

IN THE CLEVELAND MUNICIPAL COURT
DIVISION OF HOUSING
CUYAHOGA COUNTY, OHIO

PHYLLIS WALTON
13805 DIANA
CLEVELAND, OHIO 44110

PLAINTIFF

VS.

BYRON C. WASHINGTON
P.O. BOX 24748
LYNDHURST, OHIO 44124

) CASE NUMBER 93 CVH 07401

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) LANDLORD-TENANT

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) REFEREE'S REPORT AND

) RECOMMENDATION

This case was heard on September 1, 1993 before Referee Barbara A. Reitzloff, 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 regarding plaintiff's claim for money damages and attorney fees.

Plaintiff in court with counsel.

Defendant in court without counsel.

FINDING OF FACTS:

1. Defendant is the owner of the residential rental premises located at 1387 East 93rd Street, Cleveland, Ohio, and has been at all times relevant to this action.

2. In approximately May 1992 defendant placed an advertisement in the newspaper advertising the above described premises for rent.

3. Plaintiff responded to defendant's advertisement in June 1992, and began to negotiate with defendant for lease of the premises.

4. At that time defendant explained to plaintiff that the premises was not yet ready for occupancy. Defendant agreed to make the remaining repairs as quickly as possible.

5. On or about June 2, 1992, plaintiff paid defendant nine hundred fifty dollars (\$950.00), an amount equal to one month's rent (\$475.00) plus a security deposit. Defendant did not move into the premises at that time.

6. In late June 1992, plaintiff again discussed with the defendant the availability of the rental premises. The defendant informed the plaintiff that the premises would be available shortly, and that plaintiff would be expected to pay July 1992 rent.

7. On June 27, 1992, plaintiff moved into the premises, believing that she had the right to do so because of her rent payment to plaintiff for the month of June 1992.

8. Not all of the repairs were made to the premises as promised by defendant.

9. In December 1992 plaintiff informed defendant in writing of a number of defective conditions at the premises. A copy of the list was admitted into evidence as Plaintiff's Exhibit 1.

10. Plaintiff last paid her rent directly to defendant for the month of December 1992.

11. In January 1993, plaintiff paid her rent into court, in rent deposit account number 93 RD 15.

12. Plaintiff paid her rent into court through May 1993. Two thousand three hundred and seventy five dollars (\$2,375.00) remains on deposit at this time.

13. Plaintiff vacated the premises in early June 1993.

14. On July 14, 1993 defendant returned to plaintiff a portion of her security deposit, three hundred fifty seven dollars forty four cents (\$357.44), along with an itemized statement explaining the disposition of the remaining one hundred seventeen dollars and fifty six cents (\$117.56). A copy of the cancelled check and statement were admitted into evidence as Plaintiff's Exhibits 16A and B.

15. Regarding the condition of the premises, the notice delivered to defendant by plaintiff in December 1992 put defendant on notice of several plumbing, electrical, and structural problems, along with the need for extermination.

16. The premises was inspected by the City of Cleveland Department of Community Development, Division of Building and Housing in January 1993. As a result of the inspection, the City cited defendant for fifteen violations, including plumbing, electrical and structural problems, along with the need for extermination. A copy of the citation issued by the City was submitted by defendant in his answer to plaintiff's complaint, filed May 7, 1993.

17. Defendant made a few repairs during plaintiff's tenancy, citing his intention to make the repairs required by the City of Cleveland only after plaintiff vacated.

CONCLUSION OF LAW AND FACT:

Plaintiff filed this action against defendant, her former landlord, to recover damages for defendant's alleged failure to maintain the rental premises, and for return of her security deposit, a portion of which has been with held by defendant.

With respect to the condition of the premises, R.C.5321.04 provides that a landlord who is a party to a rental agreement must:

(A)(1) Comply with the requirements of all applicable building, housing, 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;

(3) Keep all common areas of the premises in a safe and sanitary 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 the 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 the instant case, the defendant rented the premises to plaintiff knowing that the premises was in disrepair. In December 1992 plaintiff informed defendant in writing of a

number of defective conditions at the premises, including structural problems, plumbing and electrical defects and an infestation of roaches and mice. In January 1993, an inspector from the City of Cleveland inspected the premises and cited defendant for eighteen violations, including electrical, structural, and plumbing violations.

In response to this information, defendant made some, but not all, of the required repairs. Defendant expressed his intention to make the major repairs to the premises only after plaintiff vacated.

The condition of the premises, intentionally left in disrepair by defendant, decreased the value to the rental premises. Plaintiff paid rent of four hundred seventy five dollars (\$475.00) per month, to the defendant or the court, for the months from June 1992 through May 1993. The value of the premises, however, was not equal to four hundred seventy five dollars (\$475.00) per month due to the lack of repairs. Plaintiff has testified that the premises was worth one hundred fifty dollars (\$150.00) per month; the court finds this estimate unreasonably low. Based upon the testimony and evidence presented, the court finds that the reasonable rental value of the premises during plaintiff's tenancy was two hundred fifty dollars (\$250.00) per month, not the four hundred seventy five dollars (\$475.00) per month charged by defendant. This reduction begins in January 1993, after defendant failed to make repairs in response to plaintiff's written notice.

In addition to the reduction in rental value, defendant's failure to maintain the rental premises caused plaintiff to suffer disruption of her normal living routine, due to the intermittent lack of heat, furnace problems, and need for extermination. For this inconvenience plaintiff is entitled to recover additional damages of one hundred dollars (\$100.00) per month, for each month of her occupancy beginning January 1993.

With respect to plaintiff's security deposit, it is undisputed that plaintiff paid defendant a security deposit of four hundred seventy five dollars (\$475.00) and that defendant returned to plaintiff a portion of the deposit, three hundred fifty seven dollars and forty four dollars (\$357.44). Plaintiff contests defendant's retention of one hundred seventeen dollars and fifty six cents (\$117.56) from the deposit.

Plaintiff does not contest defendant's claim for reimbursement for wood in the bedroom closet two dollars and fifty six cents (\$2.56), tile in the kitchen six dollars (\$6.00), or for damage to the back railing ten dollars (\$10.00), a total of eighteen dollars and fifty six cents (\$18.56). Plaintiff acknowledges that existence of nail holes in the walls, but disputes plaintiff's claim for fifty six dollars (\$56.00) for repairs. With respect to that claim, the court finds defendant's testimony of the cost of repairs credible, and so finds that defendant permissibly retained fifty six dollars (\$56.00) from plaintiff's security deposit for this repair.

With respect to another item for which defendant deducted money from plaintiff's security deposit, dirt for the backyard, the defendant failed to establish by competent, credible evidence that plaintiff was responsible for the loss of dirt from the yard. Therefore, plaintiff was entitled to the return of twenty five dollars (\$25.00) withheld for this item.

Finally, defendant withheld eighteen dollars (\$18.00) from plaintiff's security deposit for a broken window and a missing kitchen smoke detector. Plaintiff testified credibly that the window was broken when she moved into the premises, and that no kitchen smoke detector was in place at the premises. Plaintiff therefore, entitled to the return of the eighteen dollars (\$18.00) withheld for these items.

In summary, plaintiff paid rent directly to defendant through December 1992. As she first notified defendant in writing of the defective conditions at the premises in December 1992, plaintiff is not entitled to recover damages for the period through December 1992.

Plaintiff deposited rent with the court for the months of January 1993 through May 1993. For these months, plaintiff is entitled to recover damages of one thousand one hundred twenty five dollars (\$1,125.00) (\$225. x 5 months) for reduction of rent, five hundred dollars (\$500.00) (\$100.00 x 5 months) for the inconvenience, etc, suffered by plaintiff, and eighty six dollars (\$86.00), representing twice the amount this court has determined defendant wrongfully withheld from plaintiff's security deposit. Plaintiff's damages therefore total one

thousand seven hundred eleven dollars (\$1,711.00). The total net owed to defendant is six hundred sixty four dollars (\$664.00). (\$250.00 per month rent x 5 months = \$1,250.00, minus \$586.00 damages). The rent on deposit with the court shall be divided and disbursed accordingly.

JUDGMENT:


(1) Judgment for plaintiff Phyllis Walton in the amount of one thousand seven hundred eleven dollars (\$1,711.00).

(2) Clerk of courts to release the sum of one thousand seven hundred eleven dollars (\$1,711.00) from account number 93 RD 15 to plaintiff Phyllis Walton in full satisfaction of judgment.

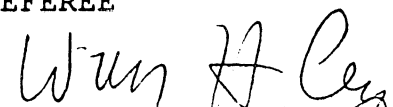
(3) Clerk of courts to release the remainder of funds on deposit (\$664.00 less poundage from account number 93 RD 15 to the defendant, Byron C. Washington.

(4) Judgment in favor of attorney for plaintiff for reasonable attorney fees, in an amount to be determined. A hearing on attorney fees will be scheduled upon the filing of an itemized fee statement by attorney for plaintiff.

RECOMMENDED:


BARBARA A. REITZLOFF
HOUSING COURT
REFEREE


APPROVED:

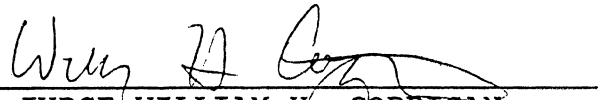

JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION

SERVICE

A copy of the Referee's Report was sent by ordinary United States mail to the Plaintiff's attorney Cornelius A. Manly, 5751 Woodland Avenue, Cleveland, Ohio 44104 and to the Defendant Byron C. Washington, P.O. Box 24748, Lyndhurst, Ohio 44124 this _____ day of December . . . , 1993.

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

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