

FILED
LICKING COUNTY
MUNICIPAL COURT

IN THE LICKING COUNTY MUNICIPAL COURT

2007 FEB 28 PM 1:15

Harry Blausey,

Plaintiff,

-vs-

Patricia Frase, et al.

Defendant.

Case No. 06 CVG 00748

Judge W. David Branstool

NEWARK, OHIO
LARRY R. BROWN
CLERK

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

This matter came before the Court for trial on June 26, 2006 and September 22, 2006. Pursuant to Rule 52 of the Ohio Rules of Civil Procedure, the Court hereby makes the following findings of fact and conclusions of law.

I. Findings of Fact

1. Plaintiff, Harry Blausey, owned and operated an apartment complex located at West Main and Maholm in Newark, Ohio. Defendant, Patricia Frase, resided in two of these apartments between March, 2005 and April, 2006. Frase resided at 691-1/2 West Main Street between March, 2005, and August, 2005, and at 693 West Main Street from August, 2005, until April, 2006.

2. Blausey had a habit of showing up unexpectedly at Frase's apartments. When he did so, he failed to provide any notice to Frase before he showed up at her apartment. The purpose of Blausey's visits were often unclear, however, he often discussed personal matters with Frase when he was there.

3. In June, 2005¹, while Frase was living at the apartment located at 691-½ West Main Street, she called Blausey to request that he fix her air conditioner. A day or two later when she returned home from work, she noticed that her air conditioner was working. She assumed that Blausey had been there to repair the air conditioner as she requested, but did not know for certain because he never gave her any notice. That evening, after she went to bed at approximately 9:00 pm, she was awakened by the sound of Blausey entering her apartment. He unlocked her door with his key, and started walking up the stairs of her apartment. Blausey yelled Frase's name. Frase asked him what he was doing and he indicated that he was making sure that the air conditioner was working. Blausey did not provide any notice prior to entering Frase's apartment on this occasion. After this, Frase became frightened of Blausey because of his unexpected and unannounced entries into her apartment.

4. On another occasion in August of 2005, after Frase moved into the apartment downstairs at 693 West Main Street, Blausey came into her apartment without announcing himself and for no apparent reason. Blausey did not provide prior notice to Frase of his intention to go into her apartment. After that, Frase bought a chain to prevent Blausey from coming into her apartment without her knowing about it.

5. On November 15, 2005, Blausey once again entered Frase's apartment, without her knowledge and without her permission. On this occasion, Blausey was attempting to evict another tenant named Martina Mendez who resided in an apartment at 222 Maholm Street, Newark, Ohio, which was in the same building where Frase resided. Derek Freter, another tenant in the complex who was residing in an apartment next to Mendez, helped Mendez get her belongings and put them into her apartment at 222

¹ Plaintiff was not certain of the specific date, but testified this occurred sometime in June, 2005.

Maholm. Feter and Mendez then changed the locks at 222 Maholm so that Blausey could not enter the apartment from the street.

As a result of Blausey's actions that day, someone called the Newark Police Department on Mendez's behalf. Officer Lynnette Riley was then dispatched to 222 Maholm Street on the afternoon of November 15, 2005. She was informed by Freter and Mendez that Blausey was attempting to illegally evict Mendez from the apartment. Blausey told Riley that he was securing the apartment because Freter had illegally broken into one of the apartments. Officer Riley told Blausey that until he properly evicted Mendez, he could not change the locks on the apartment. Blausey became belligerent and argumentative. Officer Riley informed Blausey that if he came back to the apartment, he would be arrested for criminal trespass.

After the police left, Blausey asked Don Amende, another tenant of the complex, to act as a look-out outside of Mendez's apartment while he entered Mendez's apartment through a common passageway from Frase's apartment. Both Amende and Freter testified that Blausey went into Frase's apartment in order to get into Mendez's apartment from another entrance.

6. Blausey entered Mendez's apartment from an internal hallway which connected to Frase's apartment. He did this in order to change the lock on Mendez's apartment. When Frase returned from work that afternoon, she saw Blausey's tools on her bed. Frase saw Blausey come into her apartment from the internal hallway then leave the building through her front door. Blausey did not explain what he was doing. Blausey did not provide any notice before he entered Frase's apartment on November 15, 2005.

7. Blausey returned to Frase's apartment shortly after he left. Once again, he did not provide notice prior to entering her apartment. Blausey indicated that he wanted to explain to Frase what he had been doing earlier in her apartment. A short time later, Newark Police officers responded to the scene and arrested Blausey for trespass.

8. Blausey was tried for criminal trespass in January, 2006. Prior to the trial, he asked Amende to lie for him and got upset when he refused to do so.

9. In February, 2006, Blausey banged on Frase's car when she was leaving her residence. He said that he wanted to change the locks on her door so that she could not have access to the rest of the building. Frase let him into the apartment and left him there to do his work. Once again, Blausey did not provide notice prior to asking Frase to let him into her apartment.

10. Eventually, Blausey evicted all the tenants in the building. Blausey served Frase with a three-day notice to vacate on March 13, 2006. On March 16, 2006, Frase and Amende noticed that they did not have hot water. An inspector from the Newark Fire Department, Tim Smith, was contacted. He discovered that the pilot switch to the hot water heater had been turned off. Although Blausey claimed that he was not responsible for turning the hot water off, he was the only one who had the key to the apartment on that day and the only one who had access to the area where the water heater was located.

II. Conclusions of Law

1. Revised Code 5321.04 (A)(8) requires that a landlord "except in the case of emergency or if it is impractical to do so, give the tenant reasonable notice of his intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be a

reasonable notice in the absence of evidence to the contrary." R.C. 5321.04 (B) states that: "if the landlord makes an entry in violation of division (A)(8) of this section, makes a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful and have the affect of harassing the tenant, the tenant may recover actual damages resulting from the entry of demands, obtain injunctive relief to prevent the reoccurrence of the conduct, and obtain a judgment for reasonable attorney fees when they terminate the rental agreement." Blausey entered Frase's apartment on a number of occasions without providing any notice. Specifically, in June, 2005, Blausey opened Frase's door with his own key and walked up the stairs of her apartment while she was in bed after 9:00 pm. He also went into her apartment on November 15, 2005 in order to remove Mendez's belongings. Accordingly, the Court finds that Blausey violated R.C. Sections 5321.04 (A)(8) and (B) on at least two separate occasions.

2. As a result of Blausey's conduct, Frase is entitled to actual damages. Actual damages include damages for emotional distress. Frase is entitled to damages for the emotional distress that suffered because of Blausey's violation of R.C. 5321.04. The Court finds that Frase's testimony is credible and that she is entitled to \$500.00 for the stress and emotional distress that she suffered because of the violation of R.C. 5321.04 (A)(8) and (B). Additionally, the Court finds that Frase is entitled to punitive damages in the amount of \$5,000.00.

3. Revised Code 5312.15 (A) provides that, "no landlord of residential premises shall initiate any act, including any termination of utilities or services against a tenant, or a tenant whose right to possession has terminated, for the purpose of recovering possession of residential premises, other than as provided in Chapter 1923, 5503, and

5321 of the Revised Code.” Under R.C. Section 5321.15 (C), a landlord who violates this section is liable in a civil action for all damages caused to a tenant, together with reasonable attorney fees. The Court finds that Blausey caused the water to be shut off to Frase’s apartment, as well as the other tenants, in order to recover possession of their residences and, in doing so, violated R.C. 5321.15 (A). Accordingly, Frase is entitled to nominal damages in the amount of \$25.00. Additionally, she is entitled to punitive damages in the amount of \$2,500.00.

4. For the foregoing reasons, Defendant Patricia Frase is entitled to judgment against Plaintiff in the amount of \$525.00 and for punitive damages in the amount of \$7,500.00, plus interest at the statutory rate and the costs of this action.

5. Frase is also entitled to attorney fees, pursuant to R.C. 5321.04 (B) and 5321.15 (A). Within twenty (20) days of this order, counsel for the Defendant shall file his itemized request for attorney fees supported by sufficient documentation. Counsel for Plaintiff shall have twenty (20) days to respond. Thereafter, the Court will decide the amount of attorney fees to be awarded to Defendant.

IT IS SO ORDERED.


Judge W. David Branstool