

PHILADELPHIA
COURT
IN THE NEW PHILADELPHIA MUNICIPAL COURT
NEW PHILADELPHIA, OHIO

DOROTHY HUMMEL,

PLAINTIFF

V.

LLEWELLYN'S BUSINESS MACHINES,

DEFENDANT

CLERK

CASE NO. 5-90-CVI-424

JUDGMENT ENTRY

This matter came before the Court for Trial. The Plaintiff being present and represented by Attorney Teresa Schnittke and the Defendant being present and represented by his attorneys Gregory Miller and Eugene Nemitz.

The Court

FINDS that the Trial was commenced and evidence adduced.

FINDS that the Plaintiff did sustain her burden of proof by proving to the Court, by a preponderance of the evidence, that she was entitled to a return of her security deposit.

FINDS, therefore, that the security deposit was wrongfully withheld in the amount of Two Hundred Seventy-Five Dollars (\$275.00).

With regard to the claim for double damages and attorney's fees, the Court FINDS as follows: Defendant cites the case of Vardeman v. Llewellyn (1985) 17 Ohio St. 3d 24. The Court finds, however, that that case is clearly inapplicable as the facts in that case represent a landlord who failed to comply with Revised Code Section 5321.16(B) by failing to provide the tenant with a list of itemized deductions. The controlling case is, instead, Smith v. Padget (1987) 32 Ohio St. 3d 344. The ruling made by the high Court in that case is clear as set out in Syllabus No. 3:

Under R.C. 5321.16(B)(C), a landlord who wrongfully withholds a portion of a tenant's

security deposit is liable for damages equal to twice the amount wrongfully withheld and for reasonable attorney's fees. Such liability is mandatory even if the landlord gave the tenants an itemized list of deductions from the deposit pursuant to R.C. 5321.16 (B).

Justice Holmes wrote a, concurring in part and dissenting in part, opinion in the Smith v. Padgett case. In that opinion he recognized the situation whereby a landlord, tenant and Court will have differing conclusions as to what amounts would properly be withheld from a security deposit. He clearly recognized the situation, whereas here, a landlord had timely complied with the notice requirement of R.C. 5321.16(B). However, as here, he concluded differently as to whether he was entitled to lawfully withhold the security deposit. Justice Holmes dissented as follows with regard to Smith v. Padgett decision:

"Today's decision holds the landlord strictly and unreasonably accountable for honest mistakes which will inevitably be made. The inequity it visits upon sincere landlords is not consistent with the overall purpose of the Landlord/Tenant Act, nor the specific purpose of R. C. 5321.16(C).

Accordingly, I would join in reversing the decision of the Court of Appeals, but would remand the case for a determination of whether Padgett reasonably believed the itemization amounts were lawful, before assessing double damages and any attorney's fees against him." State v. Padgett (1987) 32 Ohio St. 3d 344, 744 Concurring and Dissenting Opinion.

Although the undersigned Judge agrees with the concurring and dissenting opinion of Justice Holmes this Court is, however, bound by the decision of the majority Court in Smith v. Padgett.


Further, although evidence was not presented to the Trial Court with regard to the reasonable amount of attorney's fees in this matter, the Court is persuaded by Verlinger v. Suburban Apartments Mgt. Co., 7 Ohio App. 3d 122 (1982), that since attorney fees have been held to be costs and not damages

in landlord/tenant cases, it is not encumbant upon the Plaintiff to adduce evidence on the issue of attorney's fees during the case in chief. Therefore, the Court must set this matter pursuant to the ruling in the Verlinger case for a hearing to determine the issue of the amount of attorney's fees to be awarded Plaintiff.

Therefore, it is

ORDERED, ADJUDGED, AND DECREED that the Plaintiff shall recover against the Defendant as to her Complaint in the amount of Four Hundred Ninety Dollars (\$490.00) plus interest at a rate of Ten Percent (10%) from date of this Judgment. Additionally, it is Ordered that this matter shall be set for a hearing on the Monday, the 4th day of November, 1991 at 10:30 a.m. to determine the issue of the amount of attorney's fees to be awarded the Plaintiff.

IT IS SO ORDERED.



Mary Wade Space, Judge

cc: Attorney Schnittke
Attorneys Miller & Nemitz