

THE PAGODA COMPANY

CASE # 76-CV G 1548

PLAINTIFF

VS

DATE: FEB. 25, 1977

DONALD C. SMITH, ET AL

DEFENDANT

JOURNAL ENTRY

Upon consideration of the evidence adduced at trial, and for the reasons set forth in the Findings of Fact and Conclusions of Law, the Court ORDERS, ADJUDGES AND DECREES, as follows:

1. Judgment for defendants, Donald C. Smith and Joseph Sosnowski in the sum of \$175.00, each, said sums to be released to such defendants from, and as a set-off against, the monies on deposit with the Clerk of Cleveland Heights Municipal Court, pursuant to Tenant Rental Application, Case #11.
2. Judgment for defendants, Cheryl L. Beres, Deborah Hand, and Leonard Horowitz in the sum of \$215.00, each; after deduction of escrow costs, the net procee of the monies on deposit with the Clerk of Cleveland Heights Municipal Court pursuant to Tenant Rental Application, Case #8, to be released to such defendants in partial satisfaction of Judgment.
3. Plaintiff to pay costs; upon payment of costs and proof of satisfaction of Judgment for defendants Beres, Hand, and Horowitz, the balance of monies on deposit with Clerk, pursuant to Tenant Renatl Application, Case #11 to be released to plaintiff.

RECORDED THIS 7 DAY OF  
March, 19 77

*Nancy A. Wilkerson*

CLERK OF COURT  
BY *C. Wilson*  
DEPUTY CLERK

KENNETH R. MONTLACK  
Acting Judge

ACTING JUDGE

CLEVELAND HEIGHTS MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO

THE PAGODA COMPANY )

Plaintiff )

vs. )

DONALD C. SMITH, et al. )

Defendants )

Case No. 76-CVF-1548

Judge Kenneth R. Montlack

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

FINDINGS OF FACT

1. Between late 1974 and the last day of trial in the above-entitled action, October 18, 1976, defendants (hereinafter, "Tenants") were tenants in Suites Nos. 301 and 302 at 2705 Hampshire Road, Cleveland Heights, Ohio. At the time of rental, the apartment building was in the process of being renovated by the plaintiff-owner (hereinafter, "Landlord"). Although the Landlord had improved the property substantially prior to rental to Tenants, this process had not then been completed.

2. The Landlord promised the Tenants that renovations and repairs would be completed soon; based on such representations, the Tenants entered into rental agreements with the Landlord at substantial rentals. (The rentals for Suites Nos. 301 and 302 were at \$300.00 per month from November 1, 1975 and September 1, 1975, respectively.)

3. Between late 1974 and August, 1976, the Landlord's management efforts at the building, including its slow response to tenant complaints and limited custodial services, were uneven at best; while several of the Tenants' complaints to the Landlord, and subsequently to this Court, were of an aesthetic nature and/or related to portions of the building's common areas not generally frequented by the Tenants, other more substantial grievances were either unanswered or, after long delay, resulted in less than adequate repairs by the Landlord. Most of the conditions described below existed for periods of several months or longer.

4. Over a period of several months, the Landlord failed to repair properly the building's front entrance locks, basement door locks, and

basement windows.

5. Over a period of several months, the Landlord failed to correct certain other conditions in the basement of the building: to wit, exposed and loose wiring, faulty plumbing, a deteriorated ceiling, and the unsafe and unsightly storage of flammable material. When the deteriorated basement ceiling was finally removed, the resulting rubble remained in the basement for another several weeks. Also, the Landlord failed to repair a defective stair and rail on the building's fire escape. Although neither direct interference with the Tenants' enjoyment of their suites nor physical injuries resulted and the affected areas were not generally frequented by the tenants, such areas remained unsafe and unsanitary while the conditions persisted.

6. For a period of several months, the Landlord, aware that inappropriate and insufficient numbers of refuse receptacles were supplied for the building, failed to correct this situation. Communication problems with the City of Cleveland Heights contributed to the problem, but the proximate cause of the continuous garbage overflow was the Landlord's inaction. As a result, unsanitary conditions persisted in the area of the receptacles, especially during late spring, 1976. The building at 2705 Hampshire Road is subject to rental agreements covering four or more units.

7. The Landlord failed to repair a brick walkway in the building's courtyard until April, 1976. The Landlord contends that such repairs were not possible during the winter of 1975-1976; however, the evidence shows that the disrepair existed prior thereto, and the Landlord's inaction again must be cited as the cause of this unsafe condition.

8. The evidence at trial failed to sustain the Tenants' claims of improperly maintained or unclean laundry facilities, persistent mice problems in the common areas, and alleged failure to remove ice and snow from the driveway. The Landlord acted appropriately to meet the latter condition,

and testimony by some Tenants as to difficulty in negotiating the driveway on certain winter days did not sustain the Tenants' burden in this respect.

9. Similarly, the Tenants' claim that the Landlord failed to repair a faulty pressure valve was rebutted by the Landlord's evidence of timely and appropriate action to maintain the boiler properly.

10. In Suite No. 301, occupied by defendants, Donald C. Smith and Joseph Sosnowski, the following conditions were either not repaired or repaired ineffectively, despite the Tenants' complaints to the Landlord: (a) the front door latch, which jammed intermittently during defendants' tenancy; (b) the windows, which could not be opened or closed fully during the tenancy; (c) a hole in the kitchen wall under an appliance, which provided access to the suite for mice; (d) the loose or improperly fitted connection to the garbage disposal, causing water seepage in the kitchen between April, 1976 and November, 1976. Such conditions caused inconvenience to the Tenants and--in combination with the conditions in the common areas, as described in Findings Nos. 4, 5, 6, and 7--substantially interfered with these defendants' enjoyment of the leased premises, thereby reducing the value of their tenancy in the sum of \$350.00.

11. Although the Landlord (a) failed to repaint the sun room ceiling in Suite No. 301, water-stained as a result of a roof leak occurring in spring, 1976, and (b) failed to redecorate small areas adjacent to a ceiling electrical fixture and shower controls in that suite, such omissions, while affecting the appearance of the suite, did not substantially interfere with these defendants' tenancy.

12. The evidence failed to support the Tenants' claims that the Landlord failed to maintain or repair the plumbing closet access door, a dining room floorboard, or the refrigerator in Suite No. 301.

13. In Suite No. 302, occupied by defendants, Cheryl L. Beres, Deborah Mand, and Leonard Horowitz, the following conditions were either not repaired or ineffectively repaired by the Landlord: (a) various windows

which could not be opened; (b) the bathtub drain, which did not operate properly prior to December, 1975; (c) the kitchen floor, which continued to "peel" during most of such defendants' tenancy; (d) holes in the kitchen wall under appliances, which provided access to mice in the suite; (e) the improperly mounted or uncovered electric outlets in the walls of the suite; and (f) the bathroom wall tiles, which intermittently fell out until June, 1976, resulting in less than sanitary conditions in the bathroom. This conduct caused inconvenience to such Tenants and—in combination with the conditions in the common areas, as described in Findings Nos. 4, 5, 6, and 7—substantially interfered with such defendants' enjoyment of the leased premises, thereby reducing the value of such defendants' tenancy in the sum of \$645.00.

14. In August, 1976 and September, 1976 following, but not necessarily resulting from, various complaints by the Tenants and heated exchanges between the parties, the Landlord notified the defendants of impending rental increases for Suites 301 and 302, from \$300.00 to \$345.00 per month. This 15% increase was offset by proportionately greater increases of building expenses in maintenance, taxes, and utilities during 1976. The notice of increased rents for Suites Nos. 301 and 302 were in line with the rents which the Landlord was receiving on Suite No. 201, a comparable unit in the same building whose tenants were not involved in this litigation. For these reasons, the Court finds that such rental increases were not retaliatory in nature.

#### CONCLUSIONS OF LAW

1. The Landlord violated Revised Code §5321.04(A)(1) in that its conduct, as described in Findings Nos. 4, 5, 6, 7, 10, and 13 violated §§1351.09(a), 1351.13(d), 1351.20, 1351.23(a), 1351.27(b), and 1351.28 of the Housing Code of City of Cleveland Heights, such sections materially affecting the health and safety of tenants, including the defendants herein.

2. The Landlord violated Revised Code §5321.04(A)(2) in that it failed to provide premises fit for the purposes of defendants' tenancy. In so holding, the Court has considered the seriousness of the proven defects, the existence of numerous violations of the applicable housing code, the duration of such defects, the extent of inconvenience suffered by the Tenants, the rental charged upon the premises, and the initial promises made by plaintiff to these defendants. See, e.g., Cavina v. First National Realty Corp., 428 F.2d 1071 (D.C., 1970); Mease v. Fox, 200 N.W.2d 791 (Iowa, 1972); Lewis v. Breeden, 51 Hawaii 426, 462 P.2d 470 (1969).

3. The Landlord violated Revised Code §5321.04(A)(3) in that it failed to keep the common areas of the premises in a safe and sanitary condition.

4. The Landlord violated Revised Code §5321.04(A)(4) in that it failed to maintain various electrical and plumbing fixtures in a good and safe working order.

5. The Landlord violated Revised Code §5321.04(A)(5) in that it failed to provide appropriate waste receptacles and to arrange for their removal.

6. Because the aforesaid condition of the premises substantially interfered with the defendants' beneficial enjoyment thereof, the implied covenant of beneficial enjoyment was breached. In so holding, this Court endorses the rationale expressed in Glyco v. Schultz, 35 Ohio Misc. 25, 33-4 (Sylvania Municipal Court, 1972).

7. The aforesaid breach of duties imposed by law entitles defendants to recover the sum of \$995.00 in compensation for the difference between the rental charged upon the premises and the actual value of the premises during defendants' tenancy, and costs.

Dated: February 24, 1977

KENNETH R. MONTLACK, Acting Judge