

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

Fletcher)
)
Plaintiff) Judge Raymond Pianka
)
vs.) Case No. 1998 CVG 23988
)
Shell)
) JUDGMENT ENTRY
Defendant)

Upon review, the Magistrate's Report is approved and confirmed. Judgment is for the defendant on plaintiff's claim for back rent. Judgment is for defendant against plaintiff on the counterclaim in the amount of \$111.24, plus costs and statutory interest from the date of judgment.



Judge Raymond L. Pianka
Housing Division

SERVICE

A copy of this Judgment Entry was sent via regular U.S. Mail to:
plaintiff's counsel

Donald C. Williams
DAVIS, WILLIAMS & CO., L.P.A.
1370 Ontario
1328 Standard Building
Cleveland, Ohio 44113

defendant's counsel

Steven Q. McKenzie
3408 Lorain Avenue
Cleveland, Ohio 44113

this 2nd day of Oct ~~September~~ 2000.

JKK

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

Fletcher)	
)	Judge Raymond Pianka
Plaintiff)	
)	Case No. 1998 CVG 23988
vs.)	
)	MAGISTRATE'S REPORT
Shell)	
)	
Defendant)	

This matter came for trial April 27, 2000 before Magistrate Sandra R. Lewis, to whom it was assigned by Judge Raymond L. Pianka pursuant to Ohio Rule of Civil Procedure 53, to take evidence on all issues of law and fact regarding the parties respective claims for money damages. Plaintiff present and represented by Mr. Williams. Defendant present and represented by Mr. McKenzie.

FINDINGS OF FACT

1. Plaintiff is the owner of the duplex residential rental premises known as 2635 East 128th Street, Down, Cleveland, Ohio 44120.
2. On or about October 1997, the parties entered into a written agreement for rental of the above mentioned premises.
3. Defendant paid a security deposit of \$525.
4. The lease agreement provided for late fees in the amount of \$35 if rent was not paid by the fifth of the month and \$15 per day thereafter.
5. Defendant offered the late fee in April, but plaintiff waived the fee for that month.
6. Thereafter, plaintiff did not enforce the late fee provision.
7. On or about January 1998, the parties entered into an agreement through which defendant's tenancy became subsidized by the Federal government under the Section 8 program.
8. At all times relevant to this action, the "contract rent" was \$429.
9. At all times relevant to this action, monthly rent was due between the first and the fifteenth of each month.
10. Defendant frequently changed her work situation, which necessitated almost monthly recertifications of her portion of the contract rent.

11. Pursuant to the records kept by the Cleveland Metropolitan Housing Authority, defendant's portion of the monthly rent for the months identified below was as follows:

MONTH	SECTION 8	DEFENDANT
March 1998	\$ 78	\$351
April 1998	\$191	\$238
May 1998	\$186	\$243
June 1998	\$186	\$243
July 1998	\$186	\$243
August 1998	\$186	\$243
September 1998	\$334	\$ 95
October 1998	\$334	\$ 95
November 1998	\$334	\$ 95
December 1998	\$ 86	<u>\$343</u>
TOTAL		\$2189

12. Plaintiff presented no rent records.

13. Defendant presented receipts and records indicating defendant's payments to plaintiff as follows:

MONTH	DEFENDANT PAID
March 1998	\$ 221
April 1998	\$ 334
May 1998	\$ 349
June 1998	\$ 349
July 1998	\$ 349
August 1998	\$ 349
September 1998	\$ 95
October 1998	\$ 95
November 1998	\$ 95
December 1998	<u>\$ -0-</u>
TOTAL PAYMENTS	\$2236

14. The parties agreed that defendant made payments in excess of the contract rent.

15. Plaintiff characterized the excess payments as late fees, but also admitted that she wanted \$525 for rent. Defendant testified that she never paid late fees. Defendant also testified that she thought that she was obligated to pay the shortfall between the Section 8 contract rent and the plaintiff's desired \$525. This court finds defendant persuasive on the issue of the character of the excess payments as payments in excess of contract rent.

16. Defendant vacated sometime during the first week of December 1998, leaving the keys in the premises.

17. On or about December 10, 1998, defendant sent a letter, via regular mail, to plaintiff asking for the return of her security deposit and including defendant's new address.

18. Upon regaining possession, plaintiff found (i) the premises in need of cleaning, (ii) the bathroom vanity mirror broken and (iii) the glass cabinet door broken.
19. Plaintiff paid \$110 to have the premises cleaned.
20. Plaintiff presented an estimate for replacement of the mirror in the amount of \$186.00 and for repair of the door in the amount of \$196.88, for a total of \$382.88.

CONCLUSIONS OF LAW

In the second cause of action, plaintiff seeks back rent and compensation for property damages. Defendant denies owing rent and contests certain property damages. Defendant also counterclaims seeking return of the payments in excess of the contract rent, as well as return of her security deposit and damages under R.C. 5321.16.

Rent/Payments in Excess of Contract Rent

Under the Section 8 program, there are two essential documents, (i) the contract between the owner/landlord and the housing authority and (ii) the contract (lease) between the owner/landlord and the tenant. The contract between the owner/landlord and the housing authority is called the Housing Assistance Payments Contract, and has two parts, designated as Part A and Part B. The lease between the owner/landlord and the tenant must include the "Lease Addendum" as mandated by the program. In addition the owner/landlord and tenant may have a third document/lease including additional provisions.

The housing authority establishes a "contract rent" for each participating property. The Housing Assistance Payments Contract, Part B defines "contract rent" as

The total monthly rent payable to the owner for the contract unit.
The contract rent is the sum of the tenant rent plus the HA housing assistance payment to the owner.

See Housing Assistance Payments Contract, Part B attached to defendant's Answer and Counterclaim as Defendant's Exhibit A. Further, paragraph 8 of this document indicates that

- b. The amount of the tenant rent is the maximum amount the owner can require the family to pay for rent of the contract unit, including all services, maintenance and utilities to be provided by the owner in accordance with the lease.
- c. *The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent, and must immediately return any excess rent payment to the tenant. (emphasis added)*

See Answer and Counterclaim Exhibit A. In addition, the Lease Addendum (between the landlord and the tenant), as mandated by the program regulations, includes language identical to that of paragraph c above.

At trial, the evidence demonstrated the total tenant rent, to be paid by defendant, for the period from March 1998 through December 1998 was \$2189. Further, the evidence established that defendant had actually paid \$2236 during the period from March 1998 through December 1998. While plaintiff asserted that the payments were late fees pursuant to the written agreement prior to the execution of the Section 8 documents, plaintiff failed to present any evidence tending to establish the payment amounts and the late fee amounts.

As noted in the Findings of Fact, this court found defendant persuasive on the character of the payments in excess of rent. Thus, defendant paid \$47 (\$2236 total actually paid - \$2189 total tenant rent) in excess of the contract rent, in spite of failure to pay her December 1998 portion. Judgment is for defendant on plaintiff's claim for rent.

In addition, the court notes that defendant seeks return of any payment in excess of the contract rent. Pursuant to the agreement of the parties as evidenced by the HAP contract and the Lease Addendum, this court finds that defendant is entitled to recover the \$47 paid in excess of the contract rent.

Property Damage

Plaintiff was persuasive regarding defendant's liability for cleaning, the mirror and the cabinet door. Therefore, plaintiff is entitled to recover \$110 for the cleaning, plus \$382.88 for the mirror and cabinet door, for a total of \$492.88 in property damages.

Counterclaim

Defendant seeks return of the security deposit and damages under R.C. 5321.16. R.C. 5321.16 requires a landlord to give a written itemization of charges against the security deposit within 30 days after the tenant has vacated. The statute states in pertinent part as follows:

(B) *.*. 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 attorney 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.

R.C. 5321.16(B) and (C). Thus, to recover double damages and attorney fees on an R.C. 5321.16 claim a tenant must establish that (i) s/he gave the required forwarding/new address and (ii) a portion of the security deposit was wrongfully withheld. *Smith v. Padgett* (1987), 32 Ohio St. 3d 344.

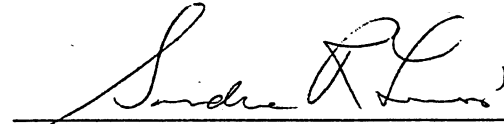
In the present matter, defendant gave plaintiff written notice of her new address on or about December 10, 1998, thus satisfying the first element of the claim. While plaintiff was persuasive regarding certain damages, the total of plaintiff's recovery is only \$492.88. Offsetting

the damages against the security deposit of \$525, there is the sum of \$32.12 due and owing to *defendant*. Thus, \$32.12 was wrongfully withheld from the security deposit. Pursuant to the statute, defendant is entitled to recover double the amount wrongfully withheld, or \$64.24.

Summary

In summary, judgment is for defendant on plaintiff's claim for back rent. After offsetting damages chargeable to defendant against the security deposit, defendant is entitled to recover \$64.24 in double damages for wrongful withholding, as well as the \$47 paid in excess of the contract rent, for a total recovery of \$111.24, plus costs and statutory interest.

Recommended:


Magistrate Sandra R. Lewis

IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE MAGISTRATE'S REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS OF JOURNALIZATION 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.

SERVICE

A copy of this Judgment Entry was sent via regular U.S. Mail to:
plaintiff's counsel

Donald C. Williams
DAVIS, WILLIAMS & CO., L.P.A.
1370 Ontario
1328 Standard Building
Cleveland, Ohio 44113

defendant's counsel

Steven Q. McKenzie
3408 Lorain Avenue
Cleveland, Ohio 44113

this 2nd day of Oct ~~September~~ 2000.

