IN THE SMALL CLAIMS DIVISION
JEFFERSON COUNTY COURT NO. 1
TORONTO, OHIO

SUZAN ALBA

PLAINTIFF

E N T R Y

-VS-

Case No. 94-CVI-140

MARTIN LOCKHART

DEFENDANT

This cause came for hearing on February 28, 1995 and the Court, after reviewing the evidence, exhibits and Arguments of Counsel, makes the following ruling:

Plaintiff (Tenant) and Defendant (Landlord) had a written Lease from April 1, 1994 through March 31, 1995. During May of 1994, Plaintiff and Defendant agreed that Lease could be terminated. Landlord said that meant within a reasonable time and not six months later. Tenant felt that meant when she found another apartment. In any event, the Lease continued through November 10, 1994. Tenant notified Landlord that she would be vacating premises by original letter sent November 1, 1994 received by Landlord on November 2, 1994. (See Plaintiff's Exhibit "A" and Exhibit "B".) The Court does find that the Lease terminated in May of 1994 but continued on a month to month basis. The Tenant could terminate the Lease but must give 30 days notice. The Court therefore finds $290.00 rent was owed for November, 1994.

The Court further finds from the evidence, that Plaintiff (Tenant) noted a number of complaints regarding the premises, none of which made the premises uninhabitable. Landlord also had complaints about premises, none of which could have been proven to be intentional or negligent damage. So, the repairs Landlord performed were from reasonable wear and tear to apartment. Regarding the broken door, neither party produced evidence to establish who caused the damage or when it was done.

The Court does find that it was reasonable to advertise to re-let the apartment and that Defendant's Exhibit 8A (Herald Star bill) from November 15, 1994 through November 21, 1994 was reasonable since Tenant left without notice but that the advertisement from November 27, 1994 through December 3, 1994 would have normally been published even if Tenant gave the 30 days notice. Therefore, the Tenant only owes Exhibit 8A of $32.75 to the Defendant. All other damages would not have been related to the failure to give reasonable notice of vacating the premises.

Therefore, Defendant is entitled to $322.75 and Plaintiff had $315.00 on deposit; and hence, Defendant is entitled to $7.75.

Regarding Landlord's failure to itemize the security deposit in writing, the Court finds:

The Landlord's failure to provide the Tenant with a list of itemized deductions from a security deposit as required by RC§5321.16(B) renders the Landlord liable pursuant to RC§5321.16(C) for double damages only as to the amount wrongfully withheld: Dwork v. Offenberg, 66 OApp2d 14, 20 003d 36, 419 NE2d 14.

Since no amount is wrongfully withheld, the Court rules against the Plaintiff's Complaint for damages. The Court further rules against the Defendant (Landlord) regarding any other claim for damages.

The Court finds neither party is entitled to attorney's fees and the judgment is awarded in favor of Defendant (Landlord) for $322.75; however, Plaintiff had a security deposit in the amount of $315.00 which the Defendant (Landlord) has retained. Therefore, Defendant (Landlord) is entitled to an additional $7.75 from the Plaintiff.

Costs to Defendant.

JUDGE JOSEPH M. CORABI