

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

WILLIAM ZEMAITIS)	CASE NUMBER 91 CVG 5137
5995 MAPLECLIFF DRIVE)	
PARMA HEIGHTS, OHIO 44130)	
)	
PLAINTIFF)	
)	
VS.)	<u>LANDLORD-TENANT</u>
)	
LINDA WAUGH)	
3659 SOUTH GREEN ROAD)	
ORANGE, OHIO 44122)	<u>REFEREE'S REPORT AND RECOMMENDATION</u>
)	
DEFENDANT)	

This matter came under consideration without a hearing based upon objections to the Referee's Report and Recommendation which were filed by the defendant on July 16, 1991. This case was referred to Referee Barbara A. Reitzloff by Judge William H. Corrigan pursuant to Civil Rule 53 for review.

REFEREE FINDS:

1. The Journal Entry of July 8, 1991 predicated upon the Referee's Report and Recommendation which established judgment for plaintiff in the amount of Seven Hundred Thirty-One Dollars and Forty-Eight Cents (\$731.48) plus costs and interest from the date of judgment is incorporated herein by reference.

2. Defendant filed objections to the Referee's Report and Recommendation on July 16, 1991, alleging that the court: (1) erred in granting plaintiff damages in the amount of Seven Hundred Ninety-Eight Dollars and Eighty-Three Cents (\$798.83) for replacement of a bedroom floor when that floor was recarpeted by plaintiff at a cost of Two Hundred Forty-Six Dollars and Seventy-Nine Cents (\$246.97); (2) erred in granting plaintiff damages in the amount of Two Hundred Sixty-Five Dollars (\$265.00) for a damaged fence when plaintiff allegedly failed to establish that defendant's dog did in fact cause those

damages; and (3) erred in granting plaintiff an award of attorney fees when plaintiff failed to seek attorney fees in his complaint.

CONCLUSIONS OF LAW AND FACT

Regarding the bedroom floor, defendant, in her objections, argues that court's award to plaintiff of Seven Hundred Ninety-Eight Dollars and Eighty-Three Cents (&98.83) is excessive, as plaintiff chose to recarpet the floor at less expense. Plaintiff is entitled to recover damages for the diminution in value of the floor as a result of the damages caused by defendant. Hague v. Saltsman No. 13382 (9th Dist Ct App, Summit, 5-10-89). That diminution in value can be measured by the cost of restoring the floor to its previous condition. That plaintiff chose a less expensive method to camouflage the damage caused by defendant does not lessen the loss in value suffered by plaintiff.

Regarding the damage to the fence which was allegedly caused by defendant's dog, plaintiff, by his failure to respond to defendant's objection does not dispute that the photographs used to established the damage to the fence were taken sometime in April 1991. This was one to two months after defendant vacated the rental premises. Nor does plaintiff dispute that he had no personal knowledge of the damage in question being caused by defendant's dog. Finally, the nature of the damage caused to the fence, as seen in the photographs, makes it unlikely that the damage was caused by a dog. For these reasons, plaintiff has failed to establish by a preponderance of the evidence that defendant's dog caused damage to the fence, and the referee erred in so awarding damages.

Lastly, defendant objects to the referee's award of attorney fees because plaintiff did not pray for fees in his complaint, nor make a motion for such fees at trial. Defendant does not dispute that plaintiff has a statutory right to fees under Revised Code 5321.05. The fees are taxable as costs in this

matter, and need not be pleaded since they are not considered special damages.
Zimmerman v. Elmore, No. 47724 (Ct App., Cuyahoga, 6-28-84).

JUDGMENT

The judgment entry Of July 8, 1991 is modified to read as follows:


(A) Judgment for plaintiff against defendant in the amount of Four Hundred Sixty-Six Dollars (\$466.48) plus costs and interest from date of judgment.

(B) Judgment of reasonable attorney fees in favor of attorney for plaintiff against defendant to extent of services performed in obtaining judgment pursuant to Revised Code 5321.05. A hearing should 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 Court.

RECOMMENDED:


BARBARA A. REITZLOFF
HOUSING COURT REFEREE

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 Tina E. Weckslar, 75 Public Square, Suite 1025, Cleveland, Ohio 44113 and to Teddy Sliwinski, 3717 East 65th Street, Cleveland, Ohio 44105 this 10th day of October 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:

Barbara A. Reitzloff
BARBARA A. REITZLOFF
HOUSING COURT REFEREE

APPROVED:

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