

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

Dennis)	
)	Judge Raymond Pianka
Plaintiff)	
)	Case No. 2002 CVG 12760
vs.)	
)	MAGISTRATE'S REPORT
Dudley)	AND JUDGMENT ENTRY
)	
Defendants)	

This matter came for pretrial October 1, 2001 before Magistrate Sandra R. Lewis. Plaintiff failed to appear. Defendant Erica Dudley was present and represented by Ms. Smith. The court notes that plaintiff failed to respond to defendants' counterclaim. Pursuant to notice given via this court's order dated August 29, 2002, plaintiff's claims dismissed for want of prosecution and matter proceeded to immediate bench hearing of defendants' claims. Hearing had.

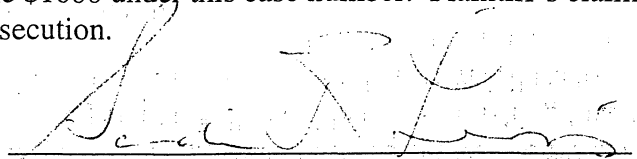
Recommendation

Based upon the evidence presented, the court finds that plaintiff (i) accepted payments of rent outside the parameters of the Section 8 program and (ii) failed to maintain the premises in fit and habitable condition. Defendant presented competent credible evidence establishing that she (i) paid \$1236 in excess rent, (ii) paid \$1580 in excess gas charges (flowing from failure to maintain the premises in a weather-tight condition and from the malfunctioning furnace which was ultimately "red-tagged" by the gas company), and (iii) was entitled to an abatement in rent of \$94 (against rent paid directly to plaintiff) after cancellation of the Section 8 contract for landlord's failure to maintain. Defendant is entitled to recover \$2910 from plaintiff.

During the tenancy, defendants deposited rent (i) totaling \$734 with the Clerk of Courts under 2002 RD 20 and (ii) pursuant to this court's order, \$1000 under this case number. In light of defendants' deposits of rent money, this court finds that plaintiff wrongfully withheld the security deposit of \$500 and defendants are therefore entitled to return of that sum.¹

In summary, defendants are entitled to recover \$2910 for conditions on the premises and \$500 wrongfully withheld, for a total recovery of \$3410. Final judgment is for defendants against plaintiff in the amount of \$3410, plus costs and interest from the date of judgment. In partial satisfaction of this judgment, the Clerk is to release to defendants (i) the funds on deposit under 2002 RD 20, less poundage and (ii) the \$1000 under this case number. Plaintiff's claims are dismissed with prejudice for want of prosecution.

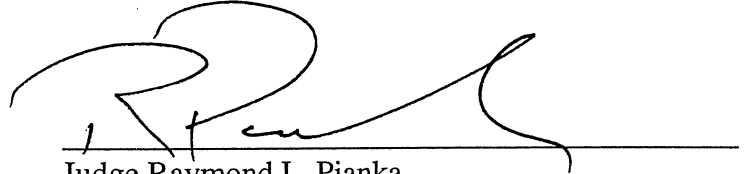
Recommended:


Magistrate Sandra R. Lewis

¹ The court notes that defendant did not plead double damages under R.C. 5321.16 and is therefore not entitled to double damages as allowed under the cited statutory provision.

JUDGMENT

Upon review, the Magistrate's Report is approved and confirmed. Plaintiff's claims are dismissed with prejudice for want of prosecution. Judgment is for defendants against plaintiff in the amount of \$3410, plus costs and interest from the date of judgment. The Clerk of Courts is to release to defendants (i) the funds on deposit under 2002 RD 20, less poundage and (ii) the \$1000 under this case number in partial satisfaction of the judgment. Said releases may occur no sooner than 14 days from journalization of this order and are to be sent to the defendants in care of counsel Maria A. Smith, 1223 West 6th Street, Cleveland, Ohio 44113.



Judge Raymond L. Pianka
Housing Division

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

Tiffeney Dennis
25931 Euclid Avenue, #119
Euclid, Ohio 44132

Maria A. Smith
1223 West 6th Street
Cleveland, Ohio 44113

this 28 day of January 2003.

And to defendant's counsel

