

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

Franklin Thompson, et. al.

Plaintiff

vs.

Cindy Womack

Defendant

Date: March 20, 2008

CASE NO. 2007CVG26006

LANDLORD – TENANT

MAGISTRATE'S REPORT AND
RECOMMENDATION

This matter called for Pre-Trial on March 19, 2008. Defendant was present with Counsel. Plaintiff was not present. A trial on the matter was convened on Defendant's Counter-claim as a sanction for Plaintiff's absence. Plaintiff's Complaint is dismissed with prejudice for want of prosecution.

FINDINGS OF FACT:

1. The parties had a written agreement for the rental of the premises located at 12525 Lancelot Ave., Cleveland, Oh. 44108.
2. The rent was \$595.00 per month and a security deposit in the amount of \$595.00 was paid.
3. The rent was subsidized through the Housing Choice Voucher Program (Section 8).
4. The Plaintiff filed a complaint for back rent and for property damages.
5. The Defendants have filed a counterclaim for excess rent paid in violation of HUD lease, return of the security deposit and attorney fees.
6. The Defendant was responsible for paying rent in the amount of \$166.00 per month.
7. The balance of the rent (\$429.00) was paid by CMHA.
8. The Plaintiff collected an additional \$105.00 per for ten months (December through September) from the Defendant in violation of HUD rules.
9. CMHA notified the Plaintiff in October that the Defendant's portion of the rent was reduced to zero.
10. The Defendant vacated the property in December, 2007.

11. The Plaintiff failed to provide the Defendant with a letter detailing the disposition of the Security deposit within the statutory period (thirty (30) days).
12. The Security Deposit was not returned to the Defendant.
13. The Defendant testified at trial and exhibits offered as evidence were the HUD Lease, the lease between the parties and the payment record.
14. Attorney for the Defendant testified to the value of the legal services provided.

CONCLUSIONS OF LAW AND FACTS:

The Defendant has paid additional rent to the Plaintiff in violation of the HUD addendum to the Lease (Paragraph 8 d. of the HAP Contract). The total amount overpaid is \$1,050.00. The Plaintiff is liable to the Defendant for this amount.

Additionally the Plaintiff failed to return Defendant's Security Deposit in a timely manner. According to the statute O. R. C. 5321.16, the Plaintiff must pay the Defendant twice the amount of the Security Deposit. The total due is \$1,190.00.

O. R. C. 5321.16 provides in part:

B) Upon termination of the rental agreement any property or money held by the landlord as a security deposit may be applied to the payment of past due rent and to the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with section 5321.05 of the Revised Code or the rental agreement. Any deduction from the security deposit shall be itemized and identified by the landlord in a written notice delivered to the tenant together with the amount due, within thirty days after termination of the rental agreement and delivery of possession. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address as required, the tenant shall not be entitled to damages or attorneys fees under division (C) of this section.

(C) If the landlord fails to comply with division (B) of this section, the tenant may recover the property and money due him, together with damages in an amount equal to the amount wrongfully withheld, and reasonable attorneys fees.

The Defendant is also entitled to have her Attorney's fees paid. Her attorney testified that the value of his services were \$750.00. (3.5 Hours at \$200.00 per hour)

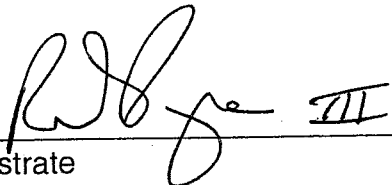
Defendant's counterclaim requested punitive damages and because the Plaintiff acted in such an egregious fashion, the court hereby awards \$1,050.00 in punitive damages.

JUDGMENT:

Defendant testified to and presented evidence substantiating her claim for damages. Judgment is rendered for Defendant against Plaintiff in the amount of **\$4,040.00** (\$1050.00 rent overpayment, \$1,190.00, \$1,050.00 punitive damages and \$750.00 Legal fees) plus costs and interest from date of judgment.

Plaintiff's Complaint is dismissed with prejudice for want of prosecution.

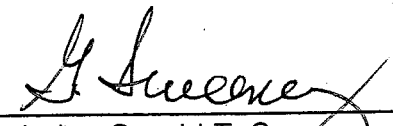
Recommended By:



Magistrate

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 FUTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

Approved:



Visiting Judge Gerald F. Sweeney

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

FRANKLIN THOMPSON, ET. AL.

Date: April 17, 2008

Plaintiff(s)

-VS-

Case No.: 2007-CVG-26006

CINDY WOMACK

Defendant(s)

JUDGMENT ENTRY

This case is before the Court on defendant's objection to the magistrate's decision concerning the award of attorney fees. Pursuant to 45 C.F.R. §1642.2(b)(2), the judgment rendered for the defendant against the plaintiff is reduced from \$4,040.00 to \$3,290.00, as defendant's counsel is not permitted to accept attorney fees.

Case closed. File to Judgment



Judge Raymond L. Pianka
Housing Division

SERVICE

A copy of this Judgment Entry was mailed to counsel/parties in court on

4/23/08 CRK

