

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

JOHN LITTLEJOHN)	CASE NUMBER 91 CVG 14377
P.O. Box 770136)	
LAKEWOOD, OHIO 44107)	
)	
PLAINTIFF)	
)	
vs.)	<u>LANDLORD-TENANT</u>
)	
ROBERTO DEHOSTOS, et. al.)	
LAWN AVENUE, UP)	
CLEVELAND, OHIO 44102)	
)	<u>REFEREE'S REPORT AND</u>
)	<u>RECOMMENDATION</u>
DEFENDANT)	

This case came to be heard on January 7, 1992, before Barbara A. Reitzloff, to whom this case was assigned by Judge William H. Corrigan pursuant to Civil rule 53, to take evidence on all issues of law and fact, regarding plaintiff's claim for unpaid rent, property damage, and unpaid utilities.

Plaintiff in court.

Defendants in court with counsel.

FINDINGS OF FACT

A number of the facts in this case are undisputed:

1. In approximately January 1991, plaintiff (landlord) and defendants entered into a rental agreement for lease of the residential premises located at 7103 Lawn Avenue, 2nd floor, Cleveland, Ohio. Prior to moving into the premises, defendant Dehostos signed an "Application to Rent"

(Plaintiff's Exhibit B) which set forth some terms of the tenancy.

2. The terms of the rental agreement included the following: The monthly rent was Three Hundred Dollars (\$300.00); defendants paid plaintiff a security deposit of Three Hundred Dollars (\$300.00); defendants agreed to pay for some portion of the cost of electrical service at the premises.

3. Defendants last paid rent to plaintiff for the month of April 1991.

4. In addition to these undisputed facts, plaintiff testified that:

A. Defendants did not return the keys to the rental premises to the plaintiff;

B. Plaintiff first became aware that defendants had vacated the unit on or about June 2, 1991, when plaintiff received keys to the unit from the downstairs tenant;

C. Plaintiff testified that defendants had a telephone number at which to contact him, and that defendants may have obtained an address for him from the electric bills he presented to them. Plaintiff notified defendants of his post office box number when he served them with an Revised Code 1923.04 notice to vacate on May 25, 1991.

D. Plaintiff testified that defendants agreed upon renting the unit to be responsible for payment for the portion of the monthly electric bill attributable to their unit. Through a system of wiring and meters, plaintiff was able to ascertain which portion of the electric usage and bill was attributable to defendants' unit. Plaintiff presented some

copies of electric bills to defendant. Plaintiff calculates that the defendants unit consumed One Hundred Fifty-Six Dollars and Sixty-Two Cents (\$156.62) of the Two Hundred Eighty-Five Dollars and Five Cents (\$285.05) total billing during the tenancy.

E. Plaintiff testified that on or about June 2, 1991, he discovered that an outside door to the premises was damaged, apparently from being kicked in. Plaintiff presented an estimate for repair of that damage in the amount of Two Hundred Seventy-Five Dollars (\$275.00). Plaintiff did not witness anyone damaging the door.

5. In addition to the undisputed facts set forth in paragraph 1, 2, and 3, defendants testified that:

A. Defendants had a telephone number at which to contact plaintiff, but did not have an address.

B. Defendants attempted to contact plaintiff twice by telephone to inform plaintiff that they were moving, but were unable to reach him.

C. Defendants vacated the rental premises on or about May 14, 1991. A receipt showing evidence of payment of rent to plaintiff through May 5, 1991 was produced by defendants.

D. Defendants denied causing any damage to the door.

E. Defendants testified that they agreed to be responsible for one-half of the electric bill for the premises.

CONCLUSIONS OF LAW AND FACT

Plaintiff's second cause of action contains three components; unpaid rent, unpaid utility bills, and property damage.

A number of problems were created for both plaintiff and defendants by the lack of communication between the parties. Plaintiff provided the parties with a telephone number, but no address. Defendants, on the other hand, may have had an address for plaintiff, but attempted to contact plaintiff only twice by telephone to inform him that they had vacated the premises. This court remains unconvinced that either party in this case used his or her best efforts to maintain communication. Bearing that in mind, the court will first address plaintiff's claim for unpaid rent.

The parties agree that rent was last paid for the month of April 1991. Plaintiff acknowledges that he does not know the date defendants actually vacated the premises, due, in part, to his failure to provide defendants with an address to which to return the keys. Defendants themselves, however, acknowledge that they occupied the premises through at least mid-May 1991. Accordingly, damages in an amount equal to one-half of the May 1991 rent, or One Hundred Fifty Dollars (\$150.00) is allowed.

Regarding plaintiff's claim for unpaid utility bills, counsel for defendant correctly points out that plaintiff did not produce original records to establish accurately the procedure by which he calculated defendants' share of the electric bill. Defendants themselves, however, admit that they agreed to be responsible for one-half of the electric bill, and did not take issue with the bills themselves. Accordingly, damages are awarded to plaintiff on this claim in the amount of One Hundred Twenty-One Dollars and Seventy-Nine

Cents (\$121.79), one-half of the total of Two Hundred Forty-Three Dollars and Fifty-Nine Cents (\$243.59) for the period from January 26, 1991 through May 28, 1991. (This period of calculation began two weeks after defendants began to occupy the premises, and ended approximately one to two weeks after defendants vacated the premises).

Regarding the broken door, plaintiff has produced no witnesses to establish who caused the damage or when it was done. Given the confusion regarding the date defendants vacated the premises, defendants may have vacated the premises 2 to 3 weeks before the damage was discovered. As a result, plaintiff has not proven by a preponderance of the evidence that defendants caused this damage to the property. Accordingly, plaintiff's claim for these damages is denied.

In summary, plaintiff has established his entitlement to damages in the amount of Two Hundred Seventy-One Dollars and Seventy-Nine Cents (\$271.79) (\$150.00 plus \$121.79). Plaintiff has retained defendants' security deposit of Three Hundred Dollars (\$300.00), satisfying these damages.

One final note: The parties' rental agreement contains a provision which states that defendants will forfeit their security deposit if they live at the premises for less than ten months. Revised Code 5321.16 provides for the use and return of security deposit. It does not permit an automatic forfeiture of the deposit as contained in plaintiff's lease. A written rental agreement may not modify the Revised Code 5321.16 security deposit provision. The forfeiture provision

in the lease is therefore unenforceable. See Revised Code 5321.13.

JUDGMENT

Judgment for defendants on plaintiff's second cause of action. Each party to bear their own costs.

RECOMMENDED: 

BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

APPROVED: 

JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION

SERVICE

A copy of the Referee's Report was sent by ordinary United States mail the Plaintiff, John Littlejohn, P.O. Box 770136, Lakewood, Ohio 44107 and to the Defendants' Attorney John Hickey, 3794 Pearl Road, Cleveland, Ohio 44109, 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

APPROVED:

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