IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

VALARIE L. PEAKE	)	CASE NO. 88 CVG 2325
	)	
PLAINTIFF	)	JUDGE COLOPY
	)	
v.	)	
	)	**RULING ON MOTIONS**
RAYMOND T. THROWER	)	**AND ORDER**
	)	
DEFENDANT	)	

This case is before the Court on (1) defendant's motion for new trial dated March 15, 1989; and (2) plaintiff's motion for release of funds from escrow filed April 3, 1989.

The basis of the new trial motion are the contentions that:

1. The judgment is not sustained by the weight of the evidence.

2. The judgment is contrary to law.

3. That the defendant, through unfortunate circumstances was not able to present a proper defense and put on his necessary evidence at the trial because he was advised by his attorney that it was not necessary for him to be personally present at the trial. See affidavit attached hereto.

Addressing the second ground referred to above, the Court refers first to a holding in Prescott v. Makowski (1983), 9 Ohio App. 155. In that case the Court of Appeals for Cuyahoga County held that a landlord had a duty to send the tenant the itemized list of deductions required by R.C. 5316(b) where the tenant has failed to supply that address in writing and but where the landlord had actual knowledge of the tenant's new address. In Waldemyer Enterprises v. Bolek (May 28, 1987), Tuscarawas App. No. 86-100070, unreported, it was held that a reasonable belief that "the tenants could be contacted through a local business" was not sufficient to impose the duty on

the landlord to send the itemized notice to the tenant. The Court ruled that the statute did not impose a duty on landlords to exercise reasonable efforts to locate former tenants.

If this Court were to adopt the holding in Bolek, it would still find that defendant had a duty to send the itemized list in a timely fashion to plaintiff's attorney. Plaintiff's attorney was representing her in litigation with defendant regarding the premises prior to plaintiff vacating the premises in late June, 1988. An itemized list of deductions (Plaintiff's Exhibit 3) was sent to plaintiff's attorney by a letter dated August 12, 1988. This was not timely under R.C. 5321.16(B). No effort at all was required by defendant to find an address at which plaintiff could receive items relating to the premises. The second ground asserted for granting a new trial is without merit.

The Court finds that its judgment is supported by the weight of the evidence. The first ground asserted for granting a new trial is without merit.

With regard to the third ground the Court notes thast the trial proceeded with the concurrence of defendant's attorney and a defense was presented. The Court finds that the third ground asserted for granting a new trial is without merit.

With regard to defendant's motion for release of funds from escrow, the Court finds that it is not appropriate to order release of the funds at this time among other reasons because this case is still subject to appeal.

The defendant's motion for a new trial filed March 16, 1989, is DENIED.

The plaintiff's motion for release of funds from escrow filed April 3, 1989, is DENIED.

IT IS SO ORDERED.

Robert H. Colopy
Judge

cc: Ms. Ruth A. Gibson, Attorney for Plaintiff
Mr. Michael McGowan, Attorney for Defendant

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

VALARIE L. PEAKE PLAINTIFF v. RAYMOND T. THROWER DEFENDANT	)	CASE NO. 88 CVG 2325 JUDGE COLOPY **OPINION AND ORDER SETTING HEARING ON ATTORNEY FEES**

COLOPY, J.

This case concerns leased premises located at 339 Parkwood Avenue, Akron, Ohio. Plaintiff was the tenant and defendant was her landlord under a lease of the premises, which lease has since expired. Plaintiff has not lived there since June of 1988.

The history of this case goes back to March of 1988 when plaintiff was ordered to pay her rent of $240.00 a month into court. She had invoked the provisions of R.C. 5321.07 which permit a tenant to pay rent into court until the landlord makes requisite repairs.

The matter which came on for trial before the Court on February 2, 1989, was the plaintiff's claim under supplemental pleadings filed August 25, 1989. Both parties were represented by counsel. Plaintiff seeks to recover under the provisions of R.C. 5321.16(B) for defendant's failure to neither timely return to her her security deposit of $240.00 nor timely provide her with an itemized list of proper deductions from the security deposit. It is undisputed that defendant never provided plaintiff with an itemized list of deductions from the security deposit. Defendant contends that his failure to provide plaintiff with such an itemized list was caused by the failure of

plaintiff to provide him with a forwarding address in writing as required by R.C. 5321.16(A).

The defendant knew at least March 1988 an address to which an itemized list should have been sent. That is plaintiff's attorney, Ms. Gibson's address of the Western Reserve Legal Services. The case at bar was an ongoing one. Defendant did have a proper mailing address to which he should have sent the itemized list of deductions from the security deposit. His failure to do so render him liable for damages for an amount equal to the amount he wrongfully withheld from the security deposit. The Court finds that the defendant has failed to prove that he was properly entitled to deduct anything from the security deposit of $240.00. Defendant is liable to the plaintiff on the claim before the Court: (1) for the security deposit of $240.00; (2) an additional amount equal to the amount wrongfully withheld from the security deposit—which is 100 percent of the security deposit, to-wit: $240.00; (3) reasonable attorney fees in connection with this claim.

Plaintiff is entitled to a judgment on her claim in the amount of $540.00 plus reasonable attorney fees. A hearing will be held to determine reasonable attorney fees. Once these fees are determined, the Court will enter a judgment for a total amount of $540.00 plus the determined amount of reasonable attorney fees.

The hearing on attorney fees will be held on March 9, 1989, at 2:30 p.m.

IT IS SO ORDERED.

Robert H. Colopy
Judge

cc: Ms. Ruth A. Gibson, Attorney for Plaintiff
Ms. Debra S. Shifrin, Attorney for Defendant