

FREMONT MUNICIPAL COURT

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FREMONT, OHIO

JUDGE J. J. ...

FRUNCE

RICHARD FRUNCE

Plaintiff

v.

THERESA MILLER

Defendant

CONTRACTOR IN BACK RENT AND DAMAGES

Case No. 50-CV-1277

DECISION AND JUDGMENT ENTRY

This matter was tried to the court upon plaintiff's amended complaint, defendant's answer and counterclaim. Plaintiff claimed the amount of two hundred forty-two dollars (\$242.00) for back rent, and four hundred fourteen and 10/100 dollars (\$414.41) for damages repaired at the termination of the tenancy. Defendant's counterclaim was based upon a failure of the landlord to provide reasonable amounts of hot water, reasonable amounts of water and providing facilities that were not in working order including a stove and refrigerator. Defendant also claimed that the premises were insect infested and claimed a loss of seventy-five dollars (\$75.00) per month for ten (10) months or damage in the amount of seven hundred fifty dollars (\$750.00).

The parties stipulated that rent was due and owing in the amount of two hundred forty-two dollars (\$242.00) and that the defendant had deposited with the plaintiff the amount of one hundred seventy-five dollars (\$175.00) as a security deposit all of which was retained by the plaintiff and credited to the damage claim of the plaintiff.

Testimony established that the lease required defendant to have the carpet commercially cleaned which was admitted as not having been done at the time of the termination of the tenancy. Based upon the evidence and testimony presented, the court finds that there was damage beyond normal wear and tear to furniture in the amount of forty dollars (\$40.00) claimed by the plaintiff. Further, the court finds that miscellaneous repairs were necessary resulting from damage to a kitchen curtain, the plastering of a lamp fixture hole in the ceiling, replacement of a light fixture rock, damage to the back kitchen door screen, a hole in the bedroom hardwood floor, absence of knobs on a dresser drawer in a bedroom and the damage to a gasket at the cupboard door, all of which items including the failure of the tenant to return the keys for the premises amounted

to forty-five dollars (\$45.00). The court further finds that the plaintiff failed to establish its claim in the amount of sixty-eight and 15/100 dollars (\$68.15) for repainting the premises. Nor did the plaintiff establish its burden or proof on its claim for twenty-five (\$25.00) for labor and materials for repairing a table. There was disputed testimony concerning the replacement of box springs and mattresses and damage to the used box springs for which plaintiff was claiming twenty-five dollars (\$25.00) for the used items and one hundred fifty-nine and 90/100 dollars for the new box springs and mattresses. Therefore, the claim of the plaintiff for one hundred fifty-nine and 90/100 dollars (\$159.90) for two box springs and two mattresses is denied as is the claim for sixty-eight and 15/100 dollars (\$68.15) for wall repainting and the table repair.

As to the defendant's counterclaim the court finds that there was at least six instances of complaints relating to insufficient hot water and the resulting of the need of the defendant to use other facilities for washing. Likewise there was inadequate lack of water supply to the premises of the defendant. As to the claim of insect infestation, the court finds that the plaintiff exercised reasonable efforts to maintain a monthly exterminating service for the facilities and, therefore, denies that portion of the defendant's counterclaim. The court finds that the defendant was without a proper functioning stove and proper functioning refrigerator, that the defendant had complained concerning the amount of hot water and the water to the premises and despite the absence of specific complaints relating to a malfunctioning stove and refrigerator, the testimony established that the defendant installed her own stove and refrigerator when the facilities provided were working improperly.

The court, therefore, concludes that plaintiff has been damaged in the amount of three hundred sixty-nine dollars (\$369.00) for back rent due, carpet cleaning, furniture cleaning, and miscellaneous repairs and the amount due plaintiff less the one hundred seventy-five (\$175.00) deposit is a total of one hundred ninety-four dollars (\$194.00). As to other matters claimed by the plaintiffs the same are denied and judgment is granted to the defendant as to those other items.

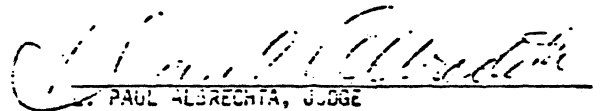
In view of the fact that the court finds that the defendant prevailed on its claim of a failure to provide adequate heat and reasonable amounts of

- 3 -

not water and that complaints were made on at least five occasions as admitted by the plaintiff and the defendant claimed that this occurred three or four times each month and based upon the testimony that a half of dozen complaints were made relating to the water, the court awards to the defendant on her counterclaim the amount of ten dollars (\$10.00) per day for six days and general damages in the amount of one hundred dollars (\$100.00) for failure to provide a properly working stove and refrigerator.

IT IS, THEREFORE, ORDERED that except as set forth herein above plaintiff's claims are denied except to the extent of one hundred ninety-four dollars (\$194.00) due and owing for damage which includes the credit of one hundred seventy-five dollars (\$175.00) deposited by the defendant; that the defendant's counterclaim is denied except as set forth above and that the said defendant's damages are the amount of one hundred sixty dollars (\$160.00) on her counterclaim.

Costs are to be taxed one half to each party.


PAUL ALBRECHT, JUDGE

Kathleen M. Shannon, Attorney for Defendant
John F. Hall, Attorney for Plaintiff