

IN THE FRANKLIN COUNTY MUNICIPAL COURT

COLUMBUS, OHIO

Macoiya Roundtree

Tenant

vs.

Ellis Valentine

Landlord

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Case Number: 98CVR-23790

Magistrate Mark Hummer

MAGISTRATE'S REPORT

This cause came on for hearing before Magistrate Hummer on Dec. 15, 1998. Attorney Pamela Simmons represented the tenant, Macoiya Roundtree. Landlord Ellis Valentine failed to appear. Although notice was mailed by the clerk to both parties directing them to appear for trial at 11:30 a.m., both Ms. Simmons and Mr. Valentine arrived at court at approximately 10:30 a.m. When Mr. Valentine discovered the case was set at 11:30, he apparently told Ms. Simmons and a court secretary that he would not be staying for the 11:30 a.m. hearing. He was not granted a continuance by the magistrate, nor did he even see the magistrate. The case was called at approximately noon and sworn testimony was taken. A few days after the hearing, Mr. Valentine called the court to ask about the hearing and was told a written decision was pending. Subsequently, on Dec. 31, 1998, Mr. Valentine sent a facsimile transmission to the magistrate explaining his reasons for the non-appearance on December 15.

The magistrate also received post-trial correspondence from Ms. Simmons as a result of testimony offered by the tenant, Macoiya Roundtree, on December 15. The testimony indicated that while Ms. Roundtree was no longer living at 343 North Monroe Street, she had not surrendered the key to the premises to Mr. Valentine. The post-trial correspondence from Ms.

Simmons notes that Ms. Roundtree delivered the key to the Legal Aid Society offices on Dec. 21, 1998, and that Ms. Simmons in turn had advised Mr. Valentine the key was available for him to retrieve at Legal Aid Society offices.

Based on the sworn testimony that was taken on December 15, the magistrate finds as follows:

FINDINGS OF FACT

1. Landlord Ellis Valentine and tenant Macoiya Roundtree entered into a written agreement (Exh. 7) under the terms of which Ms. Roundtree was to occupy the premises at 343 North Monroe Avenue for a one year term beginning in June of 1998.
2. Rent was to be \$650.00 per month.
3. On or about July 7, 1998, Ms. Roundtree sent a certified letter (Exh. 6) to Mr. Valentine detailing a long list of necessary repairs, many of which had been discussed but not reduced to writing at the beginning of the tenancy. The letter was returned to Ms. Roundtree with a postal stamp that it had been refused.
4. On or about July 23, 1998, in response to a request from Ms. Roundtree, City Code Enforcement Officer David Foster inspected the premises at 343 North Monroe Avenue and compiled a report that listed 47 code violations at the property. Mr. Foster sent Mr. Valentine a copy of the report.
5. On July 28, 1998, plaintiff deposited her \$650.00 rent for the month of August in escrow at the Franklin County Municipal Court clerk's office. She again deposited rent in escrow on September 2, 1998 for the month of September.
6. On Sept. 18, 1998, at the request of Ms. Roundtree, City Code Enforcement Officer Ed Stollard visited the property and wrote an emergency order directing Mr. Valentine to take corrective

action within 48 hours to remove raw sewage and standing water from the basement (Exh. 5). Mr. Stollard hand-delivered the order to the landlord's address at 479 East Second Avenue.

7. Mr. Valentine took no corrective action as a result of either the July inspection or the September emergency order.

8. After September, Ms. Roundtree paid no further rent to Mr. Valentine. Although there was no hot water, she and her six children continued to occupy the premises until mid-November when they moved to 953 Gilbert Street. Ms. Roundtree kept her key until December 21 because she had installed a security system at 343 North Monroe and wanted to retain the ability to get into the property until the security system was disarmed. Eventually, she deactivated it herself when the installers had not removed it before December 21. She did not notify Mr. Valentine she had vacated until Ms. Simmons informed him in the December 21, 1998, letter referred to on the first page of this Magistrate's Report.

9. On or about Sept. 29, 1998, Ms. Roundtree filed a handwritten request with the court seeking release of the escrowed rent.

10. The parties appeared for a hearing on Ms. Roundtree's request on Oct. 26, 1998. The parties engaged in unsuccessful settlement negotiations both outside the presence of and in the presence of the magistrate. Testimony was not taken and the matter was re-assigned to Nov. 9, 1998.

11. On Nov. 9, 1998, further settlement discussions were conducted in the presence and outside the presence of the magistrate. When they again proved unsuccessful, the magistrate re-assigned the matter to Dec. 15, 1998 at 11:30 a.m. and directed tenant's counsel to file as soon as possible the counterclaim that counsel said she wished to assert on behalf of her client.

12. Although the only written request by Mr. Valentine to have the escrowed funds released

to him was contained in his Dec. 31, 1998 facsimile transmission to the court, he argued orally in favor of the rent being released to him during both the October 26 and November 9 court appearances.

13. On Nov. 12, 1998, Ms. Roundtree through counsel filed a "Motion for Reduction of Rent, Reformation of Lease, Release of Escrowed Funds and Damages" and a "Complaint for Money Damages." The "motion" seeks release of the escrowed rent to the tenant, while the "complaint" seeks not only the release of the escrowed rent but also a further money judgment "not to exceed \$10,000" based on the tenant's claim that the property was worth nothing as a rental value from July 1, 1998 until the end of the tenancy.

CONCLUSIONS OF LAW

The landlord was not present for the Dec. 15, 1998 hearing, and the tenant offered credible evidence to show the premises was deemed uninhabitable in late September and was worth no more than half the agreed contract price prior to then.

Although tenant labels her November 12 pleading a "complaint," the pleading amounts to a counterclaim pursuant to R.C. 5321.09 because it arose in conjunction with the landlord's oral motion to have the escrowed rent released to him. The two housing code enforcement officers were extremely credible witnesses whose testimony supports the conclusion that the landlord failed to meet his R.C. 5321.04 obligations to comply with applicable code regulations that materially affected health and safety at the rental property. Mr. Stollard, the code enforcement officer who inspected the property on Sept. 18, 1998, testified credibly that the property was uninhabitable for code enforcement purposes because of the standing water in the basement that prevented the water heater pilot light from staying lit. The earlier inspection yielded a different result because the inspector, Mr. Foster, and the tenant testified the property was not uninhabitable but in need of

many repairs at the time of Mr. Foster's inspection.

The following factors are significant: the discussions the parties had at the beginning of the contract during which landlord agreed to make necessary repairs; the subsequent written request by tenant in early July to have the repairs made; the code report in late July that addressed 47 violations; the nature and number of the violations; and the impact on tenant and her family of the continuing existence of the violations. Based upon those factors and upon the credible testimony of tenant and the code enforcement officers, the magistrate concludes that the landlord breached his rental obligations by supplying a property that was not worth \$650.00 a month. None of the witnesses provided an exact formula for the value of the property, but the tenant testified that she believed its value was reduced by at least half and perhaps more in the early months of the tenancy because of the various code violations set forth in the July 23 inspection (plaintiff's Exh. 1). The magistrate concludes the property was worth half the agreed contract price from June through September.

Landlord already possesses the rent money in full for June and July, which means he is entitled to nothing more from the four-month period of June-September. The escrowed funds are equal to what Ms. Roundtree proved she should recover, \$1,300, half the agreed contract price for June-September. After September 18 the property was labeled uninhabitable, an apt description in light of the sewage, the standing water, the numerous other code violations, and the need for Ms. Roundtree and her children to bathe at other locations because of the lack of hot water.

In sum, the landlord failed to appear at the hearing and thereby failed to offer any evidence to support a release of the escrowed rent to him pursuant to R.C. 5321.09. The tenant, on the other hand, provided credible testimony to prove a breach of the landlord's contractual duties pursuant to R.C. 5321.04 and that the breach damaged the tenant in the amount of the escrowed rent. R.C.

5321.12 provides that in "any action under Chapter 5321 of the Revised Code, any party may recover damages for the breach of contract or the breach of any duty that is imposed by law." The measure of those damages is the difference between the rental value of the property in its defective condition and what the rental value would have been had the property been maintained. *Miller v. Ritchie* (1989), 45 Ohio St.3d 222. Because the property was worth half of the stated contract price from June to September, the tenant overpaid rent in an amount equal to the escrowed funds and is therefore entitled to receive the escrowed funds.

DECISION

Landlord's oral motion for release of escrowed rent is denied. Judgment in favor of tenant Macoiya Roundtree and against landlord Ellis Valentine in the amount of \$1,300 plus interest. Clerk to satisfy the judgment to the extent possible by releasing the escrowed rent to the tenant after appropriate deductions for costs.

1/28/99
Date _____

Mark Hummer
Magistrate Mark Hummer

Copies To:

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