

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

THOMAS P. HOGAN)	CASE NUMBER 91 CVG 27438
6223 ANITA DRIVE)	
PARMA HEIGHTS, OHIO 44130)	
)	
PLAINTIFF)	
)	
VS.)	<u>LANDLORD-TENANT</u>
)	
KIMBERLY MOZIK)	
12406 KIRTON AVENUE)	
CLEVELAND, OHIO 44135)	<u>REFEREE'S REPORT AND</u>
)	<u>RECOMMENDATION</u>
DEFENDANT)	

This case came on to be heard on January 15, 1992, 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 for unpaid rent and damages and defendant's counterclaim.

Plaintiff in court without counsel

Defendant in court with counsel.

FINDING OF FACT

Several facts in this case are undisputed:

1. In October 1990, plaintiff and defendant entered into a written month to month rental agreement for lease of the residential rental premises located at 12406 Kirton Avenue, Cleveland, Ohio at the rate of Three Hundred Fifty Dollars (\$350.00) per month (Plaintiff's Exhibit 37). Defendant paid a security deposit of Three Hundred Fifty Dollars (\$350.00).

2. Pursuant to the lease, defendant agreed to pay for gas and electric service at the premises.

3. Defendant last paid rent to plaintiff in the amount of One Hundred Twenty Dollars (\$120.00) on approximately September 1, 1991. This payment was to be applied to September 1991 rent, leaving a balance due of September 1991 of Two Hundred Thirty Dollars (\$230.00).

4. On approximately September 1, 1991, defendant promised to pay plaintiff the balance of September 1991 rent by Friday, September 6, 1991. Defendant did not make the promised payment.

5. On September 6, 1991, as a result of defendant's failure to pay the balance of September 1991 rent, plaintiff terminated electrical service to the rental premises by removing the electrical breaker switch from the box.

6. During the following weekend, plaintiff was in contact with defendant on more than one occasion. Each time he spoke to defendant, plaintiff requested that defendant pay the balance of the September 1991 rent as a condition of the restoration of electrical service.

7. On or about September 10, 1991, plaintiff restored electrical service to the premises.

8. Defendant paid plaintiff no rent after the September 1991 partial payment.

9. Defendant vacated the premises on November 11, 1991.

10. Defendant admits causing some damage to the rental premises including a screen in the back door, which was pushed out, a torn screen in the kitchen and holes in the dry wall.

Plaintiff has requested damages for the repair of these items in the amount of One Hundred Fifty-Five Dollars (\$155.00).

11. On September 10, 1991, plaintiff notified defendant in writing that her rent would increase to Four Hundred Fifty Dollars (\$450.00) per month beginning October 1991.

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

A. Defendant caused additional damage to the premises in the amount of Four Hundred Thirty-Five Dollars (\$435.00), including damage to the door jamb and trim, damage to the bedroom window glass, holes in the utility room floor, damage to the garage door trim, torn and damaged window shades, a broken screen door closer, a cracked utility tub, marks appearing to be burns on the kitchen floor, and scratches on a bedroom door. Plaintiff submitted extensive photographic evidence to support his testimony.

B. Defendant failed to reimburse plaintiff for gas service at the premises for the period from November 6 through November 11, 1991. Plaintiff produced a gas bill for the period from November 6 through November 22, 1991 in the amount of Eighteen Dollars and Forty-Nine Cents (\$18.49).

C. Defendant failed to reimburse plaintiff for electrical service at the premises for the period from October 1, 1991 through November 11, 1991. Plaintiff produced electrical bills for the period from October 1, 1991 through November 1, 1991 in the amount of Thirty-Three Dollars and Ninety-Seven Cents (\$33.97), and for the period from November 1, 1991 through December 1, 1991 in the amount of Thirty-Seven Dollars (\$37.00).

13. In addition to the undisputed facts set forth in paragraphs 1 through 11, defendant testified that:

A. She occupied the premises with her three year old child;

B. Damage to the door jamb and window was caused by a break in at the premises. Defendant did not produce a police report of this incident.

C. Food in her refrigerator valued at Fifty Dollars (\$50.00) was lost when plaintiff terminated her electrical service.

D. The shades which plaintiff testified were damaged were old and in poor condition.

E. Defendant testified that she was unaware of any damaged caused to the kitchen floor, utility tub or bedroom door. She testified that plaintiff himself damaged the utility room floor moving defendant's washer or dryer. Defendant testified that for a short period of time on November 11, 1991 she did keep a stray dog confined in the bedroom.

CONCLUSIONS OF LAW AND FACT

First, regarding plaintiff's claim for unpaid rent. There is no dispute that defendant owes plaintiff Two Hundred Thirty Dollars (\$320.00) for the unpaid balance of September 1991 rent. Regarding October 1991 rent, defendant, in her answer, correctly states that defendant is entitled to 30 days notice of the proposed rental increase. The proposed increase is therefore ineffective as to October 1991 rent. Defendant therefore is liable to plaintiff for unpaid October 1991 rent

in the amount of Three Hundred Fifty Dollars (\$350.00), the previous rental rate. Finally, regarding November 1991 rent, the September 10, 1991 letter from plaintiff would be effective to increase defendant's rent to Four Hundred Fifty Dollars (\$450.00) as of November 1, 1991. Therefore, defendant is liable to plaintiff for payment of prorated rent through November 11, 1991, in the amount of One Hundred Sixty-Five Dollars (\$165.00). ($\$450 - 30 = \15 per day X 11 days). Plaintiff has established his entitlement to damages of unpaid rent in the amount of Seven Hundred and Fifteen Dollars (\$715.00).

Revised Code 5321.05 requires a tenant to

- (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.

On plaintiff's claim for damages, defendant has admitted causing approximately One Hundred Fifty Five Dollars (\$155.00) in damage to the premises. Defendant's testimony about the alleged break in, absence some corroborating evidence, is not sufficiently credible. Damages for the door jamb, trim and window will therefore be assessed against defendant in the amount of One Hundred Eighty Dollars (\$180.00).

Regarding the holes in the utility room floor, however, defendant's explanation of the damage, as caused by plaintiff's move of an appliance, is plausible and credible. Plaintiff's claim for this item is therefore denied.

The photographs submitted by the plaintiff of the shades and screen door closer make it apparent that these items were fairly old when defendant began to occupy the premises. This court is persuaded that normal wear and tear, and not tenant misuse, were responsible for the deterioration of these items. As a result, plaintiff's claim for these items is denied.

Plaintiff claim regarding the utility tub is unclear and is not substantiated by the photograph produced by plaintiff. This claim is therefore denied.

Regarding plaintiff's claim for damage to the kitchen floor and bedroom door, while defendant denies knowledge of this damage, plaintiff's photographs establish that some damage to each item was caused. This claim is further substantiated by defendant's testimony regarding the dog. Plaintiff's claim for these items is therefore allowed in the amount of One Hundred Dollars (\$100.00). Plaintiff also established his entitlement to reimbursement for unpaid utility bills in the amount of Six Dollars and Ninety Cents (\$6.90) for gas service ($\$18.49 - 16 = \$1.15 \times 6 = \6.90) and Forty-One Dollars and Thirty-Five Cents (\$41.35) for electric service ($\$37 - 30 = \$1.23 \times 6 = \$7.38$ plus \$33.97).

Defendant has raised counterclaims against plaintiff, resulting from the termination of defendant's utilities for

defendant's nonpayment of rent. Revised Code 5321.15 provides that:

(A) No landlord of residential premises shall initiate any act, including termination of utilities or services, exclusions from the premises, or threat of any unlawful act, against a tenant, or a tenant whose right to possession has terminated, for the purpose of recovering possession of residential premises, other than as provided in Chapters 1923., 5303., and 5321 of the Revised Code.

(C) A landlord who violates this section is liable in a civil action for all damages caused to a tenant, or to a tenant whose right to possession has terminated, together with reasonable attorney fees.

Plaintiff admits the conduct alleged by defendant, which is conduct in violation of the statute. As a result, plaintiff is liable to defendant for damages in negligence, which would include damages for discomfort and disruption of her normal living routine. Defendant has placed a value on this suffering on the amount of Five Hundred Dollars (\$500.00). In light of defendant's testimony, however, and the period for which electric service was terminated, an award of Two Hundred Fifty Dollars (\$250.00) on this claim is reasonable.

In addition to the damages described above, defendant is entitled to compensation for food lost as a result of the termination of power to the unit. Defendant's estimate of Fifty Dollars (\$50.00) for the value of the food is both reasonable and credible.

Finally, defendant seeks compensation for the decrease in the value of the premises for the five day period during which she was without electricity. As the lack of electricity left the premises virtually uninhabitable, a rent abatement for that period is awarded, resulting in damages in the amount of Sixty Dollars (\$60.00). ($\$350 - 30 \text{ days} = \$12 \text{ per day} \times 5 \text{ days} = \60.00).

In addition, defendant is entitled to credit for her Three Hundred Fifty Dollars (\$350.00) security deposit.

In conclusion, plaintiff is entitled to damages in the amount of Seven Hundred Fifteen Dollars (\$715.00) for unpaid rent plus Four Hundred Thirty-Five Dollars (\$435.00) for property damages plus Forty-Eight Dollars and Twenty-Five Cents (\$48.25) for unpaid utility bills, for a total of One Thousand One Hundred Ninety-Eight Dollars and Twenty-Five Cents (\$1,198.25). This amount is to be reduced by defendant's security deposit (Three Hundred Fifty Dollars) (\$350.00), and damages awarded to defendant (Three Hundred Sixty Dollars) (\$360.00), for a total judgment for plaintiff in the amount of Four Hundred Eighty-Eight Dollars and Twenty-Five Cents (\$488.25).

Counsel for defendant is entitled to recover his fees pursuant to Revised Code 5321.15(C).

JUDGMENT

1. Judgment for plaintiff in the amount of Four Hundred Eighty-Eight Dollars and Twenty-Five Cents (\$488.25) plus costs and interest from date of judgment.

2. Judgment of reasonable attorney fees in favor of attorney for defendant against plaintiff to the extent of services performed in representing defendant on her claim under Revised Code 5321.15. A hearing should be scheduled at the convenience of the court to determine the amount of attorney fees after attorney for defendant files an itemized fee statement with the Clerk of Courts.

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, Thomas Hogan, 6223 Anita Drive, Parma Heights, Ohio 44130 and to the Defendant's Attorney, Edward Gregory, 3408 Lorain Avenue, Cleveland, Ohio 44113 this 18th 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
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

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