

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

Karen C. Leak; and
Alfred K. Leak, Jr.

DATE: January 10, 2008

Plaintiffs

-vs-

CASE NO.: 2006 CVG 33367

Versie Hale

Defendant

JUDGMENT ENTRY

The Court, having reviewed the *Magistrate's Decision* of January 10, 2008 under Ohio Rule Of Civil Procedure 53(E)(4), adopts that decision.

The Court grants judgment to Defendant against Plaintiffs in the amount of \$4813.60. Upon Defendant's motion, the Court will set a hearing to determine the amount of an award of reasonable attorney fees for Defendant's successful claims under O.R.C. §5321.08 and C.C.O. §375.08 and as sanctions against Plaintiffs for failing to comply with discovery.


JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this *Judgment Entry* was sent via regular U.S. Mail to the following on

1/14/08. [Signature]

Attorneys for Plaintiffs

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Plaintiffs

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MAGISTRATE'S DECISION

The Court set this case for trial November 14, 2007. Plaintiffs did not appear. Defendant appeared with counsel. The parties appeared before Magistrate David D. Roberts, Judge Raymond L. Pianka having assigned Magistrate Roberts to hear Defendant's testimony and evidence providing the amount of her damages for each of her counterclaims.

Based on the testimony and evidence presented, the Court finds that Plaintiffs are liable to Defendant for \$4813.60 in damages: \$1500 for lost personal property and \$800 in diminished rental value for breach of O.R.C. §5321.04 and breach of contract, \$500 statutory damages for retaliatory eviction under Cleveland Codified Ordinances §375.08, \$1950 for wrongful withholding of Defendant's security deposit in violation of O.R.C. §5321.16 and \$63.60 interest on the amount of Defendant's security deposit that exceeded one month's rent (at 5% for 24 months).


Defendant did not prove at trial the amount of reasonable attorney fees that the Court should grant her based on her successful claim under O.R.C. §5321.16, her successful claim under C.C.O. §375.08 and as a sanction for Defendant's failure to comply with discovery. Defendant may file a motion to set this issue for hearing as to the amount of such an award and as to the question of whether Defendant's counsel, The Cleveland Legal Aid Society, can be granted such an award for a claim that allows for recovery of attorney fees.

The Court notes that O.R.C. §120.54 forbids a legal aid society from pursuing "fee generating cases" but allows for exceptions that would seem to apply here. O.R.C. §120.51(C), which defines "fee generating cases" does not provide that every case that may include a claim for attorney fees is a "fee generating case." The definition excludes cases where "[t]he case is of a type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee," cases where "recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of

applicable rules governing joinder of counterclaims” and cases where “the case involves the rights of a claimant under a publicly supported benefit program for which entitlement is based on need.” O.R.C. §120.15(C). These exceptions would seem to apply to tenants who receive federal housing subsidies based on need, tenants whose main goal is to defend against a landlord’s claims, or tenants who find that private attorneys in the area will take their case only with prepayment of a fee. Defendant Hale may be all three.

Decision

The Court grants judgment to Defendant against Plaintiffs in the amount of \$4813.60. Upon Defendant’s motion, the Court will set a hearing to determine the amount of an award of reasonable attorney fees for Defendant’s successful claims under O.R.C. §5321.08 and C.C.O. §375.08 and as sanctions against Plaintiffs for failing to comply with discovery.


Magistrate David D. Roberts

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE’S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE’S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE’S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this Magistrate’s Decision was sent via regular U.S. Mail to the following on 1/14/08 DMK.

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