

IN THE CLINTON COUNTY MUNICIPAL COURT  
WILMINGTON, OHIO

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DUANE MOODY AND )  
ELIZABETH MOODY, )  
Plaintiffs )  
-vs- )  
JAMES BRADY )  
Defendant )

*Nancy Joyce* CASE NO. 92CVF 549

CLERK

MEMORANDUM DECISION AND  
JUDGMENT

BACKGROUND

On October 16, 1990, plaintiffs Duane and Elizabeth Moody, hereinafter tenants, executed a " Lease Agreement" with defendant James Brady, hereinafter landlord, for the rental or real property situated at 119 South Spring Street, Wilmington, Ohio (see Exh A). The agreement was a month to month tenancy with each party given the right to terminate the lease by providing a written 30 days notice. The tenants moved into the property on November 1, 1990 and left the premises on the evening of January 30, 1991 never to return there to reside. Landlord provided the tenants written notice of his desire to terminate the agreement on February 1, 1991 with an effective date of March 31, 1991 as the expected last date of the tenancy. However, no Court order was ever issued terminating the agreement. Tenants removed most of their belongings with exception of a few items on April 1, 1991 restoring landlord to the premises at that time.

Nearly 20 months passed. On October 16, 1992, tenants filed a Complaint with this Court seeking a judgment against landlord for monetary damages. Trial was conducted on the afternoon and early evening of February 4, 1993 with both sides represented by counsel. Essentially, tenants are seeking a return of rental monies admittedly received by landlord for the duration of the tenancy as well as a refund of their security deposit. Further, tenants seek additional expenses as a result of their re-location costs incurred upon their departure from the leased premises on January 30, 1991. Finally, tenants seek damages for personal property items left at the residence. Landlord denies he owes anything.

ANALYSIS

Central to tenants' position is resolving whether they were legally justified in leaving the leased premises on January 30, 1991. It is undisputed that landlord received \$1625 in rental payments for or on behalf of tenants during this tenancy. Computed at \$325 per month rental, commencing November 1, 1990, tenants paid rent for this property through March 31, 1991. In addition, landlord received a \$150 security deposit for tenants which has admittedly not been returned. Why then should the Court order a return of this rent? Tenants claim they were forced to move from the premises on January 30, 1991 due to a defective furnace supplied by landlord which made the premises unsafe and not habitable. While landlord professes ignorance of this defective furnace and the resulting condition as of January 30, 1991, this element is not crucial to tenant's claim as far as this Court is concerned.

At trial, overwhelming evidence was presented that the furnace located at 119 South Spring Street, Wilmington, Ohio on January 30, 1991 was unsafe (See Exh C; Exh D; Exh G). The expert witness called by tenants, Lonnie Bame, characterized the furnace as "not repairable", "dangerous" and "needs replaced." (see Exh C; Exh D) Regardless of whether landlord knew of this problem and regardless of whether the defective furnace caused illness to tenants, it is unreasonable to expect the tenants to reside in that property after the problem was made known to them. The Court finds that from January 15, 1991, (the date the Court believes the furnace problem was first identified) through March 31, 1991, the date the Court finds the tenancy terminated, the fair rental market value of 119 South Spring Street, Wilmington was zero dollars. A rebate of 2½ month rental is due the tenants from landlord totaling \$822.50. It will be awarded.

In making this award, the Court is cognizant that landlord made some timely effort to repair the furnace. Despite the testimony of the self proclaimed "handyman", Lloyd Brewer, who certified the furnace was "safe from hazards" (See Exh 3), the Court is not persuaded the condition was truly remedied. Given the clear testimony and expert qualifications of Lonnie Bame, plaintiff's witness vis-a-vis the tentative statements and limited qualifications of Lloyd Brewer, defendant's wit-

ness, the Court chooses to believe this furnace should have been replaced. The fact the City Building inspector accepted Mr. Brewer's conclusions that the furnace was "safe from hazards" without question says more about the diligence of that department than the condition of the so-called repaired furnace.

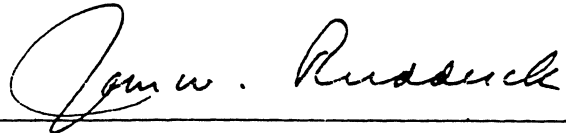
Tenants, also, seek recovery of re-location expenses, their \$150 security deposit and damages for loss of personal property. The Court is persuaded that tenants abandoned any personal property remaining at the residence. There is insufficient evidence to find landlord responsible for the loss incurred. Further, the re-location expenses sought by tenants will not be awarded. While tenants may have increased their travel expenses as a result of their re-location and move, it was their own choice to reside in the more distant location. Also, the monthly rent they paid to their relative was less than the rental they were paying to landlord. The effect of the re-location was a diminution in rent... not an increase. Given the fact the Court has relieved tenants of any responsibility for rent to landlord from January 15, 1991 to March 31, 1991, the tenants can demonstrate no actual damages that may be awarded on this issue.

With regard to the security deposit of \$150, the Court finds the burden in upon the landlord to prove the claimed damages used by him to offset the security deposit are properly chargeable to the tenants. Little evidence was presented regarding the condition of the premises when tenants assumed occupancy. Landlord used unorthodox methods to demonstrate tenants were no longer welcome at the premises such as summoning police and removing doors from the house. Under such circumstances and in conjunction with the dangerous condition of the furnace which apparently was never replaced, it is understandable why tenants did not clean the premises to the satisfaction of landlord. The Court believes landlord has failed to justify the offsets to the security deposit and will order it returned.

Accordingly, judgment is granted plaintiffs Duane Moody and Elizabeth Moody against defendant James Brady in the amount of \$972.50 plus interest at 10% until paid and the Court costs of the action.

SO ORDERED

Enter this Eight day of March ,1993

A handwritten signature in cursive script, reading "John W. Rudduck". The signature is written in dark ink and is positioned above a horizontal line.

John W. Rudduck, Judge

Clinton County Municipal Court