

FILED

CIVIL DIVISION

SEP 13 1984

PAINESVILLE MUNICIPAL COURT
~~Michael A. Cicchetti~~

IN THE PAINESVILLE MUNICIPAL COURT
LAKE COUNTY, OHIO

| | | |
|-----------------------------|---|------------------------------|
| WILBERT L. HALE | * | CASE NO. 84 CIV G 1128 |
| Plaintiff | * | ACTING JUDGE ROBERT ROSPLOCK |
| -v- | * | |
| JESS PEASE and SHARON PEASE | * | <u>JUDGMENT</u> |
| Defendants | * | |

This matter was heard on September 4 and 10, 1984, upon the Complaint in forcible entry and detainer, the defendants' Answer, their Counterclaim seeking damages for disrepair of the premises, and the plaintiff's reply to the Counterclaim.

By agreement of the parties it is found that there is no issue with respect to the plaintiff's prayer for restitution of the premises inasmuch as the premises have been condemned by the Lake County General Health District as unfit for human habitation and the defendants intend to vacate them as soon as possible.

Upon the evidence presented on the issues of the counterclaim it is found that the plaintiff failed in his duty to maintain the premises in good repair and in safe and habitable condition as required by Section 5321.04 of the Ohio Revised Code, that while he has a right to withdraw the premises from the rental market instead of repairing them and says he intended to do so, he inconsistently continued to demand, collect, and receive rent from the defendants up to September 1, 1984, the rent for August, 1984 having been deposited in court pursuant to Section 5321.07 of the Revised Code of Ohio.

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Upon expert opinion evidence presented by the defendants it is found that in their present condition the fair rental value of the premises is \$100.00 per month, that if the premises were repaired it would be \$200.00 per month, and that the impairment of rental value by reason of disrepair therefore is \$100.00 per month. It is found further that the premises have been substantially in their present condition since the water lines broke on December 23, 1983, that there is no evidence as to the fair rental value of the premises before December 23, 1983; that the plaintiff had timely notice of the major elements of disrepair or in the exercise of ordinary care in fulfilling his responsibilities as landlord should have known of them; and that the plaintiff failed to repair the defects.

While the plaintiff has argued that the defects in the premises have been caused by the defendants he has not so pleaded, either in his Complaint or by any amendment of it proffered to this Court, and there has been no evidence that the damages were caused by the defendants. Therefore the Court makes no finding as to whether or not the defects in the premises were caused by the defendants, and expresses no opinion as to whether or not the plaintiff may take up that issue in a separate action, in view of the fact that the answer and counterclaim was filed and served before August 28, 1984, the date originally set for trial, and in light of the provisions of Section 1923.081 of the Revised Code of Ohio.

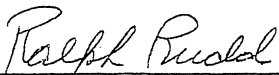
It is found that the defendants have been damaged by the disrepair of the premises, that the correct measure of damages is the impairment of fair rental value thereby, that the proven impairment of fair rental value is \$100.00 per month since January 1, 1984; and that the defendants owe the plaintiff \$35.00 as a pro rated portion of the \$100.00 fair

rental value for September, to date, which will be offset against the damages due to the defendants.

WHEREFORE it is ORDERED, ADJUDGED, and DECREED that the plaintiff shall have restitution of the premises, that the defendants shall have judgment against the plaintiff in the amount of \$765.00, that the \$200.00 rent deposited in the court by the defendants shall be released to them and credited upon that judgment, and that the plaintiff shall pay the costs of this action.

JUDGE

APPROVED:



Ralph Rudd
Attorney for Defendants