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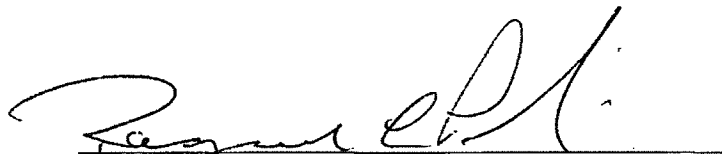
IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

Chesterfield LLC)	
)	Judge Raymond Pianka
Plaintiff)	
)	Case No. 08-CVG-16093
vs.)	
)	ORDER
Mackow, et al.)	
)	Date: February 27, 2009
Defendant)	

Upon review, the Magistrate's Report is approved and confirmed. The Court makes the following judgments:

1. Request for jury trial stricken as untimely filed.
2. Plaintiff's claims against defendant McCane are dismissed.
3. Final judgment is for plaintiff against defendant Mackow in the amount of \$5920.78 plus costs and interest from the date of judgment.
4. Judgment is for plaintiff on the counterclaim.

Copies to parties.



Judge Raymond L. Pianka
Housing Division

A copy of this Judgment Entry was sent via regular U.S. Mail to:

Plaintiff's counsel

Thomas R. Lucchesi
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485

Defendant's counsel

John C. Kealy
123 West Prospect Avenue
Suite 250, Van Sweringen Arcade
Cleveland, Ohio 44115

this 3 day of ~~February~~ ^{March} 09.

APV

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

Chesterfield LLC)	Date: February 27, 2009
)	
Plaintiff(s))	Judge Raymond L. Pianka
)	
vs.)	Case No. 08-CVG-16093
)	
Mackow, et al.)	Magistrate's Decision
)	
Defendant(s))	

This matter came for trial December 16, 2008 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 parties' respective claims for money damages. Plaintiff present and represented by Mr. Lucchesi. Defendants present and represented by Mr. Kealy.

The Court noted that under Civ.R. 38(B), the time for filing a jury demand expired on September 4, 2008. Therefore, defendant's Request for Jury, filed December 4, 2008, was stricken and the matter proceeded to bench trial.

FINDINGS OF FACT

1. At all times relevant to this action, plaintiff was the owner of the mixed-use rental premises known as 1801 East 12th Street, Cleveland, Ohio 44114.
2. The premises consists of 12 commercial units and 407 residential units.
3. On or about March 25, 2008, plaintiff and defendant entered into a written rental agreement for unit #604 in the above-mentioned premises.
4. Plaintiff's Exhibit 1 is a fair and accurate copy of the written rental agreement.
5. In addition to the written rental agreement, defendant Mackow received a rent concession, \$248, for the pro rata rent for remaining month of March 2008. Plaintiff's Exhibit 2 entitled "Concession Agreement".
6. The Concession Agreement indicates that if the written rental agreement is terminated early, defendant Mackow will be required to repay to plaintiff the \$248 in rent concession received under the agreement.
7. Defendant Mackow is the only tenant signatory to the written rental agreement.
8. Defendant moved into the premises on March 25, 2008.
9. Unit #604 is a two bedroom unit.
10. Defendant Mackow occupied the unit with a roommate, Nicole McCane.
11. Defendant made a security deposit of \$250.
12. At all times relevant to this action, rent was \$1099 per month.

13. Rent was due on the first of the month.
14. The written agreement provides for late fees of \$25 per month plus \$1 per day where rent is paid after the fifth of the month.
15. Rent was last paid in April 2008 for the month of May 2008.
16. Around mid-May 2008, defendant Nicole McCane moved out of the premises and back home to care for her sick mother.
17. Plaintiff has the common areas of the premises exterminated every six months.
18. In addition, an exterminator visits the building weekly to perform "as needed" treatments for units with spiders, grain moths, roaches, and other insect problems.
19. Residents with insect problems sign their name and unit onto the "Extermination List" in order to obtain the weekly service.
20. At some point in late May 2008, defendant suffered multiple bed bug bites.
21. Defendant notified plaintiff of the problem on or about May 29, 2008 after seeking medical care for the bites.
22. Plaintiff arranged for General Pest Control to inspect and treat defendant's unit.
23. Mr. John Gedeon is the staff entomologist with General Pest Control.
24. Mr. Gedeon's family has operated the pest control company for three generations since 1937.
25. He holds a Bachelor of Science in Urban and Industrial Pest Control from Purdue University.
26. Since 1997, he has been licensed to provide pest control services by the Ohio Department of Agriculture.
27. John Gedeon and his father came to defendant's unit on May 31, 2008.
28. Upon inspection, they found bed bugs in only one room of the unit, defendant Mackow's bedroom.
29. The majority of bed bugs found were on a book case in the defendant's bedroom.
30. Some bugs were also found on the bed and webbing.
31. There was no evidence of bed bugs in the bed headboard, or walls or baseboards in the bedroom.
32. General Pest Control treated the premises that day, May 31, 2008.
33. Defendant never returned to live at the premises after May 29, 2008.
34. The premises was rerented on October 25, 2008.
35. Defendant admitted to painting the walls, leaving furniture at the premises and failing to pay an electric bill of \$172.66.
36. Plaintiff provided a billing statement showing painting (two coats to cover deep hues applied by defendant) and furniture removal costs totaling \$470. Plaintiff's photos and Exhibit 3.
37. Plaintiff presented the electric bill for \$172.66. Plaintiff's Exhibit 4.

CONCLUSIONS OF LAW

In the second cause of action, plaintiff seeks back rent, late fees, and property damages. Defendant Mackow has denied liability arguing that she lawfully vacated the premises after the bed bugs were found in the unit. Defendant has counterclaimed for costs to replace her bedding and other personal items due to the bed bug problem.

The Court notes that defendant McCane is listed as an authorized occupant on the written rental agreement. However, she was not a signatory to the agreement and defendant Mackow has not

filed a crossclaim asserting rent liability flowing to McCane. Therefore, Ms. McCane is dismissed from this action as neither party has established that she has liability for rent or other damages sought.

Defendant last paid rent for the month of May 2008 and vacated May 29, 2008. Defendant argued that she was not liable for further rent due to plaintiff's responsibility for the bed bugs. The Court is not persuaded.

Plaintiff's expert testified credibly that he could not say with 100% certainty how the bed bugs were introduced to the unit. However, testimony established that (i) the infestation was confined to defendant's bedroom, (ii) there was no evidence of bed bug infestation in the wall or baseboards of defendant's bedroom and (iii) the majority of bugs (and casts) were on the book case. These facts suggest that the infestation was fairly new and related directly to the book case or articles placed there by defendant or her visitors.

Based upon these facts, the Court finds that defendant failed to establish by a preponderance of the evidence that plaintiff was responsible for the bed bugs. The premises was rented on October 25, 2008. The Court finds defendant liable for rent for the full months of June 2008 through September 2008 totaling \$4396 (\$1099 per month X 4 months). Defendant is also liable for the 24 additional days in October 2008 totaling \$879.12 (\$36.63 per day X 24 days). Defendant is liable for the rent concession of \$248 also.

Plaintiff sought late fees. But, defendant vacated before the end of May 2008, a month for which she did pay rent. Defendant having vacated prior to the accrual of rent sought, the Court declines to award any late fees¹ in the matter. Rent liability totals \$5523.12 (\$4396 + \$879.12 + \$248).

Plaintiff also seeks compensation for damages beyond normal wear and tear. Specifically, plaintiff seeks costs related to (i) painting and furniture removal, and (ii) unpaid electric bill. Defendant did admit that she painted and left furniture in the unit. Plaintiff was persuasive regarding the need for, and cost of, painting and furniture removal. The Court finds defendant liable for the painting and removal costs of \$470.

Defendant admitted that she did not pay the final electric bill for the unit. Plaintiff's billing statement was persuasive evidence of charges unpaid totaling \$177.66. The Court finds defendant liable for this charge also. Plaintiff's total recovery is \$6170.78 (\$5523.12 rent + \$470 property damage + \$177.66 unpaid electric charge).


Defendant sought the cost of replacing bedding and furniture abandoned due to the bed bug problem. However, defendant failed to persuade the Court by a preponderance of the evidence that plaintiff was responsible for the infestation. Further, evidence suggested that the items

¹ Even were this not the case, plaintiff would not be entitled to the \$218 per month in late fees indicated in the accounting. Cleveland has limited monthly late fees in residential rentals to the larger of (i) \$25 per month or (ii) 5% of the rent amount. Cleveland Codified Ordinance 375.02.

abandoned would have been usable after treatment. Therefore, judgment is for plaintiff on the counterclaim.

In summary, plaintiff's claims as to Ms. McCane are dismissed. Plaintiff is entitled to recover \$6170.78. Defendant is entitled to credit of her security deposit of \$250. Offsetting plaintiff's recovery from defendant's credit, the Court finds for plaintiff against defendant Makow only in the amount of \$5920.78 plus costs and interest from the date of judgment. Judgment is for plaintiff on the counterclaim. 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 Magistrate's Decision was sent via regular U.S. Mail to:

Plaintiff's counsel

Thomas R. Lucchesi
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485

Defendant's counsel

John C. Kealy
123 West Prospect Avenue
Suite 250, Van Sweringen Arcade
Cleveland, Ohio 44115

this 3 day of ~~February~~ ^{March} 09. APV