

IN THE MEDINA MUNICIPAL COURT

MEDINA COUNTY, OHIO

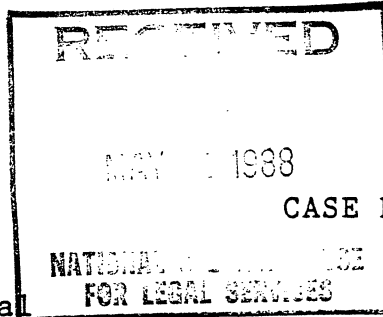
ANNE OAKES

Plaintiff

-VS-

STEVE BUFFALOHEAD, et al

Defendants



CASE NO. 87 CVG 01011

FINDING AND RECOMMENDATION OF REFEREE

This matter came on for hearing on the second cause of action on the 5th day of January, 1988, before Referee Walter H. Hay.

The Court finds that the parties agreed as to the ownership of the property and that a three (3) day notice had been delivered to the Defendants. Plaintiff testified that the Defendant called her and wanted to rent her house in Brunswick. Defendant is her niece. Defendant told Plaintiff that while the house was in a very bad condition, it could be made livable. She called back later and told Plaintiff that she could live there as long as it was fixed up according to the Hills Trustee's. She told Defendant she wanted Two Hundred Seventy Five Dollars (\$275.00) a month rent for it and that she would put on a new roof, which Plaintiff did do. The man did fix the roof and did not do the other work he was suppose to do at the house. The Defendant moved in in September of 1986. Plaintiff says she told Defendant that nothing more was to be done unless she approved it. Defendant wanted a new furnance, but Plaintiff did not have the money, so she would not get it. Plaintiff says that Defendant made many repairs without her knowledge. Defendant never paid Plaintiff

any rent at all. The agreement was not in writing. Plaintiff knew when she rented it that there was no water and that the electric wires had been taken out of the house in most rooms. Plaintiff stated she never contacted Defendant about the rent and never went out there after Defendant moved in. Plaintiff did have a meeting with the Trustees over the house. The house had stood vacant since the mid 1970's. Plaintiff was aware that Defendant had a phone, but never called her about the rent.

The Defendant said she looked at the house in July of 1986, and that the house was delapidated and much had to be done with it to make it habitable. She told her Aunt that it could be repaired, and that despite the damages, it was a sound home. Defendant found a capenter in Orrville who would work on house. She had to transport him back and forth, as he was Amish and did not drive. Her Aunt signed a contract with the carpenter, Mr. Mast. Her Aunt said that the rent would be Two Hundred Seventy Five Dollars (\$275.00) a month and that Defendant could put in repairs and when the repairs were paid for by Defendant, she would then pay the rent to Plaintiff. Defendant moved in in September, 1986 to prevent vandalism. She commenced doing clean up around the premises and took from four (4) to six (6) pickup loads of trash to Millersburg to dump it. It cost her Fifteen Dollars (\$15.00) roundtrip each time for gas. She and six (6) to seven (7) others worked six (6) to eight (8) hours a day for two (2) weeks to clean up premises. Defendant felt this was part of the rent payment. She placed a value of Four Dollars (\$4.00) an hour on their labor. She never told her Aunt the amount of labor she was performing. Defendant testified that she paid Two Hundred Dollars (\$200.00) cash to a friend to come over and tear out two porches. She had to drive him back and forth to Millersburg three (3) times. She

did not do any work for a couple of months because there was no heat. The newspapers ran an article about her, then some people volunteered to help her. Some of them put in a chimney so she could get heat at no cost to her. She testified to taking paint off in the bathroom and that she had to buy a heat gun for Twenty Five Dollars and Ninety Eight Cents (\$25.98) and zip strip to remove paint, etc. Cost Twenty Five Dollars (\$25.00) a gallon for it and she got three (3) gallons. She took two (2) weeks on bathroom forty to fifty (40-50) hours at Four Dollars (\$4.00) an hour labor. She bought plastic tub enclosure for Fifty Dollars (\$50.00). Eighteen Dollars and Fifty Cents (\$18.50) for bathroom supplies to finish it. Also, paid Thirty Two Dollars (\$32.00) for electric boxes. She gave one of the volunteers Four Hundred Dollars (\$400.00) to get supplies for the house. She got this money from loans. She had three (3) more gallons of zip strip to remove paint in other rooms. She spent two (2) to three (3) hours removing floor tile. She sealed the basement walls for One Hundred Twenty Dollars (\$120.00) for ten (10) gallons of sealer. She purchased three (3) wire brushes at Three Dollars (\$3.00) each and took thirty five (35) hours to do the sealing. She spent twelve (12) hours getting rid of carpenter ants with a group and six (6) hours more herself. She cleaned two (2) carpets and it took six (6) bottles of cleaning solution at Twelve Dollars (\$12.00) a bottle. She did call her Aunt once about furnance being on sale but her Aunt did not have the money. She fixed wall in the back of the garage.

Darrell Sigmon, Building and Zoning Inspector for the Brunswick Hills Township testified about the problems there and his volunteer work in helping Defendant. The house was never officially condemned, as the Township did not have that power in

1985. He stopped there after the new roof was put on and talked to Defendant. There was no running water and the chimney had not been put through the new roof or the sewer vents. The well was not working at that time. He personally got people involved and got volunteers to help her. He ran wiring and got the water working. He got a furnace donated and the windows fixed. A kitchen stove was donated. He stopped working when the FED was filed.

Defendant and her family worked fifteen (15) hours filling in dirt where the new water lines were installed at Four Dollars (\$4.00) an hour. She had son take in bricks for chimney for eight (8) hours and one and one-half (1½) hours for help to install furnace. She also had four (4) hours work to take out windows to be fixed.

Defendant says that Plaintiff never asked her for rent. Defendant says there was no agreement about the maximum amount of repairs that should be credited against the rent.

The following statutes apply to this case.

1923.01 R.C. (C)(5) and 5321.01 R.C. state Rental agreement means any agreement or lease, written or oral, that establishes --- the terms, conditions --- concerning the use or occupancy of premises by one of the parties to the agreement.

1923.02(A) Proceedings under this chapter may be had as follows:

(2) Against tenants in possession under an oral tenancy, who are in default in the payment of rent as provided in division (B) of this section.

(B) If a tenant holding under an oral tenancy is in default in the payment of rent, he forfeits his right of occupancy, and the landlord may, at his option, terminate the tenancy by notifying the tenant, as provided in section 1923.04 R.C. to leave the premises -

5321.06 A landlord and a tenant may include in a rental agreement any terms and conditions, including any terms relating to rent, the duration of the agreement --- that are not inconsistent with or prohibited by chapter 5321 R.C..

5321.17 The landlord may terminate or fail to renew

a month to month tenancy by notice given the at least thirty (30) day prior to the periodic rental date.

(C) This section does not apply to a termination based on the breach of a condition of the rental agreement or the breach of a duty and obligation imposed by law.

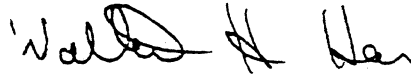
I find that there was an oral agreement pursuant to 1923.01 (C)(5) and that under 5321.06 R.C., the parties could include any terms they wished in their agreement, and that the parties did agree that the Defendant could live in the premises, and fix it up as payment towards the rent of Two Hundred Seventy Five Dollars (\$275.00). I find that it stretches the imagination that Defendant would pay Two Hundred Seventy Five Dollars (\$275.00) to Plaintiff for the premises in its then condition, and find that Defendant did agree to fix it up, and to use that, as a credit, against the Two Hundred Seventy Five Dollars (\$275.00) rent. This was corroborated by her mother. Therefore, since there was no duration of the term agreed upon, the term would be a month to month rental at Two Hundred Seventy Five Dollars (\$275.00) a month, with an offset of whatever Defendant expended, or labor performed by her and her family. She testified that she spent in labor and material a total of One Thousand Six Hundred Sixty Four Dollars and Fifty Cents (\$1,664.50) for her work in fixing up the home. The Referee feels that the volunteer work should not be counted for the purpose of rent. The only question before the Court on an FED is the right of possession (Kuhn v. Griffin 3-OA 2nd 195) (Egner v. Egner 24 OA 3rd 171). Unfit condition of the premises is not a matter of defense in an FED unless it is a retaliatory conduct of landlord. The Plaintiff is entitled to a reasonable rental of the premises and that reasonable rental was established by the parties at Two Hundred Seventy Five Dollars (\$275.00) a month less the repairs and their fair value. The total rental

for the eighteen (18) months that Defendant has been there is Four Thousand Nine Hundred Fifty Dollars (\$4,950.00) as is readily apparant, the rental far excéeds the value of the materials, and labor testified to by the Defendant herself and for which she had not one receipt.

The Referee finds that Defendant was behind in the total rent owed at the time this action was filed and Plaintiff therefor is entitled under 5321.17 R.C. to terminate the occupancy upon a three (3) day notice, which she did do.

The failure of the Plaintiff to ask for rent prior to the time of filing the action is not a defense to the action.

I recommend that an order of restitution be granted Plaintiff.



WALTER H. HAY, REFEREE