

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

EUGENE MILLER)	CASE NUMBER 90 CVG 31902
P.O. BOX 37019)	
MAPLE HEIGHTS, OHIO 44137)	
)	
PLAINTIFF)	
)	
VS.)	<u>LANDLORD-TENANT</u>
)	
ROBIN & GARY GAGE)	
5924 CABLE)	
CLEVELAND, OHIO 44105)	
)	
DEFENDANT)	
)	<u>REFEREE'S REPORT AND RECOMMENDATION</u>

This case came on to be heard on February 27, 1991, before Referee Anthony A. Walsh, 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.

FINDINGS OF FACT

Plaintiff not in court.

Defendant in court with counsel.

The parties agreed to a tenancy at 5924 Cable Avenue, Cleveland, Ohio, for a rental of Three Hundred Dollars (\$300.00). The agreement included an attic. The attic was found to be unfinished.

The defendant took possession of the premises on May 15, 1990. In August, 1990, the rent was reduced to Two Hundred Forty Dollars (\$240.00) because the attic was unusable for the purpose for which it was rented. The defendant occupied the reduced space with her husband and three children.

Rent was paid through October, 1990. On November 12, 1990, a 3-day

notice to vacate the premises was served on the defendant. A complaint in Forcible Entry and Detainer was filed on November 16, 1990 alleging as a second cause the non-payment of rent for the month of November, 1990.

On December 6, 1990, defendant filed a Motion for Order to prohibit rereental under O.R.C. 1923.15 citing violations of O.R.C. 5321.04. The order was granted on December 21, 1990.

On December 7, 1990, an agreed entry was filed declaring that the defendant and her family would move out on December 17, 1990.

An answer and counterclaim was filed on December 17, 1990, alleging a breach of contract by a violation of O.R. C. 5321.04 caused by several code violations. The court's order of December found the following facts:

1. An electrical fixture is hanging from its conductor in a bedroom.
2. Electrical outlets are missing covers.
3. The smoke detector has no battery.
4. The unit is infested with roaches.
5. The kitchen sink fixture is pulled away from the sink.

The defendant asked for a reduction in rent in the amount of Seventy-Five Dollars (\$75.00) per month on the first counterclaim.

On the second counterclaim, the defendant pleads negligence per se on the landlord's part for the violations of the statutorially imposed duties of O.R.C. 5321.04. In support of her claim, the defendant has offered photos of the premises. Defendant's Exhibit s 1-16. They show a hanging light fixture in her son's bedroom; a littered front yard; a broken smoke detector; an opening in a wall leading to an unsecured vacant part of the structure; rust stains on a wall and floor from a leaky sky light; a missing cold water faucet which allows roaches to venture into the living and sleeping quarters; bullet holes in the windows; unfinished paint applications; flaking paint in dining room which forced the defendant and her family to take their meals in the living

room. There is also a missing light in a window in the living room.

The structure has only one thermostat serving both apartments. The bullet holes in the windows (Defendant's Exhibit 9) are evidence of racially motivated shootings. The defendant and her family are African-Americans.

The security deposit was not returned to the defendant nor was the defendant notified within 30 days of charges against the deposit. R.C. 5321.16 (B). Failure to do so results in damages double the amount wrongfully withheld plus reasonable attorneys fees. R.C. 5321.16 (C).

The court finds that counsel spent 5 hours on this case in court at a claimed rate of One Hundred Ten Dollars (\$110.00) per hour. The court finds the rate claimed to be reasonable.

The court finds the plaintiff to have been negligent in allowing the conditions complained of to exist. The existence of only one thermostat for two dwelling units allowed another tenant to control the temperature in the suite occupied by the defendant. A cold water tap was dry in violation of R.C. 5321.04 (A)(6). The numerous other deficiencies warrant a finding that the dwelling was not habitable by any standard. Such inaction on his part renders the plaintiff liable in damages to the defendant.

See Shroades v. Rental Homes, Inc. 68 Ohio St. 2d 20, 427 N.E. 2d 774 (1981).

Defendants Motion to Amend Counterclaim to conform to the evidence is granted.

RECOMMENDATION

it

On plaintiff's 2nd cause of action/is dismissed for want of prosecution.

On defendant's first counterclaim, judgment for defendant in the amount of Six Hundred Dollars (\$600.00).

On defendant's second counterclaim in the amount of Three Hundred Twenty Dollars (\$320.00).

On defendant's claim for damages for negligence, judgment awarded in the amount of One Thousand Dollars (\$1,000.00).

On Plaintiff's failure to return security deposit, judgment for defendant in the amount of Six Hundred Dollars (\$600.00) and attorney's fees of Three Hundred Eighty-Five Dollars (\$385.00).

RECOMMENDED: Anthony Walsh
ANTHONY A. WALSH
HOUSING COURT REFEREE

APPROVED: William H. Corrigan
JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING COURT

SERVICE

A copy of the Referee's Report was sent by ordinary United States mail to the plaintiff Eugene E. Miller, P. O. Box 37019, Cleveland, Ohio 44105 and to the Defendant's Attorney, Barbara A. Reitzloff, 5715 Woodland Avenue, Cleveland, Ohio 44104 this 22nd day of April 1991.

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: Anthony Walsh
ANTHONY A. WALSH
HOUSING COURT REFEREE

APPROVED: William H. Corrigan
JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING COURT