

IN THE MUNICIPAL COURT, CHILLICOTHE, OHIO

**Dale Crooks et al. *
Plaintiffs *
vs. *
Bob Kingery, et al. *
Defendants. ***

**CASE NO. 94-CVG-495
FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

FILED

JUN 14 1995

**ROSEANNA J. STRONG, CLERK
CHILLICOTHE MUNICIPAL COURT
CHILLICOTHE, OHIO**

This case was tried to court on March 15, 1995 and May 22, 1995. Plaintiffs Dale Crooks and Nita Crooks were present on March 15, 1995, with attorney James T. Boulger. Defendant Bob Kingery and Karen Stapleton were present on March 15, 1995, with attorney James M. Daniels. Plaintiff Dale Crooks was present on May 22, 1995, with attorney James T. Boulger. Defendant Bob Kingery and Karen Stapleton were present on May 22, 1995, with attorney James M. Daniels.

FINDINGS OF FACT

1. On or about December 5, 1993, defendant Bob Kingery responded to a newspaper advertisement offering to rent property at 619 East Second Street, Chillicothe, Ohio, by telephoning plaintiff Dale Crooks.
2. Three or four days after the telephone conversation defendant Bob Kingery and plaintiff Dale Crooks met at the property to look at the house.
3. At the time defendant Bob Kingery viewed the house plaintiffs Dale Crooks and Nita Crooks were still working on the plumbing.
4. Defendant Bob Kingery advised plaintiffs he was anxious to move in as soon as possible.
5. Defendant Bob Kingery advised plaintiffs he would fix the toilet by installing a new floater ball and seal, and would lay carpet in the house, in order to expedite his moving in.
6. The rental agreement called for defendant Bob Kingery to pay \$235.00 per month rent starting December 18, 1993, plus defendant Bob Kingery was to assume payment of all utilities, and defendant was to have no pets on the premises.

7. The rental agreement was written on a paper sack and signed by the parties.
8. Plaintiffs were under the impression that the home would be occupied by defendant Bob Kingery, Lynette Kingery, and their three children.
9. The home was actually occupied by defendant Bob Kingery; Karen Stapleton, his girlfriend, and the three minor children of Bob Kingery and Karen Stapleton.
10. Before the rental agreement was completed, plaintiffs advised defendant Bob Kingery that plaintiffs were planning a major remodeling project for the property in the summer of 1994, and that the tenants would have to vacate the property at that time so that the remodeling could be completed.
11. Defendant Bob Kingery, Karen Stapleton, and their three minor children occupied the property from December 18, 1993, to the middle of July, 1994, at which time they vacated the property.
12. All utilities were put in the name of Karen Stapleton except the water bill, which could not be switched to her name because of an outstanding balance of \$109.00 attributable to the prior tenant.
13. Defendant Bob Kingery did not pay any water bills for the property while he occupied it, and plaintiffs were forced to pay \$582.00 for water bills attributable to defendant Bob Kingery and his family.
14. Defendant Bob Kingery did buy materials to fix the toilet that was running, did fix the toilet, and was reimbursed for this expenditure by plaintiffs.
15. When defendant Bob Kingery and his family looked at the property and moved in, he was aware that the back of the house, including the bathroom and kitchen, had a noticeable slope to it, which plaintiffs planned to correct in the remodeling to be done in the summer of 1994.
16. Defendant Bob Kingery and Karen Stapleton had a puppy for the last month they were in the property.
17. During the time defendant Bob Kingery, Karen Stapleton and their

family occupied the property, the bathroom floor was noticeably wet and unsanitary, the shower failed to drain properly, the kitchen and bathroom sinks failed to drain properly, and a sewage pipe outside the house discharged sewage onto the ground resulting in an unsanitary condition and offensive smells.

18. Defendant Bob Kingery paid rent of \$235.00 for December, 1993, and for January, February, March, and April of 1994.

19. Defendant Bob Kingery did not pay rent for May or June, 1994, totalling \$435.00.

20. Plaintiffs are chargeable with actual or constructive notice of the defects in the premises set forth in Finding of Fact 17.

21. Plaintiffs failed to present to the Court sufficient evidence as to the amount of any damages caused to the premises by defendant Bob Kingery and his family.

22. Defendant Bob Kingery and Karen Stapleton have failed to prove any unreimbursed special damages.

23. Defendant has failed to show that plaintiffs are guilty of "malice, aggravated or egregious oppression and insult".

24. The defects in the premises set forth in Finding of Fact 17, above, diminished the value of the rental premises in the total amount of \$770.00 for the period of defendant's tenancy.

CONCLUSIONS OF LAW

1. The conditions set forth in Finding of Fact 17 violated the obligations of a landlord as set forth in Section 5321.04(A)(1), (2), and (4), O.R.C.

2. Defendant did not comply with the notice requirements of Section 5321.07, O.R.C.

3. Defendant was aware of the problems with the premises set forth in Finding of Fact 15, and of plaintiffs plans to correct these problems in the summer of 1995, when defendant moved into the property, and consequently is not entitled

to damages for such conditions of the premises.


4. Except for the diminution in the rental value of the premises as set forth in Finding of Fact 24, defendant has failed to show any other compensatory damages.

5. Defendant has failed to prove that he is entitled to punitive damages in this case.

6. Defendant is not entitled to attorney fees in this case.

7. Plaintiffs are entitled to judgment on their complaint as against defendant Bob Kingery for the sum of \$247.00 (\$582.00 as set forth in Finding of Fact 13, plus \$435.00 as set forth in Finding of Fact 19, less \$770.00 as set forth in Finding of Fact 24), plus interest from July 18, 1994, and costs.

Judge



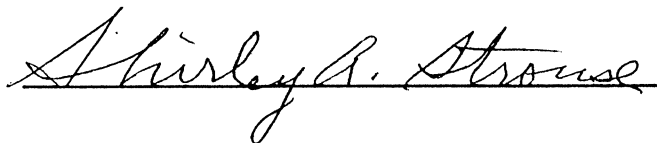
JUN 14 1995

PROOF OF SERVICE

Copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW mailed to the following by ordinary first class mail postage prepaid on the 14th day of June, 1995:

James T. Boulger, BOULGER & BOULGER, Attorneys at Law, 10-14 Foulke Block, Chillicothe, Ohio 45601

James M. Daniels, Attorney at Law, Southeastern Ohio Legal Services, 15 East Second Street, Chillicothe, Ohio 45601



IN THE MUNICIPAL COURT, CHILLICOTHE, OHIO

Dale Crooks et al. *
Plaintiffs *
vs. *
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JUDGMENT ENTRY
CASE NO. 94-CVG-495

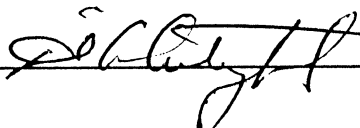
FILED

JUN 14 1995

ROSEANNA J. STRONG, CLERK
CHILLICOTHE MUNICIPAL COURT
CHILLICOTHE, OHIO

In accordance with the Findings of Fact and Conclusions of Law filed herein on June 14, 1995, judgment is hereby rendered in favor of plaintiffs Dale Crooks and Nita Crooks and against defendant Bob Kingery for the sum of \$247.00 with interest thereon at 10% per annum from July 18, 1994, and also for the costs of this action, on the claims set forth in plaintiffs' complaint.

Judgment is rendered in favor of plaintiffs Dale Crooks and Nita Crooks and against defendant Bob Kingery on the defendant's counter-claim.



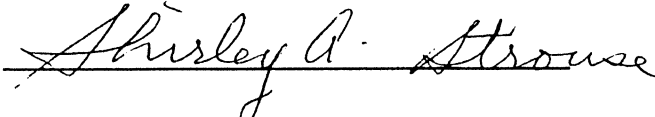
Judge **JUN 14 1995**

PROOF OF SERVICE

Copy of the foregoing JUDGMENT ENTRY mailed to the following by ordinary first class mail postage prepaid on the 14th day of June, 1995:

James T. Boulger, BOULGER & BOULGER, Attorneys at Law, 10-14 Foulke Block, Chillicothe, Ohio 45601

James M. Daniels, Attorney at Law, Southeastern Ohio Legal Services, 15 East Second Street, Chillicothe, Ohio 45601



Shirley A. Strouse