

IN THE CLEVELAND HEIGHTS MUNICIPAL COURT

CUYAHOGA COUNTY

JAMES GILL)

AND)

JAMIE ROSE)

PLAINTIFFS)

VS)

LEWIS ZIPKIN & ASSOCIATES)

DEFENDANT)

CASE NO. 78-LLT 88

COURT'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW
BASED ON REFEREE'S FINDINGS OF
FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1) Defendant is the owner of an apartment building located at 2713 Hampshire Road, in Cleveland and is a Landlord within the purview of Chapter 5321 of the Ohio Revised Code. The Plaintiffs were Tenants in Apt. #1 at 2713 Hampshire during the periods in question and paid \$295.00 per month in rent. (The Court notes that one Plaintiff may have moved from the premises before Jan. 19, 1979. The move is irrelevant since all matters herein apply jointly to the tenants.)

2) On January 19, 1978 a winter storm blew in several windows of at least 2 units of the apartment building causing snow and cold to enter the premises. This forced the tenants to vacate the premises and find other shelter for three weeks while temporary repairs were made.

3) After the temporary repairs were made, nothing further was undertaken in the way of permanent repairs to the apartment unit.

4) On July 31, 1978 the Tenants served a notice on the Landlord pursuant to O.R.C. 5321.07 containing a list of apartment defects, including the windows. Among the other defective items were the refrigerator, missing screens, hole in bathroom floor, broken front door lock, defective screen door, storm damaged interior doors and door frames, defective radiator valve, broken kitchen light fixture and defective bathroom tile. The Court find the windows were the most serious item in need of repair since they were not weather tight.

5) On Sept. 1, 1978 some of the repairs were completed from he stated

list but several of the defects, including the windows, were not remedied and the Tenants deposited their rent in the amount of \$295.00 with the Clerk of Court pursuant to O.R.C. 5321.07.

6) All of the defective conditions, except the window repairs were corrected in September, 1978.

7) The Tenants continued monthly rent depositing in the amount of \$295.00 until January, 1979.

8) The window repairs were completed on January 19, 1979, exactly one year after the windows were blown in.

9) The parties have entered into a settlement agreement for rent deposits after January, 1979 which are not now at issue.

CONCLUSIONS OF LAW

This matter comes before the Court on the Landlord's Motion for Release of Rent Held in Escrow pursuant to O.R.C. 5321.09 and 5321.10 and Tenants' Motion for Reduction in Rent pursuant to O.R.C. 5321.07. Landlord's claim that Tenants monthly rent depositing with the Clerk of Courts from September, 1978 to January, 1979 was in bad faith pursuant to O.R.C. 5321.09 (D) is also before the Court as an inseparable issue which must be considered by the Court in deciding whether the Tenants rent depositing was lawful and therefore as one factor in deciding whether the Landlords are entitled to the release as required by O.R.C. 5321.09 and 5321.10.

The findings of this Court are that:

1) The Landlord violated the obligations imposed upon him by O.R.C. 5321.04 (A) with regard to the conditions contained in the Tenant July 31, 1978 notice; specifically the defects violating O.R.C. 5321.04 (A) were the lack of weather tight windows, broken windows, defective refrigerator and missing screens, broken front door lock, hole in bathroom floor, defective screen door, storm damage to interior door frame and doors, defective bathroom tile and broken radiator valve.

2) As a result of the Landlord's failure to repair the conditions complained of in the notice served upon the Landlord by the Tenants on July 31, 1978 and required by the O.R.C. 5321.04 (A), Tenant is entitled to damages pursuant to O.R.C. 5321.07 (B) and 5321.12.

3) Tenants' rent deposits between September, 1978 and January, 1979 were procedurally proper and were made in good faith. Landlord has failed to show any of the four required factors for a O.R.C. 5321.09 (D) bad faith claim that:

A) There was no reasonable belief by the Tenants of violations of O.R.C. 5321.04 (A) conditions, the rental agreement or possible violations of other building, housing or health codes.

B) The conditions at issue were the result of acts or omissions of the Tenants.

C) The Tenants acted maliciously with the intent of causing the Landlord harm.

D) The Landlord was actually harmed as a direct and proximate consequence of the Tenants' actions.

Absent all of these factors no action for bad faith exists.

Landlord's contention that the rent depositing was in bad faith since some repairs were made is contrary to the letter and spirit of O.R.C. 5321.07. First, Landlord's admission of its failure to make some repairs within the Tenants' thirty day notice is an acknowledgment of the Tenants' reasonable belief of defective conditions. The rent depositing provisions of O.R.C. 5321.07 give Landlords ample time to repair conditions and a failure to make repairs within said time for whatever reason permits the Tenant to seek the review of a Court. The Landlord is then also provided an opportunity for an impartial review of the repair situation.

Secondly, Tenants' oral complaints and Landlords' knowledge of the major defective conditions for some six months prior to the thirty day written notice is constructive notice as to the conditions. The purpose of Chapter 5321 would be nullified if a Landlord were able to claim bad faith rent depositing after more than half a year of ignoring a serious situation. Landlord's claims against Tenants for bad faith rent deposits under O.R.C. 5321.09 (D) are dismissed.

4) Tenants are awarded damages for loss of the beneficial use and value of their suite as a result of Landlord's failure to comply with O.R.C. 5321.04 in the amount of: A) 15% of the rental for September, 1978 or \$43.50 since

several items including the windows were not repaired after notice, B) - 10% of the rental for October, 1978 or \$29.00 since the windows were not repaired, C) 20% of the rental for November, 1978 or \$58.00 since the windows were not repaired and the need for weather tight windows significantly increased with the deterioration of weather conditions, D) 20% of the rental for December, 1978 or \$58.00 for the reasons set forth in "C", and E) 25% of the rental for January, 1979 up to and including January 19, 1979 or \$45.03 for reasons set forth in "C". The Tenants total award is \$233.53 with costs to the Landlord.

5) This award is made pursuant to O.R.C. 5321.07 (B) (2) and O.R.C. 5321.12 as previously interpreted by this Court in the case of The Pagoda Co. vs. Donald C. Smith, et al., Cleveland Heights Municipal Court Case No. 76-CV-F 1548 (unreported), aff'd. Ct. Appeals' Eighth District, Case No. 17936 (unreported), and further supported by Laster vs. Bowman, 52 Ohio App. 2d 379 (1977)

6) Tenants state on pages 6 and 7 of their brief that they are not attempting to recover prenotice (notice of July 31, 1978) damages in the way of rent reduction pursuant to O.R.C. 5321.07 (B) 2 and therefore the Court does not consider this issue.

7) Tenants claims for further damages to personal property, for retaliation, for breach of contract and all other claims by either of the parties are reserved for further consideration by this Court.

The Landlord's further requested that the Court release pursuant to O.R.C. 5321.09 and 5321.10 the balance of those funds deposited by Tenants pursuant to O.R.C. 5321.07.

8) This Court as a legislative creation has those powers conferred by statute. Under O.R.C. Chapter 1901, specifically O.R.C. 1901.13 (1), the Court has the power "to control and distribute all property...levied upon or seized by any legal process issued by the Court, which may come into the hands of its officers."

9) Where, as in this case, funds are deposited with the Court pursuant to statute, the Court controls and preserves those funds pending a determination of all legal and equitable remedies necessary or proper for a complete determination of the rights of the parties.

10) To further buttress this position, O.R.C. 1923.061 was enacted by the legislature simultaneous with Chapter 5321 of the Ohio Revised Code

O.R.C. 5321.07, allowing rent deposits, and O.R.C. 5321.12, which allows Tenant to recover damages, should be read in conjunction with O.R.C. 1923.061 which also authorizes Tenants to counterclaim when the Tenants are sued for possession. Specifically, O.R.C. 1923.061 authorizes the court in its discretion to order rent deposit during the pendency of the action.

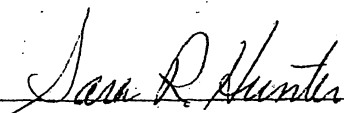
In an action for possession of residential premises based upon nonpayment of the rent or in an action for rent when the Tenant is in possession, the Tenant may counterclaim for any amount he may recover under the rental agreement or under Chapter 5321. of the Revised Code. In that event the court from time to time may order the Tenant to pay into the court all or part of the past due rent and rent becoming due during the pendency of the action. After trial and judgment, the party to whom a net judgment is owed shall be paid first from the money paid into court, and any balance shall be satisfied as any other judgment. O.R.C. 1923.061 (B). (Emphasis added.)

11) In the case at bar, the Tenants' filing of a complaint against the Landlord and the depositing of rent with the Court is analogous to a counterclaim and rent deposit by Tenants specified in O.R.C. 1923.061.

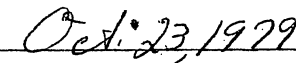
12) Section 5321.09 (C) mandating full release of the balance of rent on deposit to the Landlord would only be applicable when: A) the Landlord files an application for the release of rent; B) the Court finds that the condition contained in the notice has been fully remedied; and C) these are related claims on the part of the Tenant pending before the Court. The Court would always consider the Landlord's request for partial release of rent if there is a demonstration of legitimate need, as required by O.R.C. 5321.10. There has been no such demonstration of need in this case.

13) The Court, for the reasons set forth, overrules Landlord's motion for release and will retain the balance of those funds on deposit pending resolution of all claims of the parties.

14) It is further ordered that a trial be set on all remaining issues within the next 60 days.



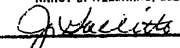
SARA R. HUNTER, JUDGE



DATE

JOURNALIZED THIS 31 DAY OF Oct. 19 79

NANCY S. WELGHANS, CLERK OF COURT

BY  DEPUTY CLERK