

**THE LAKEWOOD MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO**

Mary J. & Thomas W. Moran

**TO-WIT** Dec. 30, 1997  
**CASE NO.** 97 CVG 300

**PLAINTIFF**

**VS.**

**JUDGMENT ENTRY**

(Page 1 of 3)

Peggy Lee Foster

**DEFENDANT**

This case is before the Court upon a hearing of the defendant's objections to the Report and Recommendation of the Magistrate. This case arises out of a landlord/tenant relationship between the parties. The plaintiffs landlords commenced this action to recover possession of the premises as well as monetary damages. The issue before the Court with respect to the defendant's objections are the amount of the monetary damages.

The plaintiffs claimed monetary damages for unpaid rent, late charges, and costs of repairs to the leased premises. With respect to the cost of repairs, the Magistrate, in her report, found that the cost of repairs was \$378.88. Neither party filed objections to this finding by the Magistrate.

The Magistrate also found there was four (4) months of unpaid rent, December 1996 through March 1997 at a rate of \$550.00 per month. The Magistrate also found late fees in the amount of ten percent for the four months equaling \$55.00 per month. The defendant filed objections as well as the motion for a new trial raising three (3) issues: 1) the inclusion of the first month's rent, December 1996; 2) inclusion of last month's rent, March 1997; and 3) assessment of late fees. The hearing was held before the Court on these three (3) issues. Subsequent to the hearing, at defendant's request, defendant was permitted to file a brief in support of the objections. Additional time was given to the plaintiffs to respond to that brief which to date has not been done. Upon review of the evidence in the record the Court makes the following findings and conclusions.

With respect to the first month's rent, the record reflects that at the time the defendant and her family took possession of the premises she made a payment of \$1,100.00. There is no dispute in the record that the monthly rent was \$550.00. As such, the initial payment of \$1,100.00 reflected the first month's rent and security deposit by the defendant/tenant. Upon review of the record, the Court finds that the defendant was entitled to credit of \$550.00 reflecting the first month's rent for the month of December 1996. As such, the defendant's objections in this regard are well taken.

With respect to the issue of late fees, the record reflects that the plaintiffs/landlord through their agent tendered a lease agreement to the defendant but the defendant never signed this agreement. As such, the arrangements in affect became a month-to-month tenancy between the parties. Although the lease agreement provided for late fees in the amount of \$55.00 per month, it is unclear in the record whether the parties ever agreed to this term. The defendant's failure to sign the lease agreement indicates a lack of agreement of this term. In the absence of any agreement between the parties late fees will not automatically be assessed against the tenant. As such, the Court finds that the plaintiffs are not entitled to assessment of late fees in this case.

The final items of damages in dispute in this case is the assessment of rent for the month of March 1997. The record reflects that the defendant vacated the premises on March 9, 1997. The evidence in the record also shows that the plaintiff and her family took possession of the premises on December 6, 1997. Although the defendant claims that she herself did not take possession of the property until later in the month of December, the evidence in the record is clear that she was given access to the property and took advantage of that by allowing her family to take possession of the property as of December 6, 1996. As a month-to-month tenancy, the beginning term would begin on the sixth day of the month, the fact that the defendant obtained possession of the property on December 6th is also supported by the receipt relied on upon the defendant showing a payment of \$1,100.00 for the initial rent and security deposit which is also dated December 6, 1996.

As the beginning point of the term being the 6th day of the month, a new term would have commenced as March 6, 1997. There is no dispute in the record that the defendant vacated the premises on March 9, 1997. As such, the defendant held over into the month of March. The defendant claims that notwithstanding the holdover into the next monthly term, there is a obligation to prorate the rent and therefore, the defendant is only liable for three days of rent for the month of March. Defendant's counsel conceded at both the hearing and in her brief that this position is not supported by any case law in the State of Ohio. As a general rule, rent is due on the first day of the term and rent is not apportionable to time unless there is an express agreement between the parties. The record reflects that there is no agreement between the parties.

In the present case, the record reflects that at the time the defendant vacated the premises the plaintiffs were out of town and could not return for a period of ten days. Upon return, in light of the condition of the premises, additional time was needed to put the premises in good repair and rentable condition. The defendant argued that the plaintiffs had an obligation to litigate damages. As was stated earlier, the record reflects that the plaintiffs were out of town for a period of ten days and could not return to begin work on the premises until after that time. Given the facts of this case, where it is clear that the defendant paid only one (1) out of four (4) month's rent and left the premises in a state of bad repair as a result of that four month occupancy, it is unreasonable to demand that the plaintiffs/landlords cut short their previously planned trip in order to accommodate the defendant. What the record in this case does reflect is that upon return to the area, the plaintiffs, expeditiously repaired the premises so it would be available to rent for the month of April 1997. As such, the plaintiffs acted in good faith in an attempt to mitigate damages and re-rent the property as soon as possible. Moreover, in light of the fact that the defendant was obligated to pay the rent for the whole term beginning as of March 6th, even

assuming the plaintiffs had not completed the repairs within the thirty (30) day period, it would not relieve the defendant of her obligation for her payment of rent for that period.

Based on the foregoing, the Court adopts the Report and Recommendation of the Magistrate as modified by this judgment entry. As such, the record reflects that there is due and owing rent for a period of three (3) months at a rate of \$550.00 per month for a total of \$1,650.00. There is also damages to the rental premises in the amount of \$378.88 for a total of \$2,028.88. Applying a credit of \$550.00 for the amount of the defendant's security deposit there is a balance due and owing by the defendant to the plaintiffs in the amount of \$1,478.88. Accordingly, judgment is entered in favor of the plaintiffs and against the defendant in the amount of \$1,478.88 with interest at the rate of ten percent per annum from the entry of this judgment. The costs of this action are assessed against the defendant.

PATRICIA CARROLL  
JUDGE

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JUDGE

**LAKWOOD MUNICIPAL COURT**  
**CUYAHOGA COUNTY, OHIO**

MARY J MORAN, ET AL  
PLAINTIFF

CASE NO. 97 CVG 0300

REPORT OF THE MAGISTRATE

-VS-

PEGGY LEE FOSTER  
DEFENDANT

FILED  
APR 20 1997  
COURT CLERK

To the Honorable Patrick Carroll, Judge of said Court:

The undersigned Terease Z. Neff, pursuant to the order of this Court appointing her Magistrate herein, respectfully reports as follows:

Case called for second cause, plaintiff present, defendant absent, witnesses sworn testimony taken, trial had on 4-17-97.

**FINDINGS OF FACT**

1. Plaintiff as landlord and defendant as tenant entered into a lease agreement for rental of 15622 Hilliard Rd., Lakewood , Ohio at a monthly rental of \$550.00.
2. Defendant paid to plaintiff a security deposit in the amount of \$550.00.
3. On 1-10-97 defendant was given a three day notice to vacate the premises for non-payment of rent.
4. Defendant vacated premises on or about 3-9-97 not having paid rent as follows:

<u>MONTH</u>	<u>RENT</u>	<u>LATE FEE</u>
December, 1996	\$550.00	\$55.00
January, 1997	\$550.00	\$55.00

February, 1997	\$550.00	\$55.00
March, 1997	\$550.00	\$55.00

5. Plaintiff alleges the following damages to the suite are beyond ordinary wear and tear.

A)	Missing smoke detector-replacement cost (PIEx. 1; PLEx.11-photo)	\$ 8.98	
B)	Two 30"x22" glass panes-replacement cost (PIEx.2; PLEx.11-photo)	\$20.80	
C)	Two 8"x10" bevel edge glass-replacement cost (PIEx.3;PIEx.11-photo)	\$48.20	
D)	Four cupboard door latches-replacement cost (PIEx.4;PIEx.11-photo)	\$39.92 -\$9.98 ea.	
<del>E)</del>	One storm door-replacement cost (PIEx.5;PIEx.11-photo)	\$98.00	
F)	One door closer (no replacement cost given) (PIEx6-photo)	-	
G)	One attic door handle-replacement cost (PIEx.7;PIEx.11-photo)	\$10.98	
<del>H)</del>	Two 2"x6"x12" treated lumber (stair repair) (PIEx.8;PIEx.11-photo)	\$23.40	
I))	Cost to steam clean two rooms with carpet (PIEx.9;PIEx.10-photo)	\$100.00	
<del>J)</del>	Missing bathroom sink faucet-replacement cost (PIEx.11)	\$55.00	
K)	Cost of labor (PIEx.11)	<del>\$140.00</del> <sup>150.</sup>	
	Cost for Materials		\$405.28
	Labor Cost		<u>\$440.00</u>
	<b>TOTAL</b>		<b>\$845.28</b>

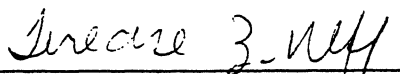
6. Plaintiff did not return defendant's security deposit.

### CONCLUSIONS OF LAW

1. Defendant breached the lease agreement by failing to pay rent and late fees in the amount of \$2,440.00.
2. Plaintiff has not proven by credible, probative and sufficient evidence the damages outlined in Findings of Fact #5 E), H), and J) are beyond ordinary wear and tear. In addition,


plaintiff's damages for labor costs (\$440.00) are not broken down into an hourly rate and exceed the costs of the materials. Plaintiff is only entitled to \$150.00 for labor.

3. Plaintiff has been damaged in the amount of \$2,818.88 (\$2,440.00 unpaid rent, and late charges + \$378.88 in damages, leaving a total of \$2,818.88).
4. Defendant is entitled to have the security deposit of \$550.00 applied to the damages of \$2,818.88 leaving a total of \$2,268.88 owed to the plaintiff.
5. The Magistrate recommends judgment for the plaintiff and against the defendant in the amount of \$2,268.88, plus court costs.

  
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**TEREASE NEFF, MAGISTRATE**

**PROOF OF SERVICE**

This report of the Magistrate was mailed to Mary J. Moran, Et Al, plaintiffs, 942 Stony Hill Rd., Hinckley, Ohio 44233 and Peggy Lee Foster, defendant, 15622 Hilliard Rd., Lakewood, Ohio 44107 by regular US mail on APR 22 1997

  
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**C. L. Root, Deputy Clerk**