

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

| | | |
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| Crawley |) | Date: September 20, 2005 |
| |) | |
| Plaintiff(s) |) | |
| |) | Case No. 2005 CVG 16627 |
| vs. |) | |
| |) | |
| Brown, et al. |) | Magistrate's Report and Recommendation |
| |) | |
| Defendant(s) |) | |

{¶1} This matter came for trial September 12, 2005 before Magistrate Sandra R. Lewis, to whom it was assigned by Judge Raymond L. Pianka pursuant to Ohio Rule of Civil Procedure 53, to take evidence on all issues of law and fact regarding the claim for possession and the parties' respective claims for money damages. Plaintiff present pro se. Defendant present and represented by Ms. Sweeney and Mr. Gregory. Trial had.

FINDINGS OF FACT

{¶2} At all times relevant to this action, plaintiff has been the owner of the up-and-down duplex residential premises known as 1758-60 Cliffview Road, Cleveland, Ohio 44112.

{¶3} The address of the UPSTAIRS unit is 1758 Cliffview Road; the address of the DOWNSTAIRS unit is 1760 Cliffview Road.

{¶4} On or about December 1, 2003, the parties entered into a written Section 8 rental agreement, as part of the Housing Choice Voucher Program ("HCVP") for the DOWNSTAIRS unit in the above mentioned premises. Defendant's Exhibit P.

{¶5} Pursuant to the HCVP, Cuyahoga Metropolitan Housing Authority ("CMHA") paid the full monthly amount of \$507.

{¶6} On or about September 30, 2004, CMHA cancelled the Housing Assistance Payment ("HAP") contract with plaintiff due to plaintiff's failure to maintain the premises. Defendant's Exhibits R and S.

{¶7} On or about November 1, 2004, the parties entered into a one-year written Section 8 rental agreement for the UPSTAIRS unit in the above mentioned premises.

- {¶8} The rental agreement provided for occupancy of the premises by defendant and her minor child. The lease did not include Demetrius T. Trammel as an authorized occupant.
- {¶9} Defendant made a security deposit of \$531.
- {¶10} Under the new written rental agreement, the monthly rent was to be \$531 per month due on the first.
- {¶11} Pursuant to the HCVP, CMHA paid the full monthly amount of \$531.
- {¶12} Defendant moved from the DOWNSTAIRS unit into the UPSTAIRS unit on or about November 1, 2004, with her children, E'Diamone Lewis and her newborn son, Demetrius Trammel, Jr.
- {¶13} The UPSTAIRS unit included the third floor of the premises to be used as a bedroom.
- {¶14} In January 2005, Demetrius T. Trammel, the father of defendant's newborn son, paid plaintiff \$70.
- {¶15} In March 2005, plaintiff complained to CMHA asserting that Demetrius T. Trammel was an unauthorized occupant in defendant's premises.
- {¶16} On or about March 24, 2005, plaintiff gave defendant a thirty-day termination notice based upon unauthorized occupant and non-payment of back rent.
- {¶17} On or about April 6, 2005, both defendant and plaintiff participated in a hearing with CMHA regarding whether or not Demetrius T. Trammel was an unauthorized occupant at the premises.
- {¶18} On or about April 11, 2005, CMHA determined that documentation indicated that Mr. Trammel lived out-of-state and therefore, defendant could continue participation in the HCVP.
- {¶19} At some point in late 2004, defendant gave plaintiff verbal notice of defective conditions in the premises including, but not limited to, inadequate heat, exposed wiring, water damage which caused flooring to buckle and a hole in the chimney opening into a room adjacent to the third floor.
- {¶20} CMHA inspected the premises several times between February and June of 2005, but the conditions were not corrected.
- {¶21} On or about April 11, 2005, a City of Cleveland Department of Community Development Division of Building and Housing Inspector, Inspector Morgan, inspected the premises and issued three Violation Notices ("VN"), each with the compliance date

set as April 14, 2005. Defendant's Exhibit C.

- {¶22} Inspector Morgan inspected both units in the premises and found that heat to the premises was inadequate.
- {¶23} Defective general conditions at the premises, identified in the VNs, included, but were not limited to, porch flooring in need of repair and missing lock hardware on the rear entrance door. These defects affect both the upstairs and downstairs units.
- {¶24} In the DOWNSTAIRS unit (defendant's previous unit known as 1760 Cliffview Road), the VNs identified conditions including, but not limited to, (i) water damage and holes in the kitchen and bath ceilings, (ii) loose/broken/missing flooring in the kitchen and bath, (iii) kitchen sink lead and (iv) inadequate heat in the structure.
- {¶25} In the UPSTAIRS unit (defendant's current unit known as 1758 Cliffview Road), the VNs identified conditions including, but not limited to, (i) holes in the bath ceilings, (ii) loose/broken/missing flooring in the kitchen, (iii) kitchen sink leak and (iv) inadequate heat in the structure.
- {¶26} On the third floor, the VN's identified conditions including, but not limited to, holes in the walls.
- {¶27} Photos of the third floor room, not included in defendant's rental premises, but adjacent to defendant's portion of the third floor, show a hole in the wall that penetrates the chimney flue.
- {¶28} Defendant valued the premises with the above conditions at \$250 to \$350 per month.
- {¶29} Plaintiff valued the premises at \$507, as it was comparable to the downstairs.
- {¶30} Water service to the premises was off for one day on or about April 28, 2005.
- {¶31} Defendant did not give plaintiff notice of this condition.
- {¶32} On or about June 1, 2005, plaintiff served defendant a three-day notice in compliance with R.C. 1923.04, based upon unauthorized occupant and non-payment of back rent.
- {¶33} CMHA last paid the rent to plaintiff for the UPSTAIRS unit for the month of July 2005.
- {¶34} CMHA abated the rent for the UPSTAIRS unit effective July 31, 2005.
- {¶35} No further rent payments have been made.

{¶36} Defendant remains on the premises.

CONCLUSIONS OF LAW

{¶37} Plaintiff seeks possession, back rent, and compensation for property damage beyond normal wear/tear. Defendant denies rent liability, asserting plaintiff breached the lease by failing to repair/maintain the premises. In addition, defendant counterclaims seeking (i) return of \$70 paid in January 2005, (ii) an order requiring plaintiff to pay the delinquent water bill, (iii) damages due to one day's lack of water service, and (iv) damages due to conditions on the premises.

{¶38} Shortly after trial in this matter, defendant sought and obtained a temporary restraining order ("TRO") requiring plaintiff to take all action necessary to maintain water service to the premises. On September 29, 2005, the TRO was continued for an additional 14 days by agreement of the parties.

{¶39} In his claim for possession, plaintiff's notices indicate two grounds, unauthorized occupant and non-payment of back rent. However, neither claim for possession can succeed in the present matter. Plaintiff served two notices, a thirty-day termination in March 2005 and a three-day in June 2005. Plaintiff continued to accept CMHA's payments through July 2005. Both notices were waived by plaintiff's continuing acceptance of current and future rents. *Associated Estates Corp. v. Bartel*, 24 Ohio App.3d 6, 492 N.E.2d 841 (Cuyahoga Cty. 1985).

{¶40} With regard to monetary damages, plaintiff sought recovery of back rent for the DOWNSTAIRS premises for October and November 2004. The parties' initial rental agreement for the DOWNSTAIRS unit was dated October 20, 2003. This agreement was effective until the parties entered into the HAP contract and tenant addendum, dated December 2003, which operated as a novation of the October 20, 2003 agreement.

{¶41} The HAP contract was cancelled at the end of September 2004 due to plaintiff's failure to repair and maintain the premises. When the HAP contract was cancelled, it operated to terminate the tenancy addendum automatically. Defendant's Exhibit K, Paragraph 9 of the Tenancy Addendum (lease).

{¶42} The October 20, 2003 agreement does not indicate that the parties negotiated or anticipated that a cancellation or termination of the December 2003 contract would reinstate the October 2003 contract. And in fact, plaintiff's testimony and conduct, in moving defendant from the DOWNSTAIRS unit which failed inspection to the UPSTAIRS unit which would likely pass inspection, clearly indicated the intention to continue participation in the HCVP. Absent evidence of a new rental agreement between the parties for the DOWNSTAIRS unit during October and November 2004, defendant had no liability for that period of time. Even were this not the case, where a subsidy is abated or cancelled due to a landlord's failure to repair or maintain, courts have declined to enforce rent liability against subsidized tenants beyond their obligation under the HAP

contract. *Kenwood Court Apts. v. Williams*, No. K90-CVG-1043 (Mun. Ct. Portage Cty. Oct. 15, 1985). The Court finds for defendant on the claim for rent for October and November 2004.

{¶43} With regard to rent from July 2005 forward, as noted above, courts have declined to enforce rent liability beyond the obligations under the HAP contract. In the present matter, plaintiff's own actions, or lack thereof, caused the termination of the subsidy. As such, defendant cannot be held responsible for more than her agreed-upon portion. Judgment is for defendant on this claim.

{¶44} Plaintiff pled property damages, but failed to present testimony or evidence regarding this claim. Judgment is for defendant on this claim.

{¶45} Defendant sought (i) return of \$70 excess rent paid in January 2005, (ii) an order requiring plaintiff to pay the delinquent water bill, (iii) damages due to one day's lack of water service, and (iv) damages due to conditions on the premises.

{¶46} While the Court is persuaded that the \$70 was excess rent, the Court found that Mr. Trammel (Sr.) paid this money. Mr. Trammel, and not defendant, is the person entitled to return of these funds. Notably, Mr. Trammel has chosen not to assert this claim. Judgment is for plaintiff on this claim.

{¶47} Defendant also sought an order requiring plaintiff to pay the water bill. This request has been rendered moot by this Court's entry of a restraining order requiring plaintiff to take all actions necessary to restore/maintain water service to the premises.

{¶48} Defendant also sought recovery of the cost of one-night's hotel stay when water was off in April 2005. However, defendant admitted that she did not notify plaintiff of the failure of the water service. Having failed to notify plaintiff of the condition, defendant deprived plaintiff of the opportunity to remedy the condition and avoid the costs defendant chose to incur. The Court finds for plaintiff on this claim.

{¶49} Defendant also sought damages due to the conditions on the premises. This Court found defendant persuasive regarding the water damage, exposed electrical wiring, lack of adequate heat, and other conditions on the premises. Defendant valued the premises with these conditions at \$250 to \$350 per month. Plaintiff valued the premises at \$507 per month as the premises was comparable to the downstairs unit.

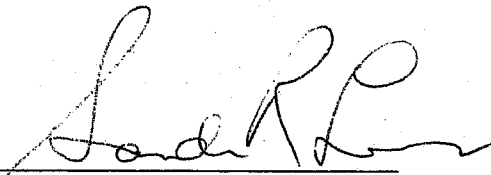
{¶50} While the UPSTAIRS unit did include a portion of the third floor, defendant did not use that portion as living space due to lack of heat. Yet, the evidence presented demonstrated that the UPSTAIRS unit was in better repair than the DOWNSTAIRS unit. On balance, the Court finds that actual value of the UPSTAIRS premises from January 2005 forward was \$430 per month. Defendant is entitled to damages in the amount of \$101 per month for the seven months during which the HAP contract continued, or the

sum of \$707.

{¶51} Finally, at the close of trial, defendant requested a declaration that the lease agreement was in effect and would continue through its expiration in November 2005. However, review of the pleadings in this matter fails to reveal such a request prior to trial. Having heard the evidence presented, this Court cannot say that this issue was clearly litigated in this matter. This request is denied.

{¶52} In summary, judgment is for defendant on the claim for possession and for defendant against plaintiff in the amount of \$707 as damages related to conditions on the premises. Defendant's request for a preliminary injunction regarding water service is set for October 13, 2005 at 11:00 a.m. on the 13th floor. Copies to parties.

Recommended:


Magistrate Sandra R. Lewis

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 via regular U.S. Mail to:

Plaintiff

Terry Crawley
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South Euclid, Ohio 44121

Defendant's counsel

Anne K. Sweeney
H. Edward Gregory
1223 West 6th Street
Cleveland, Ohio 44113

this 5 day of ^{Oct.} ~~September~~ 2005.

AMR