

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION

DAVID STOLZENBURG,

Plaintiff,

vs.

ROBERT FRUSH, JR.,

Defendant.

CASE NO. 92CVC10-8217

JUDGE MCGRATH

REFEREE BROWNING

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY
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THOMAS J. GIBBNEY
CLERK OF COURTS

REFEREE'S REPORT

Rendered this 8th day of December, 1994.

TO: THE HONORABLE PATRICK M. McGRATH, JUDGE
FRANKLIN COUNTY COMMON PLEAS COURT

On October 11, 1994, pursuant to Civil Rule 53 and Local Rule 99, this Referee conducted the jury-waived trial of this civil action. Having considered the credible evidence admitted at trial, this Referee renders the following report.

FINDINGS OF FACT

1. On June 7, 1989, Defendant, Robert Frush Jr., and his parents entered into a land installment contract, pursuant to which Mr. Frush's parents agreed to sell the real property located at 64 Eldon Avenue, in Columbus, Franklin County, Ohio, to Mr. Frush. The property in question is a three-story, single-family house.

2. On May 23, 1992, Plaintiff, David Stolzenburg, his wife, and his wife's two sons, ages 6 and 7, moved into the upper two stories of 64 Eldon Avenue pursuant to an oral agreement between Mr. Frush and Mr. Stolzenburg. Mr. Frush agreed to permit Mr. Stolzenburg and his family to live in the premises, rent-free, from June 1, 1992, to

October 1, 1992, in exchange for which Mr. Stolzenburg agreed to help Mr. Frush convert the house from a single-family residence into a duplex. Mr. Frush and Mr. Stolzenburg agreed that, beginning on October 1, 1992, Mr. Stolzenburg would pay rent of \$250 per month to Mr. Frush.

3. Mr. Stolzenburg plastered and painted the second floor, the third floor, and a hallway in the house.

4. On July 6, 1992, Mr. Frush and Mr. Stolzenburg reduced their oral agreement to a writing, which they backdated to May 23, 1992. On July 6, 1992, Mr. Stolzenburg paid \$750 to Mr. Frush. That amount represented three months' rent, paid in advance, for the period from October 1, 1992, through December 31, 1992.

5. On or about September 15, 1992, Mr. Frush notified Mr. Stolzenburg, in writing, that Mr. Frush had sold the house to a person named Debbie Frush, who wanted Mr. Stolzenburg and his family to vacate the house by October 3, 1992. Mr. Stolzenburg and his family did not, however, vacate the house, because Mr. Stolzenburg had paid their rent through December 31, 1992.

6. On October 14, 1992, while Mr. Stolzenburg and his family were away from the house, Mr. Frush padlocked Mr. Stolzenburg and his family out of the house. Mr. Frush did so without first seeking legal redress against Mr. Stolzenburg under Revised Code Chapter 1923 or 5321. When Mr. Stolzenburg and his family returned to the house on October 14, 1992, Mr. Stolzenburg asked Mr. Frush to remove the padlock, but Mr. Frush refused to do so.

7. Mr. Stolzenburg became very frustrated and agitated at his predicament. For the next four nights and three days, Mr. and Mrs. Stolzenburg lived with Mr. Stolzenburg's mother, in Washington Courthouse, Ohio, and Mrs. Stolzenburg's sons lived with Mr. Stolzenburg's brother.

8. On October 15, 1992, Mr. Stolzenburg commenced this action against Mr. Frush. On October 15, 1992, this Court issued a temporary restraining order, in which the Court ordered Mr. Frush to restore possession of the residential premises to Mr. Stolzenburg, to restore all utility services to those premises, and to restore Mr. Stolzenburg's personal property to those premises, in the event that Mr. Frush had removed such personal property from the premises. The temporary restraining order was effective through October 29, 1992. Mr. Frush was not immediately served with a copy of the temporary restraining order.

9. On October 18, 1992, having obtained this Court's temporary restraining order, Mr. Stolzenburg and his family returned to the house. They then discovered that Mr. Frush had removed some of Mr. Stolzenburg's personal belongings from the house, and had set them out on the front porch. Mr. Stolzenburg removed the padlock and he and his family moved back into the house.

10. Upon reentering the house, Mr. Stolzenburg discovered that Mr. Frush had removed the sink and the stove from Mr. Stolzenburg's kitchen, and that he had also disconnected the cold water, some of the electric outlets, and the heat. There was only a trickle of hot water in the bathroom, which Mr. Stolzenburg collected in a bucket. Because there was only limited electricity, he used extension cords to operate the

refrigerator and the freezer. Because there was no heat, he used space heaters to heat the premises. Because there was no stove, he bought a hotplate, for \$15, to heat food for his family.

11. Upon reentering the house, Mr. Stolzenburg also discovered that Mr. Frush had removed some of Mr. Stolzenburg's personal belongings, which were not on the front porch and which Mr. Stolzenburg never recovered. Those belongings were a 35-millimeter camera with a flash attachment, a 1-month-old portable washer and dryer, a number of "45" records, an Emerson video-cassette recorder, \$89 in coins, and various food items. The reasonable value of those belongings to Mr. Stolzenburg, in October 1992, was as follows:

Camera with flash attachment	\$ 88
Records	1,000
VCR	249
Coins	89
Food	400
TOTAL	\$ 1,826

Mr. Stolzenburg presented no credible evidence of the reasonable value of the washer and dryer.

12. Once Mr. Stolzenburg and his family regained possession of the premises, Mr. Stolzenburg perceived that someone needed to remain in the premises at all times, because he feared what Mr. Frush might do to Mr. Stolzenburg, his family, and his belongings.

13. Between October 23, 1992, and November 2, 1992, the City of Columbus notified Mr. Stolzenburg to vacate the house on or before November 2, 1992, because

of hazardous exposed wiring, and because there were no cooking facilities, no cold water, and no sink.

14. On October 28, 1992, this Court extended its temporary restraining order to November 10, 1992. On November 6, 1992, Mr. Frush was served with a copy of the temporary restraining order.

15. On November 9, 1992, in the Franklin County Municipal Court, Mr. Frush commenced an action in forcible entry and detainer against Mr. Stolzenburg.

16. On November 10, 1992, this Court extended its temporary restraining order to November 24, 1992.

17. On December 11, 1992, Mr. Frush's action in forcible entry and detainer was dismissed.

18. On December 22, 1992, Mr. Stolzenburg and his family moved out of the house at 64 Eldon Avenue.

19. Mr. Frush's conduct, specifically, padlocking Mr. Stolzenburg and his family out of the house, refusing to remove the padlock, setting out Mr. Stolzenburg's belongings, removing the stove and the kitchen sink, and disconnecting the utilities, was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. Mr. Frush, by his extreme and outrageous conduct, recklessly caused serious emotional distress to Mr. Stolzenburg.

20. Mr. Frush's conduct demonstrated a conscious disregard for the rights and safety of Mr. Stolzenburg and his family, which had a great probability of causing

substantial harm. In other words, Mr. Frush acted with malice towards Mr. Stolzenburg and his family.

21. As a direct and proximate result of Mr. Frush's conduct, Mr. Stolzenburg sustained the following actual damages:

Rent paid for Oct. 14 through Dec. 31, 1992	\$ 643.85
Loss of personal property	1,826.00
Purchase of hotplate	15.00
Serious emotional distress	2,500.00
TOTAL	\$ 4,984.85

CONCLUSIONS OF LAW

1. Mr. Stolzenburg was Mr. Frush's "tenant," as that term is defined by R.C. 5321.01(A). Mr. Frush was Mr. Stolzenburg's "landlord," as that term is defined by R.C. 5321.01(B). The upper two stories of 64 Eldon Avenue were "residential premises," as that term is defined by R.C. 5321.01(C), as well as a "dwelling unit," as that term is defined by R.C. 5321.01(F). Mr. Stolzenburg and Mr. Frush entered into a "rental agreement," as that term is defined by R.C. 5321.01(D).

2. Mr. Frush was obligated to maintain, in good and safe working order and condition, all electrical, plumbing, and heating fixtures and appliances in Mr. Stolzenburg's dwelling unit. R.C. 5321.04(A)(4). Mr. Frush was obligated to supply running water, reasonable amounts of hot water, and reasonable heat at all times, to Mr. Stolzenburg. R.C. 5321.04(A)(6). Mr. Frush was obligated not to abuse his right to reasonable access to Mr. Stolzenburg's dwelling unit. R.C. 5332.04(A)(7). Mr. Frush was obligated to give Mr. Stolzenburg reasonable notice of his intent to enter Mr. Stolzenburg's dwelling unit,

and to enter only at reasonable times. R.C. 5321.04(A)(8). Revised Code 5321.15 provides:

(A) No landlord of residential premises shall initiate any act, including termination of utilities ***, exclusion from the premises, or threat of any unlawful act, against a tenant, *** 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 ***.

Mr. Frush breached all of these statutory duties.

3. A violation of a statute which sets forth specific duties constitutes negligence per se. *Shroades v. Rental Homes* (1981), 68 Ohio St. 2d 20, 25. Mr. Frush is liable to Mr. Stolzenburg for injuries sustained by Mr. Stolzenburg on the demised residential premises which were proximately caused by Mr. Frush's failure to fulfill the duties imposed by R.C. 5321.04. *Id.* at the syllabus.

4. Mr. Frush's conduct also constituted a breach of his rental agreement with Mr. Stolzenburg. Mr. Stolzenburg may recover damages for such breach. R.C. 5321.12.

5. One who by extreme and outrageous conduct recklessly causes serious emotional distress to another is subject to liability for such emotional distress. *Yeager v. Local Union 20* (1983), 6 Ohio St. 3d 369, syllabus. Mr. Frush is therefore liable to Mr. Stolzenburg for the latter's serious emotional distress.

6. As a direct and proximate result of Mr. Frush's breach of the duties imposed by R.C. 5321.04, Mr. Frush's breach of the rental agreement, and Mr. Frush's reckless

infliction of serious emotional distress upon Mr. Stolzenburg, Mr. Stolzenburg is entitled to recover compensatory damages in the amount of \$ 4,984.85 from Mr. Frush.

7. Mr. Frush's malicious conduct towards Mr. Stolzenburg also subjects Mr. Frush to liability for punitive damages. The purposes of punitive damages are to punish the offending party and to make the offending party an example to discourage others from similar conduct. Mr. Stolzenburg is entitled to recover punitive damages in the amount of \$2,500 from Mr. Frush.

RECOMMENDATION

Upon consideration of the foregoing Findings of Fact and Conclusions of Law, this Referee recommends that the Court enter judgment for Plaintiff, David Stolzenburg, against Defendant, Robert Frush Jr., in the principal amount of \$7,484.85, plus interest at the legal rate from the date of judgment, and court costs.


PAMELA BROER BROWNING, REFEREE

Copies mailed to:

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