

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

Shelia Brown

DATE: March 4, 2014

Plaintiff

-vs-

CASE NO.: ²⁰¹²~~2013~~ CVG 17491

Shanay Williams

Defendant

MAGISTRATE'S DECISION

The Court held a trial in this case January 30, 2014. Plaintiff and appeared with counsel before Magistrate David D. Roberts, Judge Raymond L. Pianka having referred the case to Magistrate Roberts to take evidence on all issues of law and fact.

The Court grants judgment to Defendant in the amount of \$1510 plus costs with interest from the date of judgment and an award of reasonable attorney fees to be determined at a later time.

Findings Of Fact

{¶1.} Plaintiff and Defendant entered into a written rental agreement for property at 1276 E. 186th St. in Cleveland, a true and accurate copy submitted into evidence as Plaintiff's Exhibit 1.

{¶2.} The agreement was a federally subsidized Housing Choice Voucher (or "Section 8") Housing Assistance Payment (HAP) agreement.

{¶3.} The contract rent to be received by Plaintiff under the HAP Agreement was \$641 per month. Defendant's share of the rent was initially \$5 per month and later changed to \$41 per month.

{¶4.} Defendant provided an \$800 security deposit.

{¶5.} Defendant paid her share of the rent through December 2012 but did not pay her share for January 2013 or thereafter.

{¶6.} CMHA paid subsidy payments to Plaintiff through February 2013 but did not pay subsidy payments for March, April or May because the water had been shut off to the property at Plaintiff's fault—Plaintiff did not pay the water bill.

{¶7.} Defendant vacated the property in May 2013, returning keys to Plaintiff on May 31, 2013.

{¶8.} Defendant sent via her attorney a letter to Plaintiff date June 5, 2013 asking Plaintiff to return Defendant's security deposit.

{¶9.} Plaintiff did not return the security deposit or send a statement indicating why the deposit was not being returned.

{¶10.} Plaintiff's second cause of action in this case was pending at the time of the letter in June 2013.

Conclusions Of Law

The Court finds that Defendant owes \$205 in rent to Plaintiff at the rate of \$41 per month for the months of January through May 2013, Plaintiff holding \$800 as security, entitling Defendant to the return of \$595. The Court concludes that Plaintiff is not entitled to retain any of the security deposit due to damages beyond normal wear and tear. Because the \$595 was wrongfully withheld, the Court grants Defendant an additional \$595 as double damages under R.C. 5321.16.

The wrongful withholding of the security deposit also entitles Defendant to an award of reasonable attorney fees. Defendant's attorney shall submit to the Court by March 28, 2014 information in support of such an award, including the time spent on the security deposit claim and the hourly rate appropriate for an attorney from a legal services corporation. Plaintiff shall have to April 11, 2014 to file a response. The Court will hold a hearing on the issue if necessary.

The Court finds that Defendant is entitled to judgment on her counterclaim for the shut-off of water service, her damages being \$320. The Court concludes that Plaintiff did not fail to pay the water bill with the intent to cause Defendant to move from the property and that Plaintiff therefore did not violate R.C. 5321.15.

Defendant's final damages are \$1510 as the sum of \$1190 from the security deposit and \$320 for the water shut-off, with an award of reasonable attorney fees.

Plaintiff's claim for unpaid rent was not disputed, Defendant admitting that she did not pay \$41 in rent for five months, entitling Plaintiff to judgment for \$205. Defendant's counterclaim for lost use of the property due to the water shut-off was also not disputed. Plaintiff admitted that she caused the water to be shut off by failing to pay the bill. She restored water service after about two weeks. The Court concludes that Defendant lost almost all use of the property for

the two weeks while the water was off and is therefore entitled to judgment for one half a month's rent or \$320. Defendant testified to other consequential costs such as using a Laundromat and eating out but did not prove any dollar amounts for these costs. The Court found Plaintiff credible when she testified that she did not fail to pay the water bill with the intent of causing Defendant to move. That she did restore water service supports this conclusion. The Court thus concludes that Plaintiff did not violate R.C. 5321.15.

Plaintiff argued that her withholding of the security deposit was not wrongful because her second cause of action was pending, entitling her to hold the deposit without sending an itemized statement to Defendant. The Court disagrees with this argument. Nothing in the landlord tenant statute makes an exception for landlords who have pending money claims. Those landlords are in the same position as landlords who do not have pending money claims. The statute compels them to either return the deposit or to provide a written explanation of why the deposit is not being returned. This requirement is not a great burden on the landlord. The landlord need only provide the required explanation, which can refer to the same issues that support the landlord's money claim.

Plaintiff testified that court staff indicated to her that she was not expected to return the deposit if she was claiming that Defendant owed past due rent and had caused property damage. But, even if that is what the court staff said, and even if Plaintiff was entitled to rely on that statement, still the statement does not support the conclusion that Plaintiff did not have to follow the procedure set forth in the security deposit statute. The statute does not require the return of the deposit. A landlord with a pending money claim is not expected to return it. But the statute requires, in all cases where the deposit is not to be returned:

Any deduction from the security deposit shall be itemized and identified by the landlord in a written notice delivered to the tenant together with the amount due, within thirty days after termination of the rental agreement and delivery of possession. R.C. 5321.16.

Plaintiff failed to comply with this requirement.

Plaintiff sought to prove that Defendant damaged the property beyond normal wear and tear. As proof of the damages to the property, she submitted a contractor's invoice for a variety of repairs, a copy introduced into evidence as Plaintiff's Exhibit 2. But Plaintiff did not prove that Defendant caused any of the damages. Much of the work was needed due to normal wear and tear, such as \$1800 for repainting the interior, \$150 to secure ceiling tiles in a bedroom that were sagging due to age, \$490 to repaint hardwood floors in high traffic areas where the paint had come off the floor, \$75 to re-seal two toilets that had come loose over time and \$150 to re-attach a ceramic soap dish that had come loose over time.

Defendant called as a witness a professional home inspector who testified in detail about the condition of the house. He inspected it on the day that Defendant returned keys to Plaintiff. The inspector persuaded the Court that one of the critical questions when determining if items are in need of repair due to normal wear and tear, or due to tenant conduct, is whether the items were originally installed or repaired in a workmanlike way. Where inexpensive tiles are installed without taking care to prepare the surface they adhere to, they are likely to come loose with normal wear and tear. He testified that a poorly prepared surface can cause paint to blister and peel immediately after it is dry as appeared to be the case with the brown floor paint that Plaintiff put on the hardwood floors which began to come off even as Defendant was moving in. He did not state that he knew for certain that particular items in the house were in need of repair because of earlier faulty installation. But he convinced the Court that Plaintiff had not met her burden of proving that it was Defendant's conduct, and not the poor quality of repairs, that caused the problems.

Defendant testified credibly that other work was needed even at the time she moved in, such as the repair of the garage door, which was broken when Defendant moved in, the replacement of the side exterior door which had always had damage from what may have been an attempted break-in, the replacement of window hooks and handles which did not work properly and the replacement of an interior door handle that was always loose. Defendant had a credible demeanor when testifying and testified with great specificity, appearing to be able to accurately remember the condition of different parts of the house. Plaintiff, by contrast, did not testify to any specific details, relying instead on the general conclusion that items that needed repair when she took back possession of the property must have been items Defendant damaged.

On two issues, Plaintiff and Defendant disagreed completely. The first of these issues was whether Defendant had a dog that caused an infestation of fleas. Plaintiff testified that Defendant had a dog that left fleas in the unit, the fleas getting onto Plaintiff, then into her car and her own home, causing her to have to pay for extermination services. On cross-examination, Plaintiff admitted that she had never seen a dog at the house, only dog feces. Defendant, for her part, testified that she never had a dog at the house and has never had a dog for a pet because she does not like animals. The second issue of complete disagreement concerned tampering with the electrical panel. Plaintiff testified that she had to pay \$165 to repair tampering with the electrical panel. Defendant denied having done anything to the electrical panel and the home inspector she hired testified that he inspected the panel and saw nothing wrong with it. He took a picture of the panel, included in his report, and it shows nothing wrong with the panel.

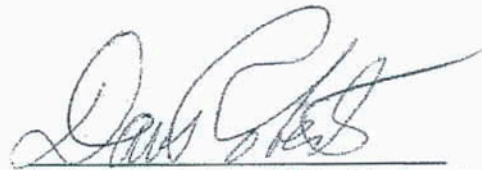
On these issues, the Court concludes that Defendant's testimony is credible and Plaintiff's is not. In the case of the dog, Defendant appeared certain about not liking animals and never having had a dog. Plaintiff's testimony was not specific about where she found dog feces and fleas. In the case of the

electrical panel, the Court concludes that either it was not tampered with at all or was tampered with after Defendant had moved out and returned the keys.

Finally, the invoice Plaintiff presented failed to persuade the Court of the cost to repair particular items. The cost of \$150 seems high for the task of putting a soap dish back onto a tile wall with adhesive. The cost of \$850 seems high for the cost of re-glazing two broken windows. Even if Plaintiff had proven that Defendant damaged individual items, the invoice offered into evidence would not have convinced the Court of the true cost to repair the individual items.

Decision

The Court grants judgment, in part, to Plaintiff on her claims and, in part, to Defendant on her counterclaims, with final judgment to Defendant in the amount of \$1510 plus costs with an award of reasonable attorney fees.



Magistrate David D. Roberts

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(D). 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 *Magistrate's Decision* was sent via regular U.S. Mail to parties on

31 12/14 2014

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

Shelia Brown

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Plaintiff

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Shanay Williams

Defendant

JUDGMENT ENTRY

The Court, having reviewed the *Magistrate's Decision* of March 4, 2014 under Ohio Rule Of Civil Procedure 53(D), adopts that decision.

The Court grants judgment, in part, to Plaintiff on her claims and, in part, to Defendant on her counterclaims, with final judgment to Defendant in the amount of \$1510 plus costs with interest from the date of judgment and an award of reasonable attorney fees.

Defendant's attorney shall submit to the Court by March 28, 2014 information in support of the award of attorney fees, including the time spent on the security deposit claim and the hourly rate appropriate for an attorney from a legal services corporation. Plaintiff shall have to April 11, 2014 to file a response. The Court will hold a hearing on the issue if necessary.



JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this *Judgment Entry* was sent via regular U.S. Mail to the parties on 3/6/14.
WPI