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IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

WILLIAM A. PETERSON DBA
JEM INVESTMENT COMPANY
5212 WARRENSVILLE CENTER

VS. PLAINTIFF

RUTH WALKER
11118 HARVEY AVENUE
CLEVELAND, OHIO 44104

DEFENDANT

)CASE NUMBER 89 CVG 27148

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)LANDLORD-TENANT

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)REFEREE'S REPORT AND RECOMMENDATION

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This case beginning May 23, 1990 and adjourned to July 12, 1990, before Referee Paul J. Tuffin, to whom this case was assigned by Judge William H. Corrigan, pursuant to Ohio Civil Rule 53, to take evidence on all issues of law and fact, including plaintiff's claim for alleged unpaid rent and defendant's counterclaim.

Plaintiff and defendant in court with counsel.

REFEREE FINDS:

1. Pursuant to oral month-to-month agreement in 1987, defendant (tenant) took occupancy of premises located at 11118 Harvey Avenue, upon paying a security deposit of Three Hundred Eighty-Five Dollars (\$385.00), the monthly rental rate.
2. Plaintiff filed a Forcible Entry and Detainer complaint on September 25, 1989 alleging non-payment of rent. 1st cause hearing on October 16, 1989 ordered defendant to vacate the premises within ten days (10). Defendant filed answer and counterclaim alleging uninhabitable dwelling, seeking damages and rent abatement.
3. Plaintiff and defendant testified at trial beginning

May 23, 1990, each presenting supporting witnesses, including City of Cleveland Housing Inspector. Multiple photos, repair receipts, housing code violations and other documents were introduced into evidence by litigants.

CONCLUSION OF LAW AND FACT:

Defendant vacated the cited premises on December 6, 1989, having last paid the agreed monthly rental of Three Hundred Eighty-Five Dollars (\$385.00) for June 1989. There is no waiver of tenant's obligation although the person entitled to received rent is not readily ascertainable, if ultimately the person entitled is established by a preponderance of the evidence. This view comports with the Doctrine of Unjust Enrichment.

Ohio Revised Code 5321.04, obligations of landlord states in pertinent part:

(A) A landlord who is a party to a rental agreement shall:

(1) Comply with the requirements of all applicable building, housing, health, and safety codes which materially affect health and safety;

(2) Make all the repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by him;

(6) Supply running water, reasonable amounts of hot water and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the

within the exclusive control of the tenant and supplied by a direct public utility connection.

Some of the violations cited on City of Cleveland report of November 10, 1989, by their very nature, can reasonably be considered to have pre-existed. The occupancy of defendant which began in October 1987. Some of these include drain or waste lines to lavatory deteriorated and leaking, exterior foundation in need of pointing, interior ceilings contain loose or deteriorated materials and interior wall cracks.

The evidence does show that plaintiff expended considerable effort and resources in making repairs and was generally responsive to defendant's requests for repairs. Although this may be a factor in mitigation, the evidence shows that plaintiff failed to comply with the obligations of Ohio Revised Code 5321.04.

Damages must be founded on evidence. Lovelady v. Rheinlander 66 OA 409, 20 O OPS 342, 34 NE 2nd 788.

Based on the evidence of record, abatement of rent of One Hundred Dollars (\$100.00) per month from October 1987 to December 1989 is in order for total abatement of Two Thousand Six Hundred Dollars (\$2,600.00). From this is deducted unpaid rent at the rate of Two Hundred Eighty-Five Dollars (\$285.00) per month (\$385-\$100 abatement) from July 1989 to December 1989, which equals One Thousand Four Hundred Twenty-Five Dollars (\$1,425.00), for net rent overpaid of One Thousand One Hundred Seventy-Five Dollars (\$1,175.00) by defendant.

The evidence shows that defendant suffered emotional distress due to defendant's failure to comply with Ohio Revised Code 5321.04, although no medical evidence has been adduced to buttress this allegation.

Notwithstanding the attempted repairs of plaintiff, it has been established that defendant suffered considerable emotional distress traceable to plaintiff's failure to comply with the cited statute in the amount of Five Hundred Dollars (\$500.00).

JUDGMENT

- (A) Judgment for defendant on plaintiff's complaint.
- (B) Judgment for defendant against plaintiff of One Thousand Six Hundred Seventy-Five Dollars (\$1,675.00) plus costs and interest from date of judgment on counterclaim.

RECOMMENDED: _____

PAUL J. TUFFIN
HOUSING COURT REFEREE

APPROVED: _____

JUDGE WILLIAM H. CORRIGAN
HOUSING COURT
CLEVELAND MUNICIPAL COURT

SERVICE

A copy of the Referee's Report was sent by ordinary United States mail to the Plaintiff's Attorney Neil Myers, 26111 Brush Avenue, Euclid, Ohio, 44132 and to the Defendant's Attorney Stephanie M. Jackson, 5715 Woodland Avenue, Cleveland, Ohio 44104 this _____ day of July 1990.

WM. CORRIGAN JUL 23 1990
IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE REFEREE'S REPORT MUST BE IN WRITING WITHIN FOURTEEN (14) DAYS OF FILING AND MUST COMPLY WITH THE OHIO RULES OF PROCEDURE AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

RECOMMENDED: _____

PAUL J. TUFFIN
HOUSING COURT REFEREE

APPROVED: _____

JUDGE WILLIAM H. CORRIGAN
HOUSING COURT
CLEVELAND MUNICIPAL COURT