CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
JUDGE RAYMOND L. PIANKA

GRAIG BROWN,

Plaintiff(s)

-VS-

ROSE MARIE RAY,

Defendant(s)

Date: February 18, 2008

Case No.: 08-CVG-25314

JUDGMENT ENTRY

Upon review, the Magistrate's Decision is approved and confirmed.

On application of the defendant, the Counterclaim is dismissed without prejudice with respect to counterclaim-defendant Akurai Enterprises, LLC only.

Judgment is for the defendant on the Counterclaim, in the amount of $ 14,123.78, plus costs and interest from the date of judgment.

JUDGE RAYMOND L. PIANKA
HOUSING DIVISION

SERVICE

A copy of this Judgment Entry was sent by regular U.S. mail to the parties on 2/19/09.
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CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

GRAIG BROWN,

Plaintiff(s)

-VS-

ROSE MARIE RAY,

Defendant(s)

Date: FEBRUARY 18, 2009

Case No.: 08-CVG-25314

MAGISTRATE'S DECISION

This case came for hearing on the defendant's Second Amended Counterclaim on February 10, 2009 before Magistrate Heather A. Veljković, to whom it was referred by Judge Raymond L. Pianka pursuant to Ohio Rule of Civil Procedure 53. Plaintiff having failed to file any responsive pleading, the case proceeded to a default hearing.

FINDINGS OF FACT:

{¶1.} Service has been perfected with respect to the plaintiff on the defendant's Second Amended Counterclaim.

{¶2.} Defendant was a tenant at the premises located at 2980 South Moreland #3, Cleveland, Ohio ("premises"), pursuant to a Housing Choice Voucher Program contract.

{¶3.} Plaintiff was the tenant's landlord.

{¶4.} Pursuant to the contract, Ms. Ray's portion of the rent was $189; the total monthly rent was $575.

{¶5.} Ms. Ray last paid rent to plaintiff on September 16, 2008, for the month of September, 2008.

{¶6.} One day in October, 2008, defendant awoke to discover that the electricity in her unit was not working.

{¶7.} She called the Illuminating Company, her landlord, the Cleveland Police Department, and a Housing Specialist, in efforts to restore the electricity to the premises.

{¶8.} Ms. Ray has asthma, a chronic health condition that is aggravated by coldness.

{¶9.} Ms. Ray testified that it was very cold in her apartment.

{¶10.} Due to the lack of electricity in the unit, Ms. Ray spent time at her mother's apartment unit.

{¶11.} Ms. Ray checked her unit numerous times over the next couple of weeks, and her power still was not restored.

{¶12.} Ms. Ray does not have an automobile, so she had to walk the 10 to 15 blocks from her apartment to her mother's home.

{¶13.} As a result of having no electricity, all of the food in Ms. Ray's refrigerator and freezer, as well as her deep freezer, spoiled.

{¶14.} On Friday, October 31, 2008, Ms. Ray went again to check whether her power had been restored.

{¶15.} But this time, the key would not turn to open her unit door.

{¶16.} When discovering that she could not enter her apartment, Ms. Ray called Mr. Brown; she left a voice mail message.

{¶17.} All of Ms. Ray's personal belongings were in her apartment, including (among other items): clothes, televisions, couches, bedroom furniture, clothing, birth certificate, and purse.

{¶18.} Ms. Ray had some of her asthma medications in the unit.

{¶19.} Because Ms. Ray has only a few articles of clothing with her, she had to wash them frequently so that she has clean clothes to wear.

{¶20.} In November, 2008 Steve Conrad of Allied Home Inspections, Inc. performed services for the defendant, because of the lack of electrical service and the lock-out.

{¶21.} He billed defendant, through the Legal Aid Society of Cleveland, $592 for services performed.

{¶22.} On December 18, 2008, Eric Woljevach, of Cleveland Key, went to the premises to help defendant regain access.

{¶23.} Mr. Woljevach is a locksmith, and has been employed as such for 21 years.

{¶24.} When he arrived at the premises, there was a deadbolt on the door.

{¶25.} He tried to pick the deadbolt and applied WD-40, but the cylinder would not move at all.

{¶26.} He noticed that there was superglue, or another epoxy, in the lock.

{¶27.} Therefore, he had to drill out the screws from the outside of the lock.

{¶28.} After he got the old lock off, he replaced it with a new lock. He gave the keys to either Ms. Ray or to the Court's bailiff, Yusef Russell, who also was present at the premises.

{¶29.} Mr. Woljevach testified that, because of the epoxy in the lock, this was not an easy job for him to perform.

{¶30.} For his services rendered, he charged $158.

{¶31.} Also at the premises on December 18, 2008 was Charles A. Mulligan, a home inspector from Ashton Home Inspections.

{¶32.} Mr. Mulligan noted that, when the group was able to gain entry to the premises after Mr. Woljevach successfully removed the lock, that Ms. Ray's personal belongings were in the premises, but that there was no electricity or heat, and that it was cold inside.

{¶33.} For his services, Mr. Mulligan charged $228.50. Deft. Exhibit 6.

{¶34.} Edward Littlejohn appeared at the trial, and indicated that he also was present with Ms. Ray at the premises on December 18, 2008.

{¶35.} In addition, he was with her on a number of occasions when she went to the premises to determine whether she could gain access to her unit.

{¶36.} He testified that the defendant did not want to go by herself.

{¶37.} On December 18, 2008, Mr. Littlejohn and Ms. Ray left the premises for about an hour to an hour and a half, to move a load of Ms. Ray's belongings.

{¶38.} As they were standing there, a man approached with a crowbar.

{¶39.} Ms. Ray believes this man to be the brother of the plaintiff; but she does not know his name.

{¶40.} He tore off part of the door; he proceeded to pry off the lock in a hurried manner.

{¶41.} Ms. Ray also testified that she and the plaintiff had a dispute when she tendered late rent in September, 2008 but failed to pay her late fee.

{¶42.} Ms. Ray slept on her mother's couch through November and December, 2008.

{¶43.} She stored her belongings on the floor of her mother's bedroom.

{¶44.} As a preemptive measure, Ms. Ray contacted the management of her mother's building.

{¶45.} Ms. Ray's mother lives in a public housing building specifically designated for seniors, and she did not want her mother to lose her housing.

{¶46.} Ms. Ray was worried and nervous because she didn't want to get her mother in trouble; she was criticized by her family and others because of the situation.

{¶47.} Ms. Ray was afraid to go to the premises alone; she didn't want to walk in the dark after work, and was afraid of a confrontation with the plaintiff.

{¶48.} Ms. Ray works at Save-a-Lot as a cashier.

{¶49.} She has worked at this job for just over a year.

{¶50.} She makes $7.50 an hour, typically for either 6 or 8 hours per work day.

{¶51.} Ms. Ray has had to take time off of work during the pendency of this case; she estimates that she has had to take time off at least 8 times.

{¶52.} She was very concerned that she would lose her employment, due to having to take time off.

{¶53.} Ms. Ray's physician prescribed her mediation for her nerves and to help her sleep.

{¶54.} Her physician also recommended that she seek psychiatric services.

{¶55.} At one point, Ms. Ray was so distressed that she called "211" – Cuyahoga County's First Call for Help.

{¶56.} She thought she was on the verge of "snapping"; she was depressed, and thought she might hurt her mother or her sister.

{¶57.} Ms. Ray also called her attorney, Jane Messmer, very late one evening, when she was distressed.

{¶58.} Ms. Ray felt frustrated when her landlord never showed up to any of the Court hearings.

{¶59.} She thought that he would appear, and they would be able to resolve their disputes.

{¶60.} However, Mr. Brown never made an appearance in any of these proceedings.

{¶61.} At some point after the service of the three-day notice, Ms. Ray found on her door a 30-day notice to vacate the premises.

{¶62.} She was afraid that Mr. Brown would take her belongings and place them outside, although there was no testimony that Mr. Brown had ever made such a threat.

{¶63.} When she was preparing to move out of the premises, Ms. Brown got in touch friend of her sons, who owns a truck; she arranged with the young man to help her move, and to have two of his friends help.

{¶64.} Ms. Brown paid the young man with the truck $75 in cash, plus $25 for gas, for helping her move; she also paid each of the other young men $25 in cash.

{¶65.} When Ms. Brown vacated the premises, she had to put her belongings into storage.

{¶66.} She incurred costs in the amount of $92.73. Defendant's Exhibits 8, 9, and 10.

{¶67.} Ms. Ray returned keys through certified mail on or about December 29, 2008. Defendant's Exhibit 13.

{¶68.} Ms. Ray provided the landlord with a security deposit in the amount of $400 in April 2008 in the amount of $400. Defendant's Exhibit 12.

{¶69.} Mr. Brown still retains the defendant's security deposit in the amount of $400.

CONCLUSIONS OF LAW:

{¶70.} Preliminarily, the Court notes that the defendant attempted to add a new party defendant when she filed her counterclaim. A review of the file indicates that the Clerk of Court failed to issue summons to Akurai Enterprises, LLC. Defendant filed a Notice of Dismissal, with respect to this defendant only, at hearing.

{¶71.} Plaintiff having failed to reply to the allegations contained in the defendant's second amended counterclaims ("counterclaim"), this case proceeded as a default hearing. Pursuant to Ohio Rule of Civil Procedure 54(C), "A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded the relief in the pleadings." The Court, therefore, is strictly limited to what defendant pled in her demand for judgment.

{¶72.} Defendant, in her counterclaim, presents seven separate and distinct counterclaims. The Court will address each claim in the order presented in the pleading.

{¶73.} In her First Counterclaim, defendant asserts that the plaintiff violated R.C. 5321.15(A) and CCO 375.07(a) by disrupting electrical service to the premises. Revised Code 5321.15 states, "No landlord of residential premises shall initiate any act, including termination of utilities or services, exclusion from the premises, or threat of any unlawful act, against a tenant, or a tenant whose right to possession has terminated, for

the purpose of recovering possession of residential premises * * *." Section (C) provides that, "A landlord who violates this section is liable in a civil action for all damages caused to a tenant * * * together with reasonable attorneys fees."

{¶74.} Cleveland Codified Ordinance 375.07(a) states, "No landlord of residential premises shall initiate any act, including the termination of utilities or services, exclusion from the premises, or threat of any unlawful act against a tenant or a tenant whose right to possession has been terminated, for the purpose of recovering possession of residential premises, other than as provided in Chapters 1923, 5303, and 5321 of the Ohio Revised Code."

{¶75.} Defendant seeks recovery based on the diminution in value of the rental premises for the months (partial October 2008, entire month of November 2008 and partial December 2008) during which she was without electrical service. The Court finds that plaintiff has established the elements of the claims made pursuant to the Revised Code and the Codified Ordinances beyond a preponderance of the evidence and awards defendant judgment in the amount of $1,613.66, as outlined in the counterclaim.

{¶76.} The Second Counterclaim seeks damages pursuant to the same provisions as in the First Counterclaim, but on the basis that plaintiff denied defendant access to the premises. Because Ms. Ray was without access for the entire month of November and partially December, 2008, the Court awards her damages in the amount of $1,131.62, as outlined in the counterclaim.

{¶77.} In the Third Counterclaim, defendant seeks recovery on the basis of a breach of the landlord's duties imposed by R.C. 5321.04(A)(4). However, in the prayer for relief, defendant sought damages "in an amount to be proven at trial." Judgment is rendered in favor of the defendant on the Third Counterclaim. But, because this case proceeded to a default hearing, the Court is unable to award defendant any monetary damages. See Ohio Rule of Civil Procedure 54(C).

{¶78.} The Fourth Counterclaim alleges that Mr. Brown, "acted willfully and maliciously in disrupting the electrical service to the premises on or about October 5, 2008 and denying access to the rental premises since October 31, 2008, both in violation of R.C. § 5321.15."

{¶79.} Plaintiff's violation of R.C. 5321.15 supports an award of punitive damages because defendant proved that the acts were made with malice. *Brookridge Party Center, Inc. v. Fisher Foods, Inc.* (1983), 12 Ohio App.3d 130, 12 OBR 451, 468 N.E.2d 63; *Allen v. Lee* (1987), 43 Ohio App.3d 31, 538 N.E.2d 1073. Malice is shown by evidence of hatred, ill will, revenge, or "a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm." *Preston v. Murty* (1987), 32 Ohio St.3d 334, 336, 512 N.E.2d 1174, 1176; *Villella v. Waikem Motors, Inc.* (1989), 45 Ohio St.3d 36, 37, 543 N.E.2d 464, 466.

{¶80.} Plaintiff showed a "conscious disregard for the rights and safety" of Ms. Ray when he disobeyed this Court's orders to allow Ms. Ray access and to restore her electricity to

the unit. In addition, the illegal lockout demonstrates that Mr. Brown attempted to seek revenge against Ms. Ray's complaints about the electricity.

{¶81.} The determination of the amount of punitive damages is within the discretion of the trier of fact as long as the award is not based upon passion and prejudice. *Saberton v. Greenwald* (1946), 146 Ohio St. 414, 32 O.O. 454, 66 N.E.2d 224; *Levin v. Nielsen* (1973), 37 Ohio App.2d 29, 66 O.O.2d 52, 306 N.E.2d 173. The Court may consider a variety of factors, including but not limited to:

> the relationship between the parties,
> the probability of recurrence unless the conduct is deterred,
> the harm that is likely to occur from similar conduct,
> the harm that actually occurred,
> the reprehensibility of the conduct,
> the nature of the wrong,
> the removal of any financial profit so that future conduct results in a loss,
> the financial status of the parties,
> the deterrence value,
> a reasonable relationship between compensatory and punitive damages,
> whether the wrong is a single occurrence or a pattern of wrongful conduct.

{¶82.} *Myer et al. v. Preferred Credit, Inc.* (2001), 117 Ohio Misc.2d 8, ¶66 (Harrison County Court of Common Pleas).

{¶83.} Each of these factors supports a greater, not smaller, award of punitive damages against the plaintiff. Plaintiff's relationship to defendant was one of landlord to tenant, giving plaintiff greater power and greater responsibility and making his intentional violation of that power all the more reprehensible. The evidence demonstrates that plaintiff's actions were part of a conscious pattern of mistreating this tenant, suggesting that only a sizeable award of punitive damages will stop plaintiff from doing the same thing again to another tenant. The type of conduct, using force to drive a tenant from the tenant's home, is likely to cause great harm to future (or other) tenants. The actual conduct did cause great harm to defendant. For all these reasons, the conduct is reprehensible and the nature of the wrong supports a larger award of punitive damages.

{¶84.} A larger award will also prevent plaintiff from benefiting from his abusive self-help tactics to illegally evict his tenants. The financial status of the plaintiff, owner of a large, valuable apartment building, supports a larger award. A larger award may also serve to deter plaintiff from repeating his illegal behaviors. The evidence suggests that that behavior is part of a pattern of wrongful conduct and not a single occurrence. The punitive damages should bear a reasonable relationship to Plaintiff's compensatory damages, but need not be limited to any particular multiple of this amount. *TXO Prod. Corp. v. Alliance Resources Corp.* (1993), 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366.

{¶85.} The trier of fact must also take into account the financial circumstances of the party against whom punitive damages are to be awarded. Here, plaintiff failed to file an answer or other responsive pleading, and failed to make any appearances after filing the

complaint. While no evidence was put on at trial with respect to the financial circumstances of Mr. Brown, the Court can conclude that at the rate of $575 per month, the defendant's unit alone would produce $10,000 in income in less than 18 months. In addition, there was testimony that defendant's unit was not the only one in the building – in fact, she testified that there was at least one other entire floor in the building.

{¶86.} Despite numerous orders from this Court requiring him to restore electricity to the premises, and to allow defendant access, plaintiff has continually ignored his requirements under the Ohio Landlord-Tenant Act. The Court concludes that, absent exemplary and punitive damages, the plaintiff will continue to disregard orders of this Court and fail to follow the laws of this state. The Court grants judgment in favor of the defendant on her Fourth Counterclaim for exemplary and punitive damages in the amount of $10,000, as prayed for in the counterclaim.

{¶87.} Ms. Ray also incurred costs for hiring private housing inspectors and a professional locksmith in the course of this case. The Court concludes that these were ordinary and reasonable costs considering the plaintiffs willful and wanton disregard of this Court's orders and the Ohio Landlord-Tenant Act. The Court further concludes that, despite the fact that the Legal Aid Society of Cleveland may be the party billed for these costs, defendant is liable to the Legal Aid Society for reimbursement of these costs, pursuant to the terms of the "Agreement to Represent" admitted as Defendant's Exhibit 14. Judgment is for the defendant on the Fifth Counterclaim, in the amount of $978.50.

{¶88.} For her Sixth Counterclaim, defendant alleges that, because of the plaintiff's wanton disregard for her rights and this Court's orders to repair the electrical utilities and to allow Ms. Ray access into her rental unit, she has incurred costs associated with moving. However, in the Counterclaim, she sets forth in her prayer for relief "consequential damages in an amount to be proven at trial." This Court awards judgment in favor of the defendant on the liability of this claim; however, the Court remains bound by the confines of Rule 54(C), and is unable to award monetary damages.

{¶89.} Finally, defendant seeks a return of her security deposit in the amount of $400. The Court having found that defendant tendered $400 to plaintiff, and that plaintiff has failed to make return of the deposit (despite the return of the keys, and a demand from the defendant's attorney), judgment is for the defendant on the Seventh Counterclaim in the amount of $400.

RECOMMENDATION:

{¶90.} On application of the defendant, the Counterclaim is dismissed without prejudice with respect to counterclaim-defendant Akurai Enterprises, LLC only.

{¶91.} Judgment is for the defendant on the Counterclaim, in the amount of $ 14,123.78, plus costs and interest from the date of judgment.

Heather A. Veljkovic

MAGISTRATE HEATHER A. VELJKOVIĆ

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS 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.

SERVICE

A copy of this Judgment Entry was sent by regular U.S. mail to the parties on 2/19/09. APV