



Hamilton County Municipal Court

ALMS & DOEPKE BUILDING
222 E. CENTRAL PARKWAY
CINCINNATI, OHIO 45202

JUDGE
JACK ROSEN

(513) 632-8625

October 15, 1985

Charles W. Isaly, Esq.
22 W. Ninth Street
Cincinnati, Ohio 45202

Ronnie E. Dixon, Esq.
901 Elm Street
Cincinnati, Ohio 45202

RE: Paul Wallpe vs. Nadine McCurdy, Case No. 84CV36081

Gentlemen:

I have reviewed the pleadings, exhibits and testimony in the above noted action and find as follows:

FINDINGS OF FACT

1. Mr. Wallpe is the owner of the premises located at 208 East Thirteenth Street, Cincinnati, Hamilton County, Ohio (stipulated).
2. Mrs. McCurdy was a tenant in said premises under the federal Section 8 program.
3. Mrs. McCurdy executed a lease for the period October 1, 1982 through September 30, 1983 for apartment #3 at a rental of \$300.00 per month, of which sum she was liable for \$57.00 of the monthly rental and Mr. Wallpe received the sum of \$243.00 in subsidy.
4. Subsequent to entry into apartment #3, Mrs. McCurdy moved into apartment #2 in the same premises.
5. Mrs. McCurdy entered into a second lease with Mr. Wallpe for the period of October 1, 1983 through September 30, 1984 for apartment #2 at the same rental rate, but her subsidy was reduced to \$242.50 and she was liable for the monthly sum of \$57.50.
6. Upon moving from apartment #3 to apartment #2, certain tenant-caused damages were found which resulted in a balance in the security deposit of \$87.00 after deduction of the agreed upon amount of damages.
7. Mrs. McCurdy was given credit by Mr. Wallpe for all payments she made or which was paid on her behalf.

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8. That after all credits, Mrs. McCurdy was in arrears for her share of the monthly rental in the sum of \$355.00 at the expiration of the first year's lease and \$425.00 additionally at the expiration of the second year's lease for which no timely claim was made by Mr. Wallpe.

9. Mrs. McCurdy paid no rent for the months of October, November or December, 1984.

10. No Section 8 subsidy was payable for the months of October, November or December, 1984 because of the refusal of Mr. Wallpe to make necessary repairs required by C.H.M.A. for certification of the premises and by order of the City of Cincinnati Building Department.

11. Numerous building orders were issued by the City of Cincinnati during the second lease period for apartment #2 which were not complied with until after Mrs. McCurdy vacated the premises.

12. That pursuant to agreement of the parties entered of record on December 26, 1984, Mrs. McCurdy vacated the premises on or about January 5, 1985.

13. At no time did Mrs. McCurdy follow the provisions of the Ohio Landlord-Tenant Act relative to notice of defects in writing or escrow her rental payments.

14. City of Cincinnati's Building Code violations were found to exist in the subject premises and orders issued on May 25, 1983, which orders were not complied with upon subsequent inspection of March 23, 1984.

15. On March 23, 1984, the City Inspector, Mr. David Schneider, found fourteen (14) violations of the City's minimum standard, including seven (7) in Mrs. McCurdy's apartment.

16. Orders based upon the March 23, 1984 inspection were issued to Mr. Wallpe on March 29, 1984.

17. That inspections of the premises by Mr. Schneider on April 9, 1984, April 20, 1984 and June 22, 1984 revealed that Mr. Wallpe had not complied with the orders of March 29, 1984 and on September 13, 1984, a second set of building orders was issued.

18. Mr. Schneider received complaints from Mrs. McCurdy about water closet, roaches and mice.

19. Mr. Richard Valerius, housing inspector for C.H.M.A., inspected Mrs. McCurdy's apartment during 1984 and sent a list of needed repairs to Mr. Wallpe.

20. Mrs. McCurdy complained to Mr. Valerius of mice and rats and he found evidence of roach infestation, although none of mice or rats.

21. Mr. Wallpe sent a professional exterminator to Mrs. McCurdy's apartment to spray and traps were supplied for mice and rats.

22. Mrs. McCurdy's housekeeping habits left much to be desired.

23. That on September 27, 1983, Mrs. McCurdy agreed that the apartment was acceptable, signed acceptance and Section 8 certification of her apartment was granted.

24. Problems with apartment #2 began after Mrs. McCurdy moved in.

25. That as a result of the conditions of apartment #2, the rental value was diminished commencing June, 1984, the court finding that sixty (60) days is a reasonable time within which the repairs required by building orders issued on March 29, 1984 should have been completed.

CONCLUSIONS OF LAW

1. Plaintiff, not having pled nor prayed for damages to the apartment, is precluded from recovery for such damages as defendant may have caused which are beyond reasonable wear and tear.

2. Plaintiff, by his own actions, precluded Section 8 certification on and after October 1, 1984 and can make no claim for the difference between defendant's portion of the monthly rental and the previously agreed rental price.

3. Plaintiff is entitled to set-off the \$87.00 security deposit against the claimed rent due.

4. That the value of the leased premises was diminished by one-third during the period commencing June 1, 1985 and defendant is entitled only to a reduction in her portion of the rent paid, HUD not being a party to this action.

5. That plaintiff is entitled to rent in the sum of \$114.99 for the period October, November and December, 1984; the further sum of \$6.39 for the five (5) days in January, 1985 together with rent owed prior to October 1, 1984 in the sum of \$72.33, a total of \$193.71.

6. Defendant is entitled to a credit of \$87.00, representing the balance of her security deposit toward the sum found due to plaintiff.

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7. Judgment should be entered in favor of plaintiff in the sum of \$106.71 and costs.

Plaintiff's motions are overruled.

Please present an Entry in accordance with the court's ruling on or before October 31, 1985.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jack Rosen".

Jack Rosen
Judge

JR:pg