

IN THE CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO  
HOUSING DIVISION

DAWN K. BEARD	)	CASE NUMBER 91 CVG 34340
9420 CARTON AVENUE APT #3	)	
CLEVELAND, OHIO 44104	)	
	)	
PLAINTIFF	)	
	)	
vs.	)	<u>LANDLORD-TENANT</u>
	)	
MONICA SMITH	)	
9420 CARTON AVENUE, APT #1	)	
CLEVELAND, OHIO 44104	)	
	)	
DEFENDANT	)	<u>REFEREE'S REPORT AND</u>
	)	<u>RECOMMENDATION</u>

This case came to be heard on April 6, 1991, before Referee 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 second cause of action for unpaid rent and defendant's amended counterclaim for money damages.

Plaintiff in court without counsel.

Defendant in court without counsel.

FINDING OF FACT:

1. It is undisputed that in approximately February 1991, plaintiff (Landlord) and defendant (Tenant) entered into an oral, month to month rental agreement for lease of the residential rental premises located at 9420 Carton, Apt #1, Cleveland, Ohio, at the rate of Two Hundred Dollars (\$200.00) per month. Defendant paid plaintiff a security deposit of Two Hundred Dollars (\$200.00).

2. The parties also agree that defendant vacated the rental premises on January 11, 1992, and that defendant last paid plaintiff rent for the month of November 1991. Defendant owed plaintiff a balance of Ten Dollars (\$10.00) for November 1991 rent.

3. Defendant left no forwarding address when she vacated the premises, and plaintiff has retained defendant's security deposit.

4. Defendant testified that she was without heat at the rental premises for approximately 5 weeks, requiring her to seek other accommodations. Defendant produced 5 receipts of Sixty Dollars (\$60.00) each for her alternative lodging.

5. Defendant produced a witness from the East Ohio Gas Company who testified from records that a service call was made to the premises on December 18, 1991, at which time the gas pilot was light and heat restored.

#### CONCLUSIONS OF LAW AND FACT

Plaintiff has established by a preponderance of the evidence that defendant owes plaintiff unpaid rent in the amount of Two Hundred Eighty-One Dollars (281.00) calculated as follows: \$10 November 1991 balance plus \$200 December 1991 rent plus \$71 January 1991 prorated rent. From this sum must be subtracted any sum owed to defendant, and defendant's security deposit.

Defendant has alleged that she was without heat in the premises for six weeks, from December 9, 1991 through January 11, 1991. However, the witness from East Ohio Gas testified credibly and this court finds that heat was restored on

approximately December 18, 1991. Defendant is therefore entitled to damages for other accommodations for only that nine day period, for a total of Seventy-Seven Dollars (\$77.00) (\$60 per week divided by 7 = \$8.56 per day x 9 = \$76.94). In addition, as defendant was unable to use the premises for those nine days except essentially for storage, her rent for the month of December 1991 will be reduced by Fifty Dollars (\$50.00). Defendant has not proven her entitlement to damages resulting from "harassment" nor for lost wages.

In conclusion, unpaid rent of Two Hundred Eighty-One Dollars (\$281.00) owed to plaintiff must be offset by defendant's Two Hundred Dollars (\$200.00) security deposit and defendant's damages of One Hundred Twenty-One Dollars (\$121.00). This leaves a balance owed to defendant of Forty Dollars (\$40.00).

JUDGMENT

Judgment for defendant on plaintiff's first cause of action. Judgment for defendant against plaintiff's on defendant's counterclaim in the amount of Forty Dollars (\$40.00), plus costs and interest from date of judgment.

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 to the Plaintiff, Dawn K. Beard, 9420 Carton Avenue, #3, Cleveland, Ohio 44104 and to the Defendant, Monica Smith, 9918 Reno, Cleveland, Ohio 44104 this <sup>23rd</sup> day of April 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  
HOUSING COURT REFEREE  
CLEVELAND MUNICIPAL COURT

APPROVED: 

JUDGE WILLIAM H. CORRIGAN  
CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION