IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

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| RICHARD HANSGEN, | : | |
| Plaintiff, | : | |
| v. | : | RENT ESCROW CASE |
| | : | NO. 00CVR-40822 |
| PATRICIA SEIGEL and FRANCES SEIGEL, | : | MAGISTRATE JUMP |
| Defendants. | : | |

MAGISTRATE'S DECISION

This matter came on for hearing before Magistrate David S. Jump on the applications of both parties for release of escrowed rent. The landlord appeared without counsel. Attorney Mindy A. Worly represented the tenant. Based on the evidence and arguments presented, after weighing the credibility of the witnesses, the magistrate issues the following decision.

The tenant lived in the landlord's property for more than thirty (30) years. In October, 2000, the gas company shut off the gas to the stove and a space heater because of a gas leak. Petitioner's Exhibits 1 and 2 are the shut off notices and descriptions. The tenant notified the landlord about the situation.

Because the landlord had not repaired the gas leak by the end of October, 2000, the tenant sent a letter to the landlord requesting repairs. Petitioner's Exhibits 4 and 3 are copes of the tenant's letter and envelope, respectively. The landlord still did not make the repairs. Because of the landlord's failure to make the repairs, on December 1, 2000, the tenant began paying his rent into escrow with the Clerk of Court pursuant to ORC §5321.07.

At some point, the landlord and a maintenance worker went to the tenant's residence. The tenant either was not home or did not answer the door. The landlord assumed that the tenant did not

want the gas problem repaired and consequently failed to make the repairs necessary for the restoration of gas service in the tenant's apartment.

In late December, 2000, a water pipe burst in the tenant's apartment. The tenant called the landlord about the problem. The landlord sent a maintenance worker to shut off the water in the tenant's apartment, but the landlord did not repair the water problem at that time. Because of the landlord's failure to repair the gas and water problems, the tenant went through the winter without gas or water. The tenant continued to pay his rent into escrow for a total of four months, from December 2000 to March 2001.

On February 8, 2001, the City of Columbus Department of Trade and Development inspected the tenant's apartment and issued an Emergency Order to the landlord to repair the gas and water problems. The city inspector issued another Emergency Order after another inspection on February 12, 2001. Finally, because the landlord had not made repairs, the city issued an Order to Vacate on February 26, 2001. All of those orders are included in petitioner's Exhibit 5.

Also on February 26, 2001, the landlord served the tenant with a thirty day notice of the termination of his tenancy. The landlord decided to terminate the tenancy because the landlord recognized that the apartment was uninhabitable.

The landlord finally complied with the orders and made the repairs to the tenant's apartment on March 2, 2001. Until that date, the tenant did not have proper heat or water in his apartment. The tenant had made it through the winter with portable heaters in one room of his apartment. He used blankets to block off the doors to other rooms to keep the heat in one room. The tenant moved out of the apartment on April 30, 2001, after more than thirty (30) years as a tenant in the property.

Both parties have filed motions seeking the release of the escrowed funds pursuant to ORC 5321.09. The landlord argues that she is entitled to the return of the funds because she has now

made the repairs. The tenant argues that he is entitled to the release of the funds because the conditions of the apartment reduced the reasonable value of the apartment to nothing. As a result, the tenant argues that he should be entitled to the return of the rent he paid into escrow.

ORC §5321.04 provides the obligations of a landlord. That section states, in pertinent part:

5321.04 OBLIGATIONS OF LANDLORD

> (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;
> ***
> (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;
> ***
> (6) Supply running water, reasonable amounts of hot water, and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

The landlord has failed to meet her obligations under Ohio law. The landlord has failed to provide heat and water in the tenant's apartment and has failed to maintain the apartment in a fit and habitable condition. The tenant has proved by the preponderance of the evidence that because of the conditions in the apartment, the apartment had no value from October 11, 2000 to March 2, 2001.

Pursuant to ORC §5321.07, the tenant has proved by the preponderance of the evidence that he is entitled to a reduction in the amount of his periodic rent because of the conditions in the apartment. Because of those conditions, the tenant is entitled to a complete abatement of his rental obligations from October 11, 2000 until March 2, 2001. During that five month period, the tenant paid four months of rent into escrow with the Clerk of Court. The tenant is entitled to the return of

that money. ***Pagoda v. Smith*** (February 8, 1979), Cuyahoga App No. 37936, unreported.

The case at bar is distinguishable from ***Weibling v. Rine*** (August 30, 1977), Franklin App. No. 77AP-355, unreported. In that case, there was not a finding that the tenant was entitled to a reduction in rent. In the case at bar, the tenant has proved that he is entitled to a complete abatement of rent for almost five months. The rent he paid into escrow is not and has never been due to the landlord.

**DECISION**

The tenant has proved by the preponderance of the evidence that he is entitled to a complete abatement of rent for the period from October 11, 2000 to March 2, 2001. The funds held in escrow are to be released to the tenant.

MAGISTRATE DAVID S. JUMP

DATED: May 25, 2001/kjd

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