.00, and for the interior doors in the amount of \$249.00.
5. Peters is liable for the cost to replace trees destroyed by her dogs being chained to them in the amount of \$350.00.
6. The total of damages and rent owed to Francis is \$4,027.00, less the security deposit of \$350.00, for net damages of \$3,677.00.
7. Francis had prior knowledge of the basements potential for water problems. He should have checked on the sump pump at some time during the rental even if he did

not receive notice from Peters of the problem. As evidenced by the receipts for sump pump purchase, the flooding problem began at least as early as November 28, 2003, and continued over the next 20 months of the tenancy. Francis owes Peters \$133.00 for the sump pump expense. The flooding of the basement also lessened the rental value of the home for these 20 months.

8. Francis had the duty to provide adequate electrical service to the rental. The 100 amp service was not sufficient for this all electric home with at least 5 people living there and using the electric. Francis was informed of some of the problems and should have known that the service was not adequate. In addition some of the outlets did not work properly. The electrical problems lessened the rental value of the home for at least the last 20 months of tenancy.

9. Peters is entitled to a judgment for the reduction in rent for 20 months at \$125.00 per month, or \$2,500.00 due to the basement flooding and the electrical problems.

10. Peters failed to prove by a preponderance of the evidence that she is entitled to recover any additional damages for loss of personal property due to the flooding, electrical problems or the porch roof leak.


11. Neither party has proven any legal basis for an award of attorney fees in this case.

12. The total judgment to Francis in the amount of \$3,677.00, must be reduced by the total judgment to Peters of \$2,633.00, leaving a net judgment to Francis of \$1,044.00.

#### DECISION

It is the Decision of the Magistrate that Judgment be granted to the Plaintiff Bradley Francis and against Defendant Jennifer Peters, in the amount of \$1,044.00 plus interest from date of judgment and costs.

DATE: September 21, 2006

  
MAGISTRATE

PROOF OF SERVICE

This Magistrate's Decision was served upon all parties or their respective Attorneys on 9-21-06

Mitchell S. Hoyle  
Deputy Clerk

NOTICE

Objections to the Magistrate's Decision must be filed in writing within 14 days. A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIVIL RULE 53(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIVIL RULE 53(D)(3)(b).