

APP 26 1984

IN THE NEW PHILADELPHIA MUNICIPAL COURT

NEW PHILADELPHIA, OHIO

WESLEY E. TOLLE	:	JUL 1 1984
PLAINTIFF	:	Case No. 5-84-CVG-30
vs	:	
TAMMY FOOTE	:	<u>JUDGMENT ENTRY</u>
DEFENDANT	:	

This matter was considered by Edward Emmett O'Farrell, Judge, New Philadelphia Municipal Court, New Philadelphia, Ohio, on April 24, 1984, relative to the Referee's Report filed April 6, 1984, and the "Objection to Referee's Report" filed April 23, 1984.

The Court

FINDS the objections to the Referee's Report are not well taken.

FINDS the Referee's Report of April 6, 1984, is proper, in conformity with the evidence and should be adpoted in toto.

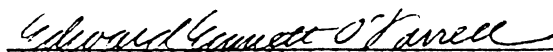
It is therefore

ORDERED, ADJUDGED AND DECREED that the Referee's Report of April 6, 1984, is adopted by this Court in toto as its Judgment Entry and judgment is granted to the Defendant against the Plaintiff on her Counterclaim in the amount of Eight Hundred Fifty Dollars (\$850.00) as and for damages for the Plaintiff's breach of statutory duty pursuant to Section 5321.04(A)(6), Ohio Revised Code.

ORDERED, ADJUDGED AND DECREED that the obligation of the Defendant to pay to the Plaintiff the monthly rental figures of One Hundred Eighty-five Dollars (\$185.00) for the month of January, 1984, and Five Hundred Ninety-Four Dollars (\$594.00) for the months of February, March and April of 1984, collectively,

are set off against the Defendant's judgment against the Plaintiff leaving a net judgment in favor of the Defendant against the Plaintiff in the amount of Seventy-One Dollars (\$71.00). Judgment is awarded to the Defendant against the Plaintiff in the amount of Seventy-One Dollars (\$71.00) with interest at the rate of 10 per cent per annum from May 1, 1984. Costs of this action are assessed against the Plaintiff in the amount of \$39.75.

IT IS SO ORDERED.



Edward Emmett O'Farrell, Judge

cc: Tolle
Foote

FILED IN
IN THE NEW PHILADELPHIA MUNICIPAL COURT

APR 09 1984

NEW PHILADELPHIA, OHIO

WESLEY E. TOLLE
PLAINTIFF

:
: WESLEY E. TOLLE
: Case No. 5-84-CVG-30

vs

TAMMY FOOTE
DEFENDANT

:
: REFEREE'S REPORT
:

This matter came on before the Court's Referee this 23rd day of March, 1984, for Hearing on both the First and Second Claim under Plaintiff's Complaint for Forcible Detainer and damages; and upon the Answer and Counter-claim of the Defendant.

Present in Court was the Plaintiff, Wesley E. Tolle, pro se; and also present in Court was the Defendant, Tammy Foote, represented by Attorney Michael Schlemmer.

Whereupon the Court's Referee took the testimony of the parties and received certain exhibits into evidence and makes the following:

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

1. The Plaintiff and Defendant entered into a written lease agreement for the rental of 252½ St. Clair S.W., New Philadelphia, Ohio, on January 27, 1983, for the term February 1, 1983 through January 30, 1984;
2. On December 13, 1983, Defendant sent and Plaintiff received the letter of Complaint marked Mutual B;
3. In December of 1983 Plaintiff and Defendant's brother reviewed the premises to determine needed repairs;

4. Defendant was current on her rent through December of 1983. In January of 1984 Defendant made no payment of her rent which was due on the 1st of the month under the terms of the lease;

5. On January 24, 1984, Plaintiff placed a telephone call to Defendant to inquire about the willingness of Defendant's brother to supply free labor for the installation of insulation on the subject premises. The brother declined, though he had previously indicated such a willingness;

6. On January 25, 1984, Plaintiff properly served the statutory Notice to Leave Premises, citing the failure of the Defendant to pay the rent;

7. At the time of the service of the said Notice, Defendant was delinquent in her rent;

8. On January 30, 1984, Plaintiff filed his Complaint in Forcible Detainer and on February 15, 1984, Defendant filed her Answer and Counterclaim. Defendant was in default of rent for January and February as of February 15, 1984;

9. The premises were inspected by James Ullis, City Environmentalist on February 22, 1984, and on March 9, 1984;

10. Though the Defendant has had marked and admitted into "evidence" a copy of the Sanitary Code of the City of New Philadelphia, no notice of Defendant's reliance on the said Code is to be found in the pleadings of the Defendant;

11. No significant violation of RC 5321.04 as the same relates to electrical fixtures is shown by the evidence;

12. The fan placed by the air return of the furnace on the premises was placed by the tenant, not the landlord;

13. The premises occupied by Defendant are supplied by a gas forced air furnace which is in the exclusive control of the tenant and is supplied by a direct public utility connection;

14. The Defendant routinely sets her thermostat at 70 degrees;

15. The premises occupied by Defendant are and have been since the inception of the term of Defendant's tenancy served by a plumbing system which is and was insufficient to supply Defendant with reasonable amounts of running water and hot water at all times as required by law;

16. The television of the Defendant was damaged by a leak in the roof of the premises;

17. The television was a gift to the Defendant which she values at \$200.00;

18. The evidence is insufficient to conclude that the cost for repair of the television exceeds the cost of replacement.

19. The determination of the Plaintiff to commence the instant action was motivated by Defendant's failure to pay the rent and was not retaliatory;

20. No procedure to deposit rent under RC 5321.07 has been initiated by Defendant;

21. That the lease has been renewed under its own terms for a period of one year until January 30, 1985;

22. That the new rent rate effective February 1, 1984, was \$198.00 per month, reflecting a 7 per cent increase pursuant to the lease;

23. Attorney Schlemmer expended 25.75 hours of attorney's time in the representation of the Defendant on her defense and Counterclaim.

CONCLUSIONS OF LAW

The landlord was permitted to commence and maintain his action for possession notwithstanding Defendant's complaints to him due to her delinquent rent. RC 5321.03(A);

The landlord/Plaintiff has not breached any duty imposed by RC 5321.04(A)(1), or (A)(2);

The landlord/Plaintiff has not breached the duty to supply reasonable heat in this case as imposed by RC 5321.04(A)(6);

The landlord/Plaintiff has breached the duty to supply running water and reasonable amounts of hot water, at all times, as imposed by RC 5321.04(A)(6);

The tenant is permitted to recover damages for the breach of duty to supply water, as aforesaid. RC 5321.12;

In any action for possession under RC 1923.01 et seq, a tenant may counterclaim for damages and if the tenant prevails on his/her claim and the amount awarded exceeds the amount of any rent due, then the remedy of possession will be denied. RC 1923.061(B);

Two Dollars per day for the period February 1, 1983, through March 31, 1984 (425 days) is an appropriate damage for failure to supply reasonable hot and cold water at all times;

The Defendant should be awarded One Dollar as nominal damages for damages to her television set;

No attorney's fees can be awarded herein as no retaliatory conduct is satisfactorily demonstrated;

That no order to remedy conditions can be granted in a case not postured under RC 5321.07.

PROPOSED JUDGMENT ENTRY

Is it

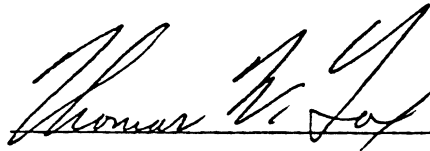
ORDERED, ADJUDGED AND DECREED that the Defendant, on her Counterclaim, is granted judgment against the Plaintiff in the amount of \$850.00 as and for

damages for his breach of statutory duty under RC 5321.04(A)(6);

FURTHER ORDERED, ADJUDGED AND DECREED that the obligation of the tenant to pay rent to the landlord in the amount of \$185.00 for the month of January, 1984, and \$594.00 for the months of February, March and April of 1984 are set off against the Defendant's judgment, leaving a net amount due the Defendant from the Plaintiff of \$71.00. This \$71.00 shall bear interest at the rate of 10 per cent per annum from May 1, 1984;

FURTHER ORDERED, ADJUDGED AND DECREED that the First Claim of the Plaintiff's Complaint for a Writ of Restitution is denied;

FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of this Court release all funds held on deposit as and for rent to the Defendant, Tammy Foote. Costs of this action are taxed to the Plaintiff, Wesley Tolle, in the amount of \$39.75.



Thomas W. Fox, Referee

Notice to the Parties

If you disagree with this report, you must file written objections with the Court within 14 days of the date of the file stamp on this report. That objection must specifically state your reason for the objection.

Please put the case number on any paper you file.

cc: Wesley Tolle
Atty. Schlemmer