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IN THE LYNDHURST MUNICIPAL COURT

CUYAHOGA COUNTY, OHIO

GATEWAY APARTMENTS, Plaintiff,	:	Civil Action Nos. 76-CV-G-725 and 76-CV-G-928
vs.	:	MEMORANDUM ORDER AND OPINION
CHARLES DARRAH, et ux., Defendants.	:	

AVERY S. FRIEDMAN, Special Referee:

I. INTRODUCTION

A. Procedural Background

On January 28, 1976, a Special Referee was appointed by the Court and with the consent of the parties to hear a series of cases under the Ohio Landlord/Tenant Act, Ohio Revised Code §§1923.01, et seq. and §§5321.01, et seq., in which thousands of dollars of rent were deposited with the Clerk of Court of the Lyndhurst Municipal Court by tenants of the Gateway Apartments, situated in Mayfield Heights, Ohio. During the pendency of those actions, two of the rent depositing tenants, Charles and Margaret Darrah, were sued by the landlord, Mentor Lagoons, also known as Gateway Apartments, in an action in forcible entry and detainer and for damages. The Darrahs filed a counterclaim for, *inter alia*. retaliation, asking for damages and seeking trial by jury. On November 29, 1976, a pre-trial was held at which time both counsel consented to the continuing jurisdiction of the Special Referee, pursuant to his appointment by the Court. At that time, the defendants' attorney waived her demand for a jury trial and a previous small claims case was consolidated with the pending claims. The Order, acknowledging jurisdiction

and setting forth an expedited filing schedule was itself filed on December 17, 1976. The parties complied with the schedule. At that time, the defendants' attorney waived her demand for jury trial.

The matter was set for trial on March 15, 1977. Plaintiff, on March 11, 1977, filed an affidavit for disqualification of the Court and of the Special Referee presumably in accordance with Ohio Revised Code §2937.20. Because the affidavit stated no specific grounds for bias of the Judge and that the Judge in any event would not be trying the action here, coupled with the plaintiff's previous consent to the Special Referee's continuing jurisdiction in this specific matter on November 29, 1976, plaintiff's objections were overruled and the case went to trial.

B. Functional Allegations

On December 10, 1976, the plaintiff, Mentor Lagoons (also known as Gateway Apartments), filed an amended complaint in forcible entry and for damages. The landlord asked for restitution, for damages for the difference paid by the defendants and the periodic monthly increase in rent and for alleged unpaid rent, for liquidated damages, and for damages relating to alleged refusal by the tenant to permit inspection of the premises by the landlord.

On December 13, 1976, the defendants filed their answer and counterclaim and, although cryptically pleaded, essentially claim that the defendants' participation in a rent strike motivated the landlord to bring its action to recover possession. The tenants further claim that the landlord maliciously circumvented this Court's Order in refusing to renew the tenants' lease. The tenants' third claim was that the landlord maliciously failed to open the complex's swimming pool on time and that the pool was not available to them for use.

By answer and reply, each of the parties deny the respective functional allegations.

C. Preliminary Rulings

Several causes by the parties may be resolved outright. With respect to the claims of the landlord, the evidence shows that the tenants terminated their tenancy at Gateway in early January, 1977, thereby rendering moot the landlord's first cause of action. Therefore, Count I of the Amended Complaint is hereby DISMISSED. With respect to Count II (unpaid rent), Count III (liquidated damages) and Counts IV and V (inspection damages which the Court will treat as one claim), these will be examined in detail, *infra*. With respect to the three claims by the tenants, we will treat them in reverse order for purposes of organization. Regarding the tenants' claim for denial of the use of the pool, this Court has previously ruled that the pool in fact was opened in timely fashion. The testimony of the witnesses for the landlord and of Mr. Magalotti for the tenants, confirmed our previous finding. With no evidence which persuasively rebuts what appears to show compliance by the landlord regarding the pool, the tenants' third counterclaim must be DISMISSED. The tenants' second counterclaim, that of the landlord's failure to execute a lease, is predicated on an alleged violation of a previous order by this Court. The thrust of the tenants' case in fact was directed to alleged retaliation as the motivating factor; whether or not retaliation was the consideration should be more appropriately treated in the tenants' first cause of action. If there was non-compliance, the Court is empowered to impose sanctions. We are, however, unconvinced that the second counterclaim indeed states a claim upon which relief can be granted to the tenants as a cause of action; and, therefore, it must likewise be DISMISSED. To the extent that retaliation was the cause for what is alleged in the tenants' second claim, we believe would be more properly treated in the first claim within the confines of the Ohio Anti-Retaliation Act, Ohio Revised Code § 5321.02.

II. REMAINING CLAIMS

We therefore come to the substantive claims. The landlord asks for unpaid rent, liquidated damages and damages for inspection refusal. The tenants claim retaliation. We look to the evidence.

III. THE FACTS

Charles and Margaret Darrah were tenants in Apartment G-7 of the Gateway Apartments from September, 1973 to January, 1977. They resided there with their daughter, Michell, now ten years old. The last apparent annual lease executed between the parties ran from 1974 to August 31, 1975 (Plaintiff's Exhibit 1). Provision 25 of the lease sets forth that the lease was to be automatically renewed on an annual basis, extending no longer than 2 years, 11 months, unless either party notified the other forty-five (45) days prior to the new term. Thus, we must determine if either party received such written notice by July 16, 1975 and, if so, what were the terms of the notice. The monthly rent at that point was $210.00. Alternatively, if the tenants did not become lessees by renewal due to a breach, thus converting them to month-to-month tenants, what was the nature of the breach?

Before the July 16th deadline, the tenants' rent was deposited with the Lyndhurst Municipal Court. We hold that the deposit was properly effected pursuant to Ohio Revised Code §5321.07 and §5321.18(C) (Plaintiff's Exhibit 26). The deposit was made on July 3, 1975. Shortly after the deposit, the tenants joined other Gateway residents in a newly-formed Gateway Tenants Association, tenants were notified on July 8, 1975 by the landlord that the deposited rent was not considered as received and therefore was being treated by it as "nonpayment" (Defendant's Exhibit 8).

Tenants for some reason failed to introduce any of the key business records during this early period (June, 1975 - August, 1975) and subsequent records (Plaintiff's Exhibit 8, et seq.) are not too helpful in understanding the sequence of events. However, the evidence is clear from the landlord's July 8th letter that it considered the tenants as having "breached" the lease.

Accordingly, under Ohio Revised Code §5321.17, the landlord was required to provide appropriate notice in order to secure new rental rates since it now considered the tenants, rightly or wrongly, month-to-month tenants. While we are not persuaded that the tenants became month-to-month tenants, *infra,* for purposes of examining whether or not housing retaliation was practiced, we look to see if notice of new rental rates was properly given and, significantly, if the increases were consistent or inconsistent with those of non-depositing tenants.

There is no evidence that the landlord provided a non-renewable notice on July 16, 1975 and therefore both parties were compelled to comply with payment and acceptance of $210.00 per month. Even if we were to accept the premise that the tenants were on a month-to-month tenancy, the new rent, $225.00, could have been imposed for the first time at the earliest at a point thirty (30) days at the commencement of the next rental period, or September 1, 1975. See Ohio Revised Code §5321.17. Indeed, the landlord's official rolls reflect that in September, 1975 (Plaintiff's Exhibit 8), their rent was jumped from $210.00, under the lease, to $250.00, as month-to-month tenants.

The September, 1975 roll is revealing for it reflects rents during the heat of the rent strike by Gateway Tenants Association members, including the Defendants. A roster of rent depositers (Defendant's Exhibit 9), when cross-referenced to the rent roll shows that non-depositers who had been month-to-month tenants or whose leases had

expired were generally charged $225.00 (e.g. Costanze, Wolf, Puleo, E. Hiller, DeFazio, Killebrow), but for those who did deposit and whose leases expired or who were depositing, those tenants, including the defendants, were charged $250.00 (e.g. Varanese, Cima, Gennaro, Darrah, Gilbert, Mumick). The only exceptions to this clear pattern were two non-depositing month-to-month tenants, Moore and Tawyea, both of whom were still charged less than depositers and tenants Goodnight, Snyder and Roche who were "starred" and otherwise distinguished. The remaining rent rolls extending up to and through the end of the rent strike do little if anything to distinquish the stark disparity during the time when emotions ran the highest over conditions at Gateway and over the formation of the Gateway Tenants Association (see memoranda and opinions previously filed and docketed with the Court). Nor are we persuaded that the attempted equalization months later did anything to justify the validity of the September, 1975 figures.

Notes kept in the landlord's diary and calendar entered during this period are further helpful. An entry by the landlord on August 29, 1975 (Defendant's Exhibit 37) notes that the tenants were depositing. Likewise, the landlord entered this information again (Defendant's Exhibit 36) shortly thereafter. The landlord was asked if the tenant here was in fact current as of August 31, 1975, to which he replied: "I have no reason to believe he wasn't."

What transpired subsequent to this period was an incipient struggle between the parties: First, by the landlord to press for the tenants to leave, by a series of progressively growing statements of indebtedness (Defendant's Exhibits 1 - 7) and on the further grounds that Mr. Darrah was known to have associated with persons having "criminal" propensities; and second, by the tenants to seek continued clarification from the landlord as to how they could maintain this tenancy by signing a lease which deviated from its "standard form". Whatever events occurred after the initial increases and attempted conversion by the landlord of the tenants to month-to-month tenancy are

of limited persuasion in an attempt to vitiate the disparity.

The Court need not resolve whether the refusal to execute a new lease under the circumstance constitutes retaliation. While the statute expressly addresses itself to this question (Ohio Revised Code §5321.02) the Court's focus need not be directed necessarily to events after the rent strike ceased. Indeed, whether retaliation was or was not practiced need not be resolved if the Court finds unlawful disparities in treatment prior thereto. Mr. Darrah, when asked on cross-examination about discussions with the landlord during this vital period, testified that he discussed with the Plaintiff and was told he could continue under a lease only if he would release his deposited funds and drop out of the tenants' association.

Mrs. Ellen Parker, the landlord's secretary since June, 1973, testified that she recalled conversations with Mr. Darrah about a lease in September, 1975. She explained that month-to-month tenants were charged $25.00 more than the current standard lease provided. On cross-examination, she was asked why some of the non-depositers were not charged in accordance with this practice and she responded that they were somehow "overlooked" or that there were perhaps lease negotiations pending. At one point Mrs. Parker stated that the difference was due to "accounting costs". No evidence of such costs was shown and we find her testimony, taken as a whole, substantially lacking in credibility.

Likewise, while irrelevant to the question of retaliation, we note that the landlord's notice requirements to the tenants insofar as rent increases were concerned, namely the increases to $260.00, $300.00 and to $350.00, were served *only one week* before rent was due - according to Mrs. Parker. We again need not decide if such tactics were indeed part of a retaliatory scheme. Thus, the Defendants never received proper notice under Ohio Revised Code §5321.17. This fact, of course, bears significantly on the amount.

The evidence regarding subsequent efforts to terminate

the tenants due to suspected criminal activities and associations, while legally sound in theory, are unimpressive. The testimony of Mr. Swope, the landlord's maintenance man, elicited nothing of probative value. Likewise, Mrs. Swope, the superintendent, offered no more than speculation about the causes of vandalism at Gateway and some observations of Mr. Darrah's presence at Gateway since March, 1976 in which she testified that she personally was afraid of him.

The testimony of John F. Magalotti provided barely a scintilla of relevance to the instant case. Mr. Magalotti, a former Gateway tenant and Gateway Tenants Association President, lapsed into numerous moments of forgetfulness and was otherwise antagonistic and uncandid. He added little to either the landlord's or tenants' case and seemed more concerned with avoiding the landlord's inquiries than in revealing the facts.

During the final cross-examination of Mr. Darrah, he admitted not having paid his last month's rent.

Mrs. Darrah testified that her family moved due to "harassment", rent increases and the effect the alleged retaliation had on her and her family.

B. The Law

There is no case in ohio jurisprudence to date which provided guidance on the question of retaliation in the landlord/tenant context and we are therefore faced with a matter of first impression.

Retaliation in the landlord/tenant relationship can be defined as a landlord's disparity in treatment of a tenant, caused by tenant's exercise of a protected right. Thus, if an eviction or rent increase were to be instituted by a landlord *where he has not otherwise*

instituted action save for one reason relating to the exercise of a protected right (e.g., engaging in tenant union activities or rent depositing), the landlord's conduct would be improper. Indeed, some courts have held such conduct to be retaliatory and therefore improper. *Schweiger v. Superior Court*, 3 Cal. 3d 507, 90 Cal. Rptr. 729, 476 P. 2d 97 (1970); *S.P. Growers Association v. Rodriguez*, 131 Cal. Rptr. 761 (1976).

In the best known landlord/tenant retaliation case, *Edwards v. Habib*, 397 F.2d 687, *cert. denied* 393 U.S. 1016 (1968), Judge Skelly Wright explained that the "[e]ffectiveness of remedial [landlord/tenant] legislation will be inhibited if those reporting violation of it can legally be intimidated". In *Portnoy v. Hill*, 57 N.Y. Misc. 2d 1097, 294 N.Y.S. 2d 278 (1968), similar to the facts here, the understanding was that if a tenant would cease his "rent strike", no action would be taken by the landlord. Such an understanding would clearly be prohibited under Ohio Revised Code §5321.02.

The landlord, up to the enactment of the 1974 Ohio Act, could legally employ the most reprehensible of tactics if a tenant were to engage in tenant union actions. Retaliation, by eviction or rent increases or service decreases, was one of the "most frightening problem[s]." Note, The Use of the Federal Remedy to Bar Retaliatory Eviction, 39 Cin. L. Rev. 712, 713 (1970). Such retaliation is, of course, now prohibited. Previous engagement in what are now statutory rights such as forming tenant unions or of rent depositing, meant sure termination. Yet, no Ohio court has considered the implication of retaliation as a tenant's cause of action until now.

Ohio, of course, has long held generally that retaliation

has no place in the law. For example, intimidation of witnesses is statutorily prohibited. Ohio Revised Code §2917.07. In *L'Orange v. Medical Protective Co.*, 294 F.2d 57 (6th Cir. 1974), the United States Court of Appeals, relying on Ohio Law, prohibited the termination of insurance coverage where the insured had testified in a malpractice suit. Indeed, the United States Supreme Court, even absent an express statute, noted that citizens can express grievances, by rent deposit as here, or otherwise:

> The right of a citizen [to] inform. . . of a [perceived] violation . . . arises out of the creation and establishment [of] the Constitution itself . . .

In *re Quarles and Butler*, 158 U.S. 532, 536 (1895). In effect, if a tenant fears a rent increase or an eviction for complaining or depositing, the statute is a shield of no substance.

How much proof must there be in order to show retaliation? In labor cases, for example, the courts have held that disparity in treatment for union activity need not be the sole motive. In *National Labor Relations Board v. Whittin Machine Works*, 204 F. 2d 883, 885 (1st Cir. 1953), the court held:

> In order to supply a basis for inferring [retaliation] it is necessary to show that one reason for the discharge is that the employee was engaged in protected activity [emphasis added].

See also, *A. P. Green Fire Brick Co. v. N.L.R.B.*, 326 F. 2d 910, 916 (8th Cir. 1964); *N.L.R.B. v. Howe Scale Co.*, 311 F. 2d 502, 505 (7th Cir. 1963).

Closer to landlord/tenant cases, we look to federal housing discrimination cases and observe judicial utilization of the same standard. *Smith v. Sol D. Adler Realty Co.*, 436 F. 2d 344

(7th Cir. 1970) ("There is no room in the law for 'partial' discrimination"); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 97 S. Ct. 555 (1977). Indeed, even if there are otherwise legitimate reasons to increase rent or terminate a tenancy, if disparity in treatment due to the exercise of a protected right is a resultant factor, retaliation is established.

While we believe the quantum of proof should likewise apply in landlord/tenant cases, we also believe the concept of the prima facie case is a proper one. In *Robinson v. Diamond Housing Corporation,* 463 F. 2d 853 (D.C. Cir. 1972), the Court wrote:

> It is commonplace, however, that a jury can judge a landlord's state of mind only by examining its objective manifestations. Thus when the landlord's conduct is inherently destructive of tenants' rights or unavoidably chills their exercise, the jury may, under well recognized principles presume that the landlord intended this result. (citations omitted). [O]nce the presumption is established, it is then up to the landlord to rebut it by demonstrating that he is motivated by some legitimate business purpose.

We are constrained to consider the argument that the rent increases or eviction action were the "signals" to the tenants that they were no longer wanted, due to criminal associations and the attendant vandalism at Gateway. We conclude that this argument is merely a ruse in an attempt to justify retaliation.

While any person is entitled to indulge in his "suspicions" and while a landlord has, of course, broad discretion in determining the type of tenant he chooses to admit and maintain, within the confines of the law, little prohibits consideration of "criminal" propensities in admission, particularly when it is evident that such

considerations are uniformly applied. Defendants argue that using past criminal activity as a criterion discriminates against a "class", presumably those previously convicted of a crime. This argument has no significant legal importance here and the defendants have been unable to cite any authority - statutory or decisional - which would support this argument.

We look, however, to the facts here with respect to the plaintiff's contention that the termination was not retaliatory, but rather based on the landlord's suspicions of criminal activity. Plaintiff argues - and persuasively so - that, assuming the defendants were periodic tenants as plaintiff has contended, a landlord would need no reason to terminate a tenancy; in this case, his suspicions regarding Mr. Darrah's past conduct and his associations with persons being investigated by the F.B.I., along with outbreaks of arson and vandalism on the premises, led him to file the eviction suit. Whether or not the basis for that eviction action is sensible or rational is not for this court to say. What we must look to is, even with what would otherwise be a groundless yet legally sufficient, reason for the landlord's action, if an additional reason, proved by a preponderance of the evidence, was by objective standards, retaliatory. We are convinced that such an additional reason existed here.

Thus, if we employ the legal principles, *supra,* the plaintiff failed to rebut the disparate factors in the rent rolls and the additional reason fo retaliation is established.

To confirm this conclusion, the United States Supreme Court has recently given direction on how to determine whether an improper purpose, such as retaliation, plays a role. The facts show

that the normal procedural sequence in establishing rents for non-rent depositers was not followed for rent depositers during the emotional peak of the rent strike. In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 97 S.Ct. 555, 564 (1974), the Court taught:

> Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role. Substantive departures too may be relevant, particularly if the factors usually considered important by the decision maker strongly favor a decision contrary to the one reached.

The serious question of damages once retaliation has been proved is one presently unresolved under this citation. We look to the functional section of the law which provides in pertinent part:

> Ohio Revised Code §5321.02(3):
>
> [T]he tenant may recover from the landlord actual damages together with reasonable attorneys' fees.

The evidence leaves us persuaded that out-of-pocket expenses, if any, were nominal. But in order to understand what the General Assembly meant in providing for an award of "actual" damages, we use our previous definition of retaliation. The Anti-Retaliation Act itself provides no definition and the definition section of the Ohio Landlord/Tenant Act, Ohio Revised Code §5321.01, is likewise silent.

Retaliation is, however, by its nature intentional conduct and tortious. The United States Supreme Court has characterized the disparity in housing opportunities as a "dignitary tort". *Curtis v. Loether*, 415 U.S. 189, 195-96 n. 10 (1974). Much in the line of housing discrimination, housing retaliation "[m]ay also be likened to an action for defamation or intentional infliction of mental distress." *Curtis, supra* at 195. Ohio Revised Code §5321.02 provides for recovery for the

statutory tort of retaliation. Such torts "clearly contemplate redress of the emotional and psychological injury" as appeared here by the testimony of Mrs. Darrah. *Rogers v. Exxon Research & Eng'r Co.*, 404 F. Supp. 324, 333 (D.N.J. 1975), *rev'd on other grounds* 550 F. 2d 812 (3rd Cir. 1977).

In addition, retaliation is a statutory tort and thus violation of the statute is a compensable incident. In *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 239 (1969) the Supreme Court wrote that:

> "[t]he existence of a statutory right implies the existence of all necessary . . . remedies [including] damages."

The practicalities of damages to victims of retaliation compel proper judicial perspective. Retaliation is a dignitary tort, requiring the trier of fact to hear evidence as to the personal effect retaliation has had. Such damages are clearly actual. Ohio Revised Code §5321.02 is meant to guard Ohio tenants from the obstruction of their "civil rights" to live free from the limited retaliatory prohibitions outlined in the statute. In this context, this "right", when violated, is measurable in damages. In addition to out-of-pocket and other clearly discernible expenses, the court must assess the dignitary obstructions a retaliation victim has endured as part of actual damages.

Accordingly, the Darrahs have incurred damages, as the result of the retaliation practiced by the landlord and, based upon their testimony, shall recover an amount of $450.00 as fair and adequate damages.

In addition, the Anti-Retaliation law expressly provides

for the recovery of attorney fees. While the statute appears to be discretionary at first blush, we are again reminded of the Supreme Court's teachings regarding attorney fees provisions in public interest statutes such as this. In *Marr v. Rife,* 503 F. 2d 735, (6th Cir. 1974), another housing case, the Court recognized that such fees should be encouraged.

Thus, it is apparent that the statute without the award of the fees, will be of little inducement to the practicing bar to prepare and to advocate comprehensively on behalf of tenants. Therefore, a policy favoring an award of attorneys fees should be encouraged.

Having resolved the question on the grant of reasonable fees, we must now look to the standard in an award. Particularly in the relatively new field of housing disparity litigation, lawyers must know how courts will consider their efforts. Certainly "[i]f a straight 'hours expended' approach were to be adopted in cases such as this, the result would be to grant a 'blank check' to the . . . attorneys." *Adams v. Hemstead Heath Company,* Civil Action No. 75-C-810, P-H E.O.H. Rptr. ¶18.4 (March 9, 1977). Judge Pratt, writing in *Adams* expressed the obvious:

> "[s]lavish adherence to the time clock approach cannot be the only test of a just award." [Emphasis added].

Attention must be paid to our Court of Appeals' pronouncement in *Swanson v. Swanson,* 48 Ohio App. 2d 85 (1976). While *Swanson* was more concerned with the potential of abuse arising out of domestic relations litigation, we have here actions governed by statutes expressly providing for an award of fees.

In her testimony, defendant's counsel contended that she is entitled to $60.00 per hour based on her experience, years in

practice and reputation in the legal community. Her statement of professional services rendered [Defendant's Exhibit 43], reflects over 60 hours presumably on this scale. We acknowledge that counsel was obliged to prove her case in an area of relatively untested waters; yet, it would have been of great aid to the court to have been provided with authority in considering these difficult issues. In fact, tenants' counsel provided the court with virtually no persuasive authorities and compelled substantial independent research in order that justice be served. Therefore, in considering all the reasons above, we believe that a fair, reasonable and appropriate fee under all the circumstances in proving portions of the counterclaim would be Three Hundred Fifty Dollars.

C. Final Claims

The defendants' admission that their final month's rent was not paid directs that the landlord is entitled to payment. For the reasons previously set forth with respect to the existing lease and the defective notices, judgment is granted on Count II of the complaint against the defendants in the amount of Two Hundred Ten Dollars.

With respect to Count III, recovery under the liquidated damages clause, we are drawn to Ohio Revised Code §5321.14, which provides in pertinent part:

> (A) If the court as a matter of law finds a rental agreement, or any clause thereof, to have been unconscionable at the time it was made, it may . . . enforce the remainder of the rental agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

While a clause to be unconscionable is one which shocks the conscience or otherwise reflects a gross inequity in bargaining power, it may very

well be that the landlord's liquidated damages clause --- adding a penalty to a breaching tenant where other conventional remedies exist --- would indeed be unconscionable. However, the above provision is governed by a subsequent section requiring the challenger to give the enforcing party a "reasonable opportunity to present evidence as to its setting, purpose and effect. . ." Ohio Revised Code §5321.14(B). Here, the tenants although contending unconscionability, completely failed to comply with sub-division (B) and, in the absence of evidence to the contrary, the clause is enforceable here. Accordingly, consistent with the lease,plaintiff is granted judgment on Count III against the defendants in the amount of Two Hundred Ten Dollars.

Finally, the related Counts IV and V with respect to alleged damages relating to inspection are unsupported by the evidence and are DISMISSED.

CONCLUSION

Although developments in litigation under the Ohio Landlord/Tenant Act are still in their infancy, it is apparent that the lack of definitive judicial interpretation of the various sections of the Act continue to cause landlord and tenant alike confusion and consternation in reference to their respective rights and obligations. Increasingly, the search for guidance ultimately turns to judicial resolution and the courts must respond unhesitatingly.

Because of the increasing difficulty in securing safe, sanitary and reasonably priced housing, tenancies cannot be treated as summarily today as in the past when legitimate claims exist. We recognize the very broad powers of the landlord and the summary nature of eviction actions, where proper. However, the law cannot and does not sanction retaliation for --- as the United States Supreme Court has taught:

> Our courts were never intended to serve as rubber stamps for landlords . . ., but rather to see that justice be done before a man is evicted from his home. *Pernell v. Southall Realty,* 416 U. S. 363, 385, 94 S. Ct. 1723, 40 L. Ed. 2d 198 (1974).

The Anti-Retaliation law, the unconscionability protections, reasonable inspection sections and the many other segments of the Ohio Landlord/Tenant Act are some of the important new public interest statutes governing the relationship of landlord and tenant and have been provided by the General Assembly to insure that, indeed, justice is done.

IT IS SO ORDERED.

AVERY S. FRIEDMAN
Special Referee

IT IS SO APPROVED.

WILLIAM E. AURELIUS
Judge

Entered this 22nd day of August, 1977.

Syllabus

GATEWAY APARTMENTS v. CHARLES DARRAH, et ux.

[Cite as Gateway Apartments v. Darrah (1977), ___ Ohio Misc. 2d ___.]

Landlord/Tenant---Rent Deposit---R.C. 5321.07---Termination Notice---R.C. 5321.17---Retaliation---R.C. 5321.02---prima facie---presumption of retaliation, when---departure from normal procedure---damages---attorney's fees---unconscionable clauses---R.C. 5321.14.

Mr. Albert C. Nozik, for plaintiff

Ms. Mildred R. Schad, for defendants.

(Nos. 76-CV-G-725 and 76-CV-G-928)

Landlord instituted action in forcible entry and detainer and increased rent after tenants commenced rent depositing under Ohio Landlord/Tenant Act. Landlord's rent rolls showed higher rent increases to tenants and other rent depositers, creating presumption of retaliation. Presumption not rebutted due to tenant's alleged "criminal" propensities. Victims of retaliation can recover damages and fees under the Act. Liquidated damage provision in rental agreement a penalty and unenforceable as unconscionable.