

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

WILLIAM E. MYRICKS
3737 E. ANTISDALE ROAD
SOUTH EUCLID, OHIO 44118

PLAINTIFF

VS.

CHARLES & LYNN REED
7933 JONES ROAD
CLEVELAND, OHIO 44105

DEFENDANT

) CASE NUMBER 93 CVG 05580

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) TENANT-LANDLORD

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) REFEREE'S REPORT AND

) RECOMMENDATION

This case was heard on March 7, 1994 by Referee/Magistrate Paul J. Tuffin, to whom it was assigned by Judge William H. Corrigan pursuant to Ohio Civil Rule 53, to take evidence on all issues of law and fact, including plaintiff's claim for alleged unpaid rent and defendant's counterclaim.

Plaintiff in court without counsel.

Defendant in court with counsel.

REFEREE FINDS:

1. Plaintiff (landlord) and defendant entered into a month-to-month oral agreement in January, 1990, for occupancy of premises located at 7933 Jones Road at the rate of three hundred fifty dollars (\$350.00) per month with payment of a security deposit of like amount.

2. Plaintiff filed a forcible entry and detainer complaint in March, 1993, alleging non-payment of rent. Defendant filed answer and counterclaim in May, 1993, alleging

failure of plaintiff to maintain the cited property in a habitable condition.

3. Plaintiff and defendant testified at trial on March 7, 1994. Exhibits introduced into evidence included photos and notices.

CONCLUSION OF LAW AND FACT:

ORC 5321.04, obligations of landlord, states in part:

(A) A landlord who is a party to a rental agreement shall:

(1) Comply with the requirements of all applicable building, housing, health, and safety codes which materially affect health and safety;

(2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by him;

In this case, it has been established by a preponderance of the evidence manifested by notices of violations of City of Cleveland Housing Code Ordinances, photos and other testimony that the above noted statute has been violated. Notice of violations dated August 10,, 1992, and March 16, 1993, show garage in need of repair, electric box deficiency, weak porch and interior floors, missing storm windows and wall cracks. It is also established that insufficient heat from faulty furnace existed for period of at least four months for the

1992-93 season. Photos taken in 1993 show that violations have not been corrected.

It is further indicated that defendants released to plaintiff rent payments which they had previously deposited for an unspecified period with the Clerk of Court based on agreement by landlord to use the funds to make necessary repairs. The evidence does not show that the indicated repairs were made.

Accordingly abatement of rent is made at the rate of seventy five dollars (\$75.00) per month from August 10, 1992, date of notice of City of Cleveland Housing Code Violations, until defendant vacated the premises on or about May 5, 1993, representing a period of approximately nine months, representing an abatement of six hundred seventy five dollars (\$675.00).


It is further indicated that defendants overpaid rent at the rate of seventy five dollars (\$75.00) per month from August 10, 1992 to February, 1993, month of last payment, for additional over-payment of four hundred fifty dollars (\$450.00) ($\75.00×6). From this gross over-payment of one thousand one hundred twenty five dollars (\$1,125.00) is deducted two months unpaid rent at the abated rent of two hundred fifty dollars (\$550.00), resulting in net due defendant of five hundred seventy five dollars (\$575.00). Although plaintiff moved to dismiss second cause in open court, it is nevertheless available for set-off proposes.

JUDGMENT:

(A) Judgment for defendant on plaintiff's second cause complaint.

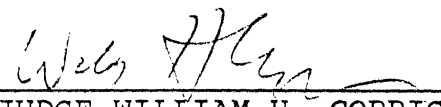
(B) Judgment for defendant on counterclaim against plaintiff of five hundred seventy five dollars (\$575.00) plus cost and interest from date of judgment.

RECOMMENDED:



PAUL J. TUFFIN
HOUSING COURT
REFEREE/MAGISTRATE

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 William E. Myricks, 3737 E. Antisdale Road, South Euclid, Ohio 44118 and to the Defendants' attorney Cornelius A. Manly, 5715 Woodland Avenue, Cleveland, Ohio 44104 this _____ day of March 1994.

SERVICE

A copy of the Referee's Report was sent by ordinary United States mail to the Plaintiff William E. Myricks, 3737 E. Antisdale Road, South Euclid, Ohio 44118 and to the Defendants' attorney Cornelius A. Manly, 5715 Woodland Avenue, Cleveland, Ohio 44104 this 31st day of March 1994.

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: Paul J. Tuffin
PAUL J. TUFFIN
HOUSING COURT
REFEREE/MAGISTRATE

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