

IN THE CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO  
HOUSING DIVISION

CLIFFVIEW MANOR APARTMENTS	)	CASE NUMBER 91 CVG 11203
1901 CLIFFVIEW ROAD, #105	)	
CLEVELAND, OHIO 44121	)	
	)	
PLAINTIFF	)	
	)	
VS.	)	<u>LANDLORD-TENANT</u>
	)	
FREDRICK AND KENNETH JEFFERSON	)	
15590 FOREST HILL BLVD.	)	
CLEVELAND, OHIO 44112	)	<u>REFEREE'S REPORT AND</u>
	)	<u>RECOMMENDATION</u>
DEFENDANT	)	

This case came to be heard on February 18, 1991, before Referee Barbara A. Reitzloff, to whom this case was assigned by Judge William H. Corrigan, to take evidence on all issues of law and fact regarding plaintiff's second cause of action.

Plaintiff in court without counsel.

Defendants in court without counsel.

FINDING OF FACT

A number of facts in this case are undisputed:

1. In approximately November, 1990 defendant Kenneth Jefferson began to occupy the rental premises located at 1901 Cliffview Road, Suite 103, Cleveland, Ohio, as a tenant of the plaintiff pursuant to a written rental agreement. That agreement was admitted into evidence as plaintiff's Exhibit 1.

2. Defendant Fredrick Jefferson is named as a party to the lease in that agreement, which was signed by both defendants.

3. In approximately February, 1991, plaintiff transferred Kenneth Jefferson to a new rental unit ("Rental premises"), located at 1849

Cliffview Road, #101, Cleveland, Ohio.

4. Pursuant to the rental agreement, rent for the premises was fixed at the rate of Three Hundred Thirty Dollars (\$330.00) per month.

5. Defendants paid plaintiff a security deposit of Two Hundred Fifty Dollars (\$250.00).

6. The rental premises was rented to the defendants as a furnished unit.

7. Defendants last paid plaintiff rent for the premises for the month of March, 1991. Plaintiff refused to accept rent after that period due to the anticipated filing of this eviction action.

8. This court granted plaintiff judgment on the first cause of action on May 20, 1991, and awarded plaintiff an immediate move out. Defendants vacated the rental premises on or about May 21, 1991, returning the keys to the premises to plaintiff.

In addition to these undisputed facts, plaintiff's witness, Richard Morgan, testified to the following:

9. Mr. Morgan manages the premises for the plaintiff.

10. Mr. Morgan testified that he inspected the premises both prior to and after defendants' occupancy.

11. Mr. Morgan testified that defendants caused the following damages beyond normal wear and tear, for which the following charges were made:

- |   |  |
|---|--|
| A. dirty tub  | Twenty Five Dollars (\$25.00)                    |
| B. dirty oven   | Ninety Five Dollars (\$95.00) apartment cleaning |
| C. freezer not defrosted (included in apartment cleaning) |  |
| D. bathroom sink  | Fifteen Dollars (\$15.00)                        |
| E. broken dresser   | One Hundred Dollars (\$100.00)                   |

F. marks on walls, damage to walls    One Hundred Twenty Dollars  
(\$120.00)

G. hole in door                            Forty Nine Dollars (\$49.00)

H. stains on carpet                        Thirty Dollars (\$30.00)

I. torn shades                             Thirty Dollars (\$30.00) for pair

J. couch springs broken, couch torn    Two Hundred Fifty Dollars  
(\$250.00) replacement cost

12. Regarding the carpet, he testified that the carpet would have been cleaned after defendants move out regardless of the condition it was left in by defendants.

13. Mr. Morgan submitted a bill for replacement of furniture, including the couch, dresser, lampshades, and a number of other pieces, for a total of Six Hundred Ninety Two Dollars and Twenty Nine Cents (\$692.29). Mr. Morgan was unable to explain the basis for replacement of pieces other than the three mentioned specifically above.

14. Mr. Morgan produced a photograph of the door allegedly damaged by defendants.

15. Mr. Morgan also produced photographs of the stove, refrigerator, and tub allegedly left in poor condition by the defendants.

In addition to the undisputed facts set forth in paragraphs 1-8, defendants testified as follows:

16. Defendant Kenneth Jefferson testified that the photographs presented by plaintiff were not photographs of the rental premises. He further testified that he and his father, defendant Fredrick Jefferson, left the stove, refrigerator and tub in the cleanest possible condition when they vacated. He testified that the tub was stained when he took occupancy of the premises.

17. Defendant Fredrick Jefferson testified that the apartment was left in a clean, damage-free condition.

18. Defendant Fredrick Jefferson moved to dismiss plaintiff's complaint based upon double jeopardy. This motion was denied.

#### CONCLUSIONS OF LAW AND FACT

There is little, if any, dispute regarding the amount of rent unpaid by defendants. The parties agree that no rent has been paid for the month of April, 1991 and the period from May 1, 1991 through May 21, 1991. While plaintiff seeks to recover late fees, plaintiff testified that the rent would not have been accepted for those months if offered. To award late fees under those circumstances would be tantamount to awarding plaintiff a rent increase of Twenty Five Dollars (\$25.00) per month, which this court will not do. Accordingly, plaintiff has established his entitlement to damages for unpaid rent in the amount of Five Hundred Sixty One Dollars (\$561.00). (\$330.00 April 1991 + \$231.00 prorated May 1991 rent) Plaintiff's claim for damages to the premises is more problematic. Revised Code 5321.05 provides that:

(A) A tenant who is a party to a rental agreement shall do all of the following:

(1) Keep that part of the premises that he occupies and uses safe and sanitary;

(2) Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;

(6) Personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying defacing, damaging or removing any fixture, appliance, or other part of the premises;

(7) Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliances supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement.

Plaintiff's testimony regarding the tub, stove and refrigerator is credible, despite defendants' protestations that the photographs are not of the premises. Accordingly, plaintiff is entitled to damages in the amount of Ninety Five Dollars (\$95.00) on this claim for defendants' violation of Revised Code 5321.05 (A) (2) (cleaning beyond normal wear and tear).

Regarding the carpet cleaning, plaintiff himself testified that the carpet would have been cleaned as a matter of practice regardless of the condition it was left in by defendants. Accordingly, plaintiff cannot be said to have suffered damages and this claim is disallowed.

Plaintiff seeks damages in the amount of Twenty Four Dollars and Twenty Five Cents (\$24.25) for window repairs, but was not able to testify with any certainty or specificity the basis for the repairs. Plaintiff's claim is therefore denied.

Plaintiff did establish by a preponderance of the evidence damage to the walls and door in the amount of One Hundred Sixty Nine dollars and Twenty Two Cents (\$120.00 + \$49.22). Defendants' denial of these damages is not credible.

Finally, regarding the furniture, plaintiff was not able to explain the basis for the replacement of the sofa chair, end tables, or dinette chairs valued at Two Hundred Sixty Seven Dollars (\$267.00). Damages must be founded on evidence, Lovelady v. Rheinlander 66 Ohio App. 409, 34 N.E. 2d 788, plaintiff's claim for these items must be denied.

However, plaintiff's claim for the shades and dresser will be allowed as it is supported by credible testimony and photographic evidence.

The remaining issue involves the sofa. Plaintiff asks for the replacement value of the couch due to a small hole in the covering and a broken spring. Defendants' deny that the couch was unusable, and further dispute the value of the couch.

The court, having viewed the photographic evidence and testimony is persuaded that the couch is beyond repair, and that the plaintiff's request for the replacement value of the item, Two Hundred Fifty Dollars (\$250.00) is reasonable. Accordingly, Two Hundred Fifty Dollars (\$250.00) in damages is awarded on this claim.

In conclusion, plaintiff has established by a preponderance of the evidence, its entitlement to damages in the amount of Nine Hundred Five Dollars and Twenty Two Cents (\$905.22), calculated as follows: Five Hundred Sixty One Dollars (\$561.00) unpaid rent plus Ninety Five Dollars (\$95.00) cleaning, plus One Hundred Sixty Nine Dollars and Twenty Two Cents (\$169.22) damage to walls and doors, plus Three Hundred Thirty Dollars (\$330.00) furniture replacement for a total of One Thousand One Hundred Fifty Five Dollars and Twenty Two Cents (\$1,155.22), less defendants' security deposit of Two Hundred Fifty Dollars (\$250.00).

#### JUDGMENT

A. Judgment for plaintiff against defendants in the amount of Nine Hundred Five Dollars and Twenty Two Cents (\$905.22) plus costs and interest from date of judgment.

B. Judgment for reasonable attorney fees in favor of attorney for plaintiff against defendants to the extent of services performed in obtaining judgment pursuant to Revised Code 5321.05. A hearing will be scheduled at the convenience of the court to determine the amount

of attorney fees after attorney for plaintiff files an itemized fee statement with the Clerk of Courts.

RECOMMENDED:

*Barbara A. Reitzloff*  
BARBARA A. REITZLOFF  
HOUSING COURT REFEREE  
CLEVELAND MUNICIPAL COURT

APPROVED:

*William H. Corrigan*  
JUDGE WILLIAM H. CORRIGAN  
CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION

SERVICE

A copy of the Referee's Report was sent by ordinary United States mail to the Plaintiff's Attorney, Renee Z. Gummo, Gaines and Stern Co., 1700 Ohio Savings Plaza, 1801 East Ninth Street, Cleveland, Ohio 44114 and to the Defendants, Fredrick and Kenneth Jefferson, 15590 Forest Hills Blvd., Cleveland, Ohio 44112 this \_\_\_ day of March 1992.

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:

*Barbara A. Reitzloff*  
BARBARA A. REITZLOFF  
HOUSING COURT REFEREE  
CLEVELAND MUNICIPAL COURT

*William H. Corrigan* Judge