

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

SHIRLEY MALCOM

DATE: JUNE 28, 2001

Plaintiff(s)

-vs-

CASE NO.: 99-CVH-21689

RONNIE T. TATE

Defendant(s)

JUDGMENT ENTRY

This case came for hearing before Magistrate Martha R. McCorkle, to whom it was referred by Judge Raymond L. Pianka, pursuant to Ohio R. Civ. P. 53, to take evidence on all issues of fact and law regarding plaintiff's complaint for money damages. Plaintiff was present, and represented by counsel. Defendant was not present, and not represented by counsel.

FINDINGS OF FACT

1. Defendant is the landlord and owner of the property located at 11623 Tuscora Avenue, Cleveland, Ohio (hereinafter "premises").
2. In February 1997, plaintiff became a tenant in the downstairs unit of the premises, pursuant to a written rental agreement and a Section 8 Housing Assistance Payment ("HAP") Contract.
3. Pursuant to the HAP Contract, the Section 8 program paid defendant Three-Hundred-Forty-Nine Dollars (\$349.00) per month and plaintiff paid the defendant Twenty Dollars (\$20.00) per month, for a total of Three-Hundred-Sixty-Nine Dollars (\$369.00) per month as rent.
4. Plaintiff paid defendant Four-Hundred-Seventy-Five Dollars (\$475.00) as a security deposit.
5. The City of Cleveland Division of Building and Housing issued to defendant a Notice of Electrical violations on August 20, 1997.
6. Plaintiff put defendant on written notice of problems with the property including: electrical problems, backyard containing garbage and debris, window to the back door missing, lack of working stove, stains on

the living room carpet, hole in the hallway floor, mildew on the bathroom wall and ceiling, part of the baseboard in the bathroom missing, several heat register covers missing, no locks on bedroom windows, doorknob on side entry door missing, doorknob on second bedroom door missing, inoperative ceiling fan in dining room, gutter on side of the house missing, and living room windows which would not open.

7. The premises were inspected by Cleveland Metropolitan Housing Authority inspectors on October 31, 1997, and failed to meet the Housing Quality Standards prescribed by the Department of Housing and Urban Development for the Section 8 program.

8. On or about March 13, 1998, the plaintiff provided the defendant with a written thirty-day notice indicating that she was vacating the premises, due to the conditions of the premises, and containing an address to where the defendant could mail what was due to her from the security deposit.

9. On or about March 25, 1998, plaintiff became unable to stay overnight at the property due to the conditions.

10. On March 27, 1998 plaintiff began to remove her possessions from the premises, but had not moved out of the property.

11. On or about April 7, 1998, the defendant changed the locks to the premises, and refused to allow the plaintiff entrance in order to retrieve the remaining items of personal property in the premises, including the following: a bed, a safe, and a color television.

12. The plaintiff proffered at trial a receipt indicating that she expended One-Hundred-Seventeen Dollars and Seventy Cents (\$117.70) to replace a full size box spring and mattress.

13. The plaintiff was damaged in the amount of One-Hundred Dollars (\$100.00) for a television and Seventy-Five Dollars (\$75.00) for a safe.

14. The plaintiff submitted photographs of the premises demonstrating the deteriorated condition of the premises suggesting that a rent abatement was deserved, in the amount of One Hundred Dollars (\$100.00) per month.

CONCLUSIONS OF LAW

Plaintiff's complaint for money damages alleges three causes of action: constructive eviction, conversion, and wrongful withholding of security deposit. Each is discussed separately below.

At the outset, the Court notes that plaintiff asserts that she has standing to recover damages against the defendant despite the fact that she was a Section 8 tenant paying minimal subsidized rent. In Foss v. Reddy, (Ct. App. 8th Dist. Cuyahoga 1995), No. 68836, the court held that a tenant who leases a premises with a Section 8 subsidy does have standing pursue a claim for damages under §5321.04(A). In the instant case, this Court determines that the plaintiff does have standing and is properly before this Court.

In her first claim, plaintiff states that defendant failed and refused to maintain the premises in a fit and habitable condition in violation of R.C. § 5321.04. Plaintiff claims that the conditions caused both a diminution in the value of the premises and eventually forced her constructive eviction from the premises.

Revised Code § 5321.04 requires that the landlord "make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition." Where a landlord breaches his duty to maintain rental property and the tenant does not make repairs, the measure of 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. Smith v. Padgett (1987), 32 Ohio St.3d 344.

In addition, Ohio courts have held that the value of the housing is equal to the full rental value of the unit being subsidized, not the portion the tenant pays. Kenwood Courts Apts. v. Williams (Portage Cty. Muni. Ct. 1991), Case No. K90 CVG 1043. Plaintiff seeks to have her rent abated due to the deteriorated conditions of the property. Specifically plaintiff states that defendant's failure to repair reduced the fair value of the rental premises from \$349 to \$100 per month from October 1997 through February 1998. Plaintiff further alleges that this failure resulted in plaintiff's constructive eviction from the premises in the month of March. This court agrees.

Defendant failed to repair numerous defects after receiving notice from the tenant requesting repairs. Defendant also failed to comply with orders to repair issued by both City of Cleveland and CMHA Housing Inspectors. Plaintiff had no working stove, significant electrical

problems, a backyard full of garbage and debris not created by the plaintiff, a missing backdoor window, and numerous other interior defects. Further, the unit failed HUD inspection on October 31, 1997, and was in the process of being terminated from the Section 8 Program. Based on the testimony and evidence produced at trial of the nature and extent of the defects at this property, it is reasonable to award plaintiff an abatement of her rent in the amount of One-Hundred-Dollars (\$100) per month from October 1997 to February 1998, totaling Five-Hundred Dollars (\$500).

With regard to constructive eviction, Ohio courts have held;

It is necessary that the tenant relinquish possession of the premises in order that there be a 'constructive eviction,' the theory being that the acts of interference by the landlord compel the tenant to leave, and that he is thus in effect dispossessed, though not forcible deprived of possession." Manifold v. Schuster (4th Dist. Highland Cty. 1990), 67 Ohio App.3d 251.

Based upon the guidelines in Manifold and this Court's finding that plaintiff did not live in the apartment after March 27, 1998 due to the conditions of the unit, this Court agrees that plaintiff was dispossessed for three days of March 1998 totaling Thirty-five Dollars (\$35).

In her second claim for conversion the plaintiff alleges that on or about April 7, 1998, the defendant locked plaintiff out of the premises and converted to his own use a color television, a safe, and a bed box spring, mattress and frame that belonged to the plaintiff. Conversion is the "wrongful control or exercise of dominion over property belonging to another inconsistent with or in denial of the rights of the owner." Tabar v. Charlie's Towing Serv., Inc. (1994 8th Dist. Cuyahoga Cty.), 97 Ohio App.3d 423, 427. In order to prove conversion, the personal property owner must demonstrate: (1) he or she demanded the return of the property from the possessor after the possessor exerted dominion or control over the property, and (2) that the possessor refused to deliver the property to its rightful owner. Id. The measure of damages in conversion action is the value of converted property at the time it was converted. Id.

Here, the defendant changed the locks to the premises at the end of March 1998 while the plaintiff still had the right to possession. The plaintiff offered testimony at trial that she requested re-entry to the premises to gather the remainder of her belongings, but that the defendant refused to allow her to do so. Accordingly, the elements of conversion have been proven, and the plaintiff is entitled to the value of

her property at the time it was converted. Plaintiff provided receipts and testimony demonstrating that the value of the items at the time of conversion totaled Two-Hundred-Ninety-Two Dollars and Seventy Cents (\$292.70). Accordingly, she is entitled to Two-Hundred-Ninety-Two Dollars and Seventy Cents (\$292.70) as damages for the conversion.

In her third claim for wrongful withholding of security deposit, the plaintiff alleges that she paid a security deposit of Four-Hundred-Seventy-Five Dollars (\$475) an amount One-Hundred-Six Dollars (\$106) greater than one month's rent of Three-Hundred-Forty-Nine Dollars (\$349). Plaintiff alleges that in mid-March 1998, she notified defendant that she would have removed her possession by the end of the month, provided her forwarding address and requested the return of the security deposit. Plaintiff claims that the defendant has neither returned any portion of her security deposit nor provided the plaintiff with an itemized statement of deductions relative to her security deposit.

Pursuant to R.C. § 5321.16(C), if a landlord fails to comply with R.C. § 5321.16(B) in returning a security deposit, a tenant may recover the property and money due her, together with damages in an amount equal to the amount wrongfully withheld, and reasonable attorneys fees. Defendant having failed to return the security deposit to the plaintiff nor having provide the plaintiff with an itemization as to why he withheld the security deposit, and plaintiff having provided the defendant with a forwarding address plaintiff is entitled to a return of the security deposit in the amount of Four-Hundred-Seventy-Five Dollars, and statutory damages in the amount of Four-Hundred-Seventy-Five Dollars, for a total of Nine Hundred Fifty Dollars (\$950.00).

Since plaintiff did not plead attorney's fees, and this matter was heard as a default, this Court may not award attorney's fees pursuant to the statute here. See Ohio R. Civ. P. 54(C).

Plaintiff also seeks interest on Revised Code § 5321.16(A) provides

"Any security deposit in excess of fifty dollars or one's month's periodic rent, whichever is grater, shall bear interest on the excess at the rate of five per cent per annum if the tenant remains in possession of the premises for six months or more, and shall be computed and paid annually by the landlord to the tenant."

Here, plaintiff gave defendant Four-Hundred-Seventy-Five Dollars (\$475.00) as a security deposit. This amount is One-Hundred-Six Dollars (\$106.00) in excess of the monthly rental amount. Therefore,

plaintiff is entitled to statutory interest at a rate of five per cent per annum on One-Hundred-Six Dollars (\$106.00) for the months that have elapsed between the time she began to occupy the premises in February 1997 until the present. Such interest continues to accrue until the landlord returns the security deposit. One-Hundred-Six Dollars (\$106.00) multiplied by five per cent (5%) interest equals Five Dollars and Thirty Cents (\$5.30) per annum, multiplied by three years equals Fifteen Dollars and Ninety Cents (\$15.90) representing interest due.

RECOMMENDED JUDGMENT

Plaintiff having proven that she was constructively evicted, that the value of the rental premises was reduced based upon conditions, that defendant converted her personal property, failed to provide her statutory interest on her security deposit and wrongfully withheld her security deposit, judgment in favor of the plaintiff against the defendant in the amount of, plus costs. Plaintiff is entitled to an abatement of her rent in the amount of One-Hundred-Dollars (\$100) per month from October 1997 to February 1998, totaling Five-Hundred Dollars (\$500). Defendant was dispossessed for three days of March 1998 totaling Thirty-five Dollars (\$35). Plaintiff is entitled to Two-Hundred-Ninety-Two Dollars and Seventy Cents (\$292.70) as damages for the conversion of her personal property. Plaintiff is entitled to a return of the security deposit in the amount of Four-Hundred-Seventy-Five Dollars (\$475), and statutory damages in the amount of Four-Hundred-Seventy-Five Dollars (\$475), for a total of Nine Hundred Fifty Dollars (\$950.00). Plaintiff is entitled to statutory interest at a rate of five per cent per annum on One-Hundred-Six Dollars (\$106.00) for the months that have elapsed between the time she began to occupy the premises in February 1997 until the present. One-Hundred-Six Dollars (\$106.00) multiplied by five per cent (5%) interest equals Five Dollars and Thirty Cents (\$5.30) per annum, multiplied by three years equals Fifteen Dollars and Ninety Cents (\$15.90) representing interest due.

Judgment for plaintiff in the amount of One-Thousand-Eight-Hundred-Ninety-Nine Dollars, plus costs.

Recommended:

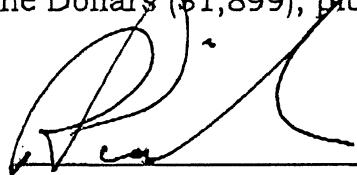

Magistrate Martha R. McCorkle

IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE
MAGISTRATE'S REPORT MUST BE FILED WITHIN FOURTEEN (14)
DAYS OF JOURNALIZATION AND MUST COMPLY WITH THE OHIO
RULES OF CIVIL PROCEDURE AND THE LOCAL RULES OF THIS

COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES
OR SEEK LEGAL COUNSEL.

JUDGMENT

Upon review, the Magistrate's Report is approved and confirmed.
Judgment is for the plaintiff against the defendant in the amount of One-
Thousand-Eight-Hundred-Ninety-Nine Dollars (\$1,899), plus costs.



JUDGE RAYMOND L. PIANKA