

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
RAYMOND L. PIANKA, JUDGE

SHELIA BROWN
Plaintiff (s)

Date: APRIL 28, 2014

-VS-

2012 CVG 017491

SHANAY WILLIAMS
Defendant (s)

JUDGMENT ENTRY

This case is before the Court on the plaintiff's objections to the magistrate's decision.

An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection. Ohio Civ. R. 53(D)(3)(b)(ii). While plaintiff's objections are not numbered or titled, and in some parts are broad and non-specific ("Plaintiff believes that almost everything referred to in the magistrate's decision is without basis..."), the Court shall, nonetheless, attempt to address each of the items on which the objections *are* specific.

1. Security Deposit

Plaintiff argues that "there was no finding of fact that \$800 was being held or any calculation in the findings as to what the Plaintiff was entitled to keep."

A magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law. A request for findings of fact and conclusions of law shall be made before the entry of a magistrate's decision or within seven days after the filing of a magistrate's decision. Civ. R. 53(D)(3)(a)(ii). In this case, no request for findings of fact was filed.

Nonetheless, the magistrate issued his decision with delineated findings and conclusions. If a finding of fact was contained in the conclusion section of the decision, the placement of that finding in the conclusion section is not an error, and does not impact the objection process. Civ. R. 53(D)(3)(b)(iii). An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. *Id.*

In this case, the magistrate clearly delineated the calculations used to determine the disposition of the security deposit. He determined that defendant paid plaintiff an \$800.00 security deposit, which plaintiff retained; he also determined that defendant

owed plaintiff unpaid rent of \$205.00. These conclusions are consistent with the factual findings in the report. He determined that plaintiff was not owed any compensation for property damage beyond normal wear and tear, a legal conclusion. Subtracting the \$205.00 owed from the \$800.00 withheld, he determined that plaintiff wrongfully withheld from defendant \$595.00. That the remainder of the deposit was wrongfully withheld also is a legal conclusion. While the Court concludes that the findings and conclusions were accurately labeled, whether they were or not, the magistrate's decision sets forth a clear basis for his decision with respect to the security deposit. Plaintiff's objection on this issue is overruled.

2. Water Shut Off

Plaintiff raises a similar objection to the water shut off issue. Plaintiff argues that the magistrate did not make findings of fact to support loss of use of the property and the damages defendant incurred.

Review of the magistrate's decision reveals that the magistrate did make findings with respect to the water shut off, although they are contained in the Conclusions of Law section of the report. He found that plaintiff caused the water to be shut off when she failed to pay the bill, and that defendant was without water service for two weeks. The magistrate also found that defendant lost nearly all use of her property for the half-month when she was without water, and so awarded her damages equal to one-half month's rent, or \$320.00. The Court notes that defendant sought additional damages on this claim, which the magistrate determined she did not prove.

3. Property Damage

Plaintiff also argues that the magistrate "makes mention" in his conclusions that a contractor's invoice was submitted, but "makes no findings of fact regarding this invoice." She adds that it "strains credibility that the magistrate could not find any damages from this amount attributable to defendant."

Again, the magistrate's decision specifically discusses the condition of the premises and the invoice. The magistrate determined that "Plaintiff did not prove that Defendant caused any of the damages." He added that "[m]uch of the work was needed due to normal wear and tear, such as painting the walls and the floors in high-traffic areas and re-sealing toilets that had come loose over time." The magistrate would have needed to review and comment upon the invoice only if he determined that defendant had caused damage to the premises beyond normal wear and tear. As he found that the defendant did not, he was not required to make express findings regarding the invoice.

4. Conclusions

Plaintiff's objections are without merit. While the plaintiff complains that there are no findings of fact designated as such with respect to specific issues, review of the magistrate's decision reveals that, in fact, the findings of fact are contained therein. "There is no standard format which must be followed by a trial court when issuing

findings of fact and conclusions of law. Instead, 'the findings and conclusions must articulate an adequate basis upon which a party can mount a challenge to, and the appellate court can make a determination as to the propriety of, resolved disputed issues of fact and the trial court's application of the law.'" *Dovi Interests, Ltd. v. Somerset Point Ltd. P'ship*, 2004-Ohio-636 (February 12, 2004, Cuyahoga App. No. 82788), citing *Dixon v. Brown* (May 16, 1996, Cuyahoga App. No. 66931, 1996 Ohio App. LEXIS 1999, at *46. While some of the magistrate's factual findings may be contained within the "Conclusion of Law" section, they articulate the basis for the decision, and a basis upon which a party can mount a challenge.

While the magistrate did make factual findings in his decision, the plaintiff did not file with her objections a transcript or affidavit. The plaintiff's objections do not comply with Civ. R. 53(D)(3)(b)(ii), which requires that "[a]n objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. Civ. R. 53(D)(3)(b)(iii). Having failed to comply with this Rule, plaintiff's objections are overruled.

Finally, the Court urges plaintiff's counsel to be cautious regarding the tone and language used when referring to judicial officers in this Court. Plaintiff's counsel is expected to represent his client competently and diligently. At the same time, he has a duty as a lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Oh St Govt Bar Rule 4. Statements such as "[r]eading the magistrate's decision, you would think this matter only took a half hour," and "he tried to cut corners," approach the line of a disrespectful attitude toward the Court, and are not necessary for zealous advocacy.

Plaintiff's objections to the magistrate's decision are overruled. The Court's prior decision is affirmed.

This matter is referred back to Magistrate Roberts, for disposition of the outstanding attorney fee issue.



Judge Raymond L. Pianka
Housing Division

A copy of this judgment entry was sent by regular U.S. mail to parties/counsel on 4/30/14, by MMW.