

6. Under the terms of the lease and after application of the security deposit Defendant owes a balance of \$1,500.00 rent.

Motion to Limit Judgment to Prayer/ Rule 54(C)

7. Defendant's motion to limit judgment to Plaintiff's prayer for relief is over-ruled. The Plaintiff's pleadings are sufficient to put Defendant on Notice that Plaintiff's claim would include damages in addition to the amount specifically stated in Plaintiff's prayer for relief.

Counter-claim for Rent Abatement

8. Although not at issue, the Court finds that the term of the lease granting express contract lien and security interest of the Plaintiff in the Defendant's personal property, to secure compliance of the lease to be "illegal, unconscionable and against public policy".

9. Additionally the Court finds the provision of the lease requiring the Defendant-Tenant to waive the warranty of habitability in direct violation of the Ohio Landlord-Tenant Act, and therefore also "illegal, unconscionable and against public policy". The law is well settled that the provisions of the Ohio Landlord-Tenant Act are not subject to waiver, even if done voluntarily and with consideration. The inclusion of this waiver in a lease makes such lease of residential property prima facie "illegal" and suspect of a willful violation of the Tenant's rights under the Landlord-Tenant Act.

10. On July 17, 1995 the Health Inspector of the City of Girard determined the rental premises to be unfit for human occupancy.

11. The Court finds that Plaintiff failed to maintain the premises in a fit and habitable condition during the tenancy of the Defendant as required by Section 5321.04, Ohio Revised Code, and that the Defendant is entitled to a rent abatement in the amount \$150.00 per month for seven months in a total amount of \$1,050.00.

12. Defendant owes Plaintiff a balance of rent due in the amount of \$450.00

JUDGMENT ENTRY

Judgment for the Plaintiff in the amount of \$450.00, together with interest at the rate of 10% from 12-19-95, and costs.

Date: 12-19-95



MARK S. FINAMORE, MAGISTRATE

[X] Copies to be mailed to the parties. Date of Mailing: _____
Plaintiff/Atty. Roux Defendant/Atty. Flevares

The Decision of the Magistrate is hereby:
[] Accepted and approved. [] Reversed [] Modified

Date: _____

JUDGE MICHAEL A. BERNARD

IN THE GIRARD MUNICIPAL COURT
TRUMBULL COUNTY, OH

PETER J. ROSACE, ET AL.)
)
Plaintiffs)
)
-vs-)
)
LORI HANCOCK AKA)
LORI HANCOCK DYCK)
)
Defendant)

CASE NO. 95 CVG 516

Judge Michael A. Bernard

JUDGEMENT AND ORDER

* * *

This matter came on for consideration upon the Defendant's Objections to the Magistrate's Report filed on December 28, 1995. The Plaintiffs failed to appear but were represented by their Attorney, John Chaney. The Defendant appeared and was represented by Attorney William M. Flevares.

The Court finds that the Parties entered into a rental agreement on or about the 2nd day of November, 1994, wherein the Plaintiff as the landlord leased the premises located for street numbering purposes as 423 Lawrence Avenue, Girard, Trumbull County, Ohio 44420 to the tenant and Defendant, Lori Hancock; that the tenant was to pay the landlord the total sum of \$3,200.00 rather than the sum of \$3,400.00 and did pay the sum of \$2,100.00 during the course of the tenancy; that the Defendant is entitled to an abatement of \$1,050.00 for the reason that the landlord failed to maintain the premises in a fit and habitable condition during the tenancy of the tenant as is required by Section 5321.04 of the Ohio Revised Code; that the tenant owes the landlord the balance of the rent due in the amount of \$50.00 rather than the \$450.00 for the reasons herein after noted.

The Court finds that the Magistrate erred as a matter of fact by failing to credit the December rent in the sum of \$200.00; that the tenant purchased a fan, which the landlord agreed to credit against the December rent; the landlord also agreed to forego the sum of \$150.00 for the reason that the tenant did not gain occupancy of the premises until November 15, rather than November 2, 1994.

The Court further finds that the balance of the Magistrate's Findings of Facts and Conclusions of Law are fair and equitable and are hereby adopted except to the extent herein before set forth.

It is therefore the **JUDGEMENT AND ORDER** of this Court that the Plaintiff recover from the Defendant the sum of \$50.00, together with interest at the rate of 10% thereof from January 31, 1996, plus costs herein incurred.

DATE: 2-1-96

HON: Michael A. Bernard
MICHAEL A. BERNARD, JUDGE

cc: Atty. John Chaney
Atty. William Flevares

FILED

FEB 01 1996

GIRARD MUNICIPAL COURT
GIRARD, OHIO



Michael A. Bernard

Judge

Girard Municipal Court
100 W. Main St., Girard, OH 44420

