

IN THE CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO  
HOUSING DIVISION

MARILYN D. LANIER	)	CASE NUMBER 93 CVG 13802
4129 E. 108TH STREET	)	
CLEVELAND, OHIO 44105	)	
	)	
PLAINTIFF	)	
	)	
VS.	)	<u>TENANT-LANDLORD</u>
	)	
PATRICIA RAMSEY	)	
9904 GAYLORD AVENUE	)	
CLEVELAND, OHIO 44105	)	
	)	
DEFENDANT	)	<u>REFEREE'S REPORT AND</u>
	)	<u>RECOMMENDATION</u>

This case was heard in two sessions 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 property damages and defendant's counterclaim. First session was held on February 1, 1994 and adjourned to second session on February 8, 1994.

Plaintiff in court without counsel at both sessions.

Defendant in court with counsel.

REFEREE FINDS:

1. Plaintiff (landlord) and defendant entered into a written month to month agreement in April, 1991, for occupancy of premises located at 9904 Gaylord, at which time a security deposit of seven hundred twenty five dollars was paid.

2. Plaintiff filed a forcible entry and detainer complaint in June, 1993, alleging nonpayment of rent. Hearing held on July 12, 1993 restored right of occupancy to

plaintiff. Defendant filed answer and counterclaim in August, 1993, alleging, among other things, failure of plaintiff to make necessary repairs and seeking reimbursement for repairs made by defendant to make premises habitable. Plaintiff filed reply to counterclaim.

3. Plaintiff, defendant and several witnesses testified at both court sessions and videotapes were shown. Exhibits introduced into evidence included videotapes, rental agreement, notices, rental and repair receipts and public utility records.

CONCLUSION OF LAW AND FACT:

"Damages must be founded on evidence." Lovelady v. Rheinlander, 66 OA 409, 20 O OPS 342, 34 NE (2d) 788.

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;

(6) Supply running water, reasonable amounts of hot water and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be

equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

In this case, it has been established by a preponderance of the evidence that plaintiff failed to comply with housing code standards manifested by falling ceiling, defective plumbing, crumbling wall plaster, cut-off of water due to non-payment from May 25, 1993 to June 7, 1993 and other indicated violations. Defendant expended personal funds of approximately two thousand four hundred dollars (\$2400.00) to make necessary repairs in the quest to make the premises habitable. The repairs included extensive dry wall installation, ceiling repairs and painting. (See Defendant's Exhibits). Defendant is entitled to an additional two hundred fifty dollars (\$250.00) for hardship and expenses during fourteen day water shut-off due to non-payment by plaintiff.

Although defendant may have been motivated to make the above noted repairs in anticipation of buying the cited property, the evidence does not show any agreement to that effect existed between the parties. However, a court of equity will not permit plaintiff to evade the landlord's statutory obligation to make necessary repairs, and the tenant must be reimbursed for necessary repairs made to preclude unjust enrichment to plaintiff. There is no evidence that defendant committed any property damage beyond fair-wear-and-tear.

It is established that defendant on several occasions had more than the agreed two persons per bedroom residing at the premises.

Equity requires that defendant pay additional rent to the extent of security deposit for additional occupants. Plaintiff is entitled to the security deposit which she already has in her possession.

In summary, defendant is entitled to two thousand six hundred fifty dollars (\$2650.00) on counterclaim comprised of two thousand four hundred dollars (\$2400.00) as reimbursement for necessary repairs and two hundred fifty dollars (\$250.00) for water cut-off.

JUDGMENT:

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

(B) Judgment for defendant against plaintiff of two thousand six hundred and fifty dollars (\$2650.00) on counterclaim, plus cost and interest from date of judgment.

RECOMMENDED: 

PAUL J. TUFFIN  
HOUSING COURT  
REFEREE/MAGISTRATE

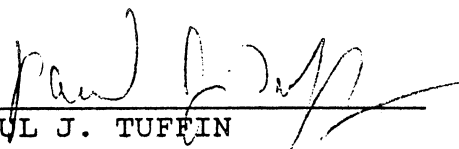
APPROVED: 


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 Marilyn D. Lanier, 4129 East 108th Street, Cleveland, Ohio 44105 and the Defendant's attorney Stephanie M. Jackson, 5615 Woodland Avenue, Cleveland, Ohio 44104 this \_\_\_\_\_ 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  
HOUSING COURT  
REFEREE/MAGISTRATE

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