

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

EVA WALKER)	CASE NUMBER 91 CVG 15960
3483 MARTIN LUTHER KING DRIVE)	
CLEVELAND, OHIO 44104)	
)	
PLAINTIFF)	
)	
vs.)	
)	
CERISE REDD)	
C/O ANNE L. WALLACE)	
10018 BENHAM)	
CLEVELAND, OHIO 44105)	<u>REFEREE'S REPORT AND</u>
)	<u>RECOMMENDATION</u>
DEFENDANT)	

This case came on to be heard on January 6, 1992, before Referee Barbara A. Reitzloff, 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 unpaid rent and damages.

Plaintiff in court without counsel.

Defendant in court without counsel.

FINDINGS OF FACT

Several facts in this case are undisputed:

1. In late November or early December 1989, plaintiff and defendant entered into an oral, month-to-month rental agreement for lease of the residential rental premises located at 2227 East 85th Street, Cleveland, Ohio, at rate of Two Hundred Dollars per month. Defendant paid plaintiff a security deposit of Two Hundred Dollars (\$200.00). In addition to the payment of rent, defendant agreed to reimburse plaintiff for gas service at the rental premises.

2. Plaintiff filed her complaint in forcible entry and detainer on June 18, 1991. Plaintiff's complaint included a second cause of action for unpaid rent and damages.

3. Defendant failed to pay any rent to plaintiff for the months of May 1991, June 1991 and July 1991.

4. Defendant vacated the rental premises on July 19, 1991.

5. Defendant kept a dog at the rental premises.

6. At one point during her tenancy, defendant fell against the back door of the premises, knocking a glass window out of the door.

In addition, to these undisputed facts, plaintiff testified to the following:

7. Plaintiff testified that she increased defendant's rent to Two Hundred Fifty Dollars (\$250.00) per month in January 1991. Plaintiff stated she orally informed defendant of this rent increase.

8. Defendant caused to the living room and dining room carpets, by permitting her dog to urinate on them.

9. Plaintiff replaced the living room and dining room carpeting, at a cost of One Hundred Thirty-Two Dollars Ninety-Six Cents (\$132.96). Plaintiff submitted a receipt for the replacement carpeting.

10. Plaintiff estimated repair of the glass in the door would cost between Fifty Dollars (\$50.00) and One Hundred Dollars (\$100.00).

11. Plaintiff produced gas bills showing an unpaid balance of Four Hundred Fifty-Eight Dollars and Ninety-Eight Cents (\$458.98) for gas service at the rental premises. Plaintiff testified this amount remained unpaid by the tenant.

In addition to the undisputed facts set forth in paragraphs 1-6, defendant testified to the following:

12. In addition to the Two Hundred Dollar (\$200.00) security deposit, defendant testified that she gave plaintiff a Fifty Dollar (\$50.00) "holding" deposit to hold the apartment for her.

13. Defendant left plaintiff no forwarding address when she moved from the unit.

14. Defendant testified that she received an estimate for repair of the window in the amount of Eighty-Nine Dollars (\$89.00) plus tax.

15. Defendant testified that the dog was kept inside the premises, and had the run of the entire premises. Defendant testified that the dog was paper trained, and did not urinate on the carpeting.

16. Defendant testified that the carpeting at the rental premises was old and frayed. Defendant added that the City of Cleveland Health Department investigated a complaint at the premises regarding dog feces, but found the apartment clean upon their arrival and issued no citations.

17. The defendant believes that the gas bills at the premises and the amount claimed for them by the plaintiff are too high. Defendant testified that the gas service account had a zero balance when her tenancy began. She spoke to plaintiff once regarding high gas bills, without resolution. Defendant offered no evidence to refute plaintiff's claim that the bills submitted were in fact for gas service at the rental premises.

CONCLUSIONS OF LAW AND FACT

There is no dispute that rent was unpaid for the months of May 1991, June 1991 and July 1991. Plaintiff testified that she proposed to increase defendant's monthly rent from Two Hundred Dollars (\$200.00) to Two Hundred Fifty Dollars (\$250.00) in January 1991. Her testimony regarding the notice of the proposed increase to the tenant was vague and inconsistent with her testimony at the September 24, 1991 default hearing. It is therefore not credible, and damages for unpaid rent will be assessed at the rate of Two Hundred Dollars (\$200.00) per month, for a total of Six Hundred Dollars (\$600.00).

Regarding the unpaid gas bill, plaintiff presented evidence to show that defendant left the premises with Four Hundred Fifty Eight Dollars and Ninety-Eight Cents (\$458.98) in unpaid charges. While defendant may believe the gas charges were too high, she produced no evidence to establish that the bills were inaccurate. Plaintiff is therefore entitled to damages in the amount of Four Hundred Fifty-Eight Dollars and Ninety-Eight Cent (\$458.98) on this claim.

Defendant admits that she damaged the back door to the premises, for which she received an estimate of Eighty-Nine Dollars (\$89.00). Damages will be awarded in the amount of Eighty-Nine Dollars (\$89.00) on this claim.

Finally, regarding the carpeting, plaintiff testified credibly that defendant's dog damaged the carpeting at the premises. Defendant, while disputing that the dog caused damaged to the rug, admitted that the dog was essentially

confined inside the premises. It is believable that a dog confined for a long period could damage carpeting. Defendant, however, raises the issue of the age and condition of the carpeting which plaintiff replaced. The parties agree that carpeting was at least 4 to 5 years old. Plaintiff produced documentary evidence showing One Hundred Thirty-Two Dollars and Ninety-Six Cents (\$132.96) as the replacement cost for the carpeting. While some reduction for depreciation may be appropriate, the bill submitted by the plaintiff is very reasonable. Depreciation in the amount of Thirty-Two Dollars and Ninety-Six Cents (\$32.96) will be allowed, and defendants awarded in the amount of One Hundred Dollars (\$100.00) on this claim.

The parties agree defendant paid plaintiff a Two Hundred Dollar (\$200.00) security deposit. The Fifty Dollars (\$50.00) paid to plaintiff by defendant to "hold" the apartment is not a security deposit. Defendant is entitled to Two Hundred Dollars (\$200.00) credit for her deposit.

Plaintiff is therefore entitled to net damages in the amount of One Thousand Forty-Seven Dollars and Ninety-Eight Cents (\$1,047.98) (\$600.00 rent plus \$89.00 door damage plus \$458.98 gas service plus \$100.00 carpeting less \$200.00 security deposit).

JUDGMENT

Judgment for plaintiff on her second cause of action in the amount of One Thousand Forty-Seven Dollars Ninety-Eight Cents (\$1,047.98) plus costs and interest from date of judgment.

RECOMMENDED:

BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

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, Eva Walker, 3483 Martin Luther King Blvd., Cleveland, Ohio 44104 and to the Defendant, c/o Anne L. Wallace, 10018 Benham, Cleveland, Ohio 44105 this 27th day of 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 COURT