

**WAYNE COUNTY MUNICIPAL COURT
CIVIL DIVISION**

JINA CUPP

Plaintiff

vs.

ALAN OLP

Defendant

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Case No. 2020 CV-G 001317

JUDGMENT ENTRY

This matter came on for hearing before the Court Magistrate. Plaintiff, Jina Cupp, was present, represented by Attorneys Joshua Hinkel and John Pettit. Defendant, Alan Olp, was present, represented by Attorney Craig Reynolds. Based on the complaint, the exhibits, and review of the Magistrate's Proposed Decision, the Court makes the following Findings of Fact, Conclusions of Law and Decision. A Magistrate's Proposed Decision and Judgment Entry regarding Defendant's counterclaim for restitution of the premises was issued on March 8, 2021.

Findings of Fact

Plaintiff Jina Cupp resided at the premises located at 519 Beaver St., Lot #1, Orrville, Ohio in October of 2020. The premises being a trailer home is owned by Defendant Alan Olp. Defendant permitted his son Nathan Olp to live at the premises with his girlfriend, being the Plaintiff. The parties had an oral agreement; whereby, Nathan Olp and/or Plaintiff would pay Defendant the amount of \$250.00 per month in rent. Additionally, Defendant testified that his son and/or Plaintiff were to pay water and electricity bills for the premises.

In October of 2020, Nathan Olp apparently was sentenced to prison and left the premises. According to Defendant, he stated he did not want to "harbor" a felon, so he told Nathan Olp to leave. On October 14, 2020, Plaintiff filed the complaint herein seeking an injunction to restore her to possession of the premises after Defendant removed her from the premises by changing locks and terminating electrical service. After an earlier hearing, this Court issued a preliminary injunction ordering that Plaintiff be restored to possession of the premises and electrical services be restored by Defendant after finding Defendant wrongfully excluded Plaintiff from the premises. Plaintiff's complaint also sought damages for violations of the Landlord Tenant Act,

damages for conversion of property, and actual and punitive damages for violating the covenant of quiet enjoyment.

Regarding her damages, Plaintiff testified that she was forced to reside in a hotel room with her daughter for several nights when Defendant removed her from the premises and discontinued utilities. Plaintiff specifically addressed the dates of October 3, 2020 through October 14, 2020 when she was forced to reside in a hotel. Plaintiff's Exhibit #1 details the dates and location of her hotel stays along with the cost of each hotel stay. In total, Plaintiff expended \$617.29 for her hotel stays from October 3 through October 14, 2020. Plaintiff testified she also stayed in her car on some dates, but no testimony regarding any economic damages were presented.

Plaintiff further presented a list of items that she found missing after she was returned to possession of the premises. Plaintiff's Exhibit #2 lists eighteen items that Plaintiff testified were not at the premises upon her return. On cross-examination, Plaintiff testified that at minimum five of the items (trampoline, cabinet, bike, weed eater, and ladders) were located outside the trailer when she left. Plaintiff also referred to several of the items, including the tools and drills, as being "his" or "ours", referring to property that Nathan Olp may have purchased or may have been jointly purchased. Plaintiff had no receipts to verify who purchased any of the items or to establish the purchase price. Plaintiff's testimony regarding the allegedly missing property was not credible as it was both evasive and largely based upon hearsay and conjecture.

Defendant contended that he was not responsible for the lost property as a great deal of the property was outside the trailer or in a shed that Plaintiff was not to access. Defendant testified that the missing TV was his youngest son's, not the Plaintiff's, and he was not aware where it went after Plaintiff and Nathan Olp took possession of the premises.

Defendant filed a counterclaim seeking that he be returned to possession of the property and that he be compensated for unpaid rent and utilities. Specifically, Defendant testified that the agreement between the parties was for monthly rent of \$250.00 and the tenants were to pay utilities. Defendant testified that he has not received rent since October of 2020. Plaintiff confirmed that she has not paid Defendant any rent. Plaintiff argued that she was not liable for utilities, but also testified on cross-examination that the premises' electricity was turned off a week ago because she did not pay the bill. Defendant's Exhibits C and D detailed the water and

electrical bills for the premises from October 1, 2020 to today. Defendant argued that any award of damages to Plaintiff is offset by the damages he has incurred.

After the close of Plaintiff's and Defendant's cases, the Court took testimony for Attorney Pettit, the supervisor of Plaintiff's primary attorney regarding the basis for the Plaintiff's Motion for Attorney Fees and heard argument from the parties regarding the motion.

Conclusions of Law

Plaintiff's Damages Claims

Plaintiff seeks damages based upon claims made under Landlord Tenant Act, specifically R.C. 5321.15 and R.C. 5321.04(A)(4), as well for conversion and breach of the common law covenant of quiet enjoyment. The R.C. 5321.15 provides:

"(A) 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, other than as provided in Chapters 1923., 5303., and 5321. of the Revised Code.

* * *

"(C) A landlord who violates this section is liable in a civil action for all damages caused to a tenant, or to a tenant whose right to possession has terminated, together with reasonable attorneys fees."

R.C. 5321.04(A)(4) states:

(A) A landlord who is a party to a rental agreement shall do all of the following:

* * *

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by the landlord.

Plaintiff's claims under the Landlord Tenant Act specifically related to Defendant turning off electrical service and changing the locks to the premises. This Court previously found that Defendant had unlawfully terminated electrical service and excluded Plaintiff from the premises in its October 21, 2020 Preliminary Injunction Order. Defendant did not dispute these facts at trial and conceded that he owes Plaintiff damages in the amount of her hotel costs. Therefore, Plaintiff is entitled to recover the amount of \$617.29 for her hotel stays from October 3 through October 14, 2020 caused by Defendant's violation of the Landlord Tenant Act.

Plaintiff's conversion claim involve the property included in Plaintiff's Exhibit 2 which she alleges the Defendant improperly removed from the property. "[C]onversion is the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights." *State ex rel. Toma v. Corrigan*, 92 Ohio St.3d 589, 592, 752 N.E.2d 281 (2001), quoting *Joyce v. Gen. Motors Corp.*, 49 Ohio St.3d 93, 96, 551 N.E.2d 172 (1990). To prevail on a claim of conversion, a plaintiff must demonstrate "(1) that [she] owned or had the right to control the property at the time of the conversion, (2) the defendant's wrongful act or disposition of the plaintiff's property rights, and (3) damages." *Pelmar USA, L.L.C. v. Mach. Exchange Corp.*, 9th Dist., 2012-Ohio-3787, 976 N.E.2d 282. "It is not necessary that the property be wrongfully obtained." *McCartney v. Universal Elec. Power Corp.*, 9th Dist. Summit No. 21643, 2004-Ohio-959.

Plaintiff did not meet her burden in establishing her conversion claims. As stated above, Plaintiff's testimony regarding the allegedly converted property was largely based upon hearsay and conjecture and did not support the conclusion that she was the owner of the property or has the right to control the property. Specifically, Plaintiff referred to several of the items, including the tools and drills, as being "his" or "ours", referring to property that Nathan Olp may have purchased or may have been jointly purchased. Plaintiff had no receipts or other independent evidence to demonstrate who purchased any of the items or to establish the replacement price.

Furthermore, Plaintiff failed to meet her burden in establishing the Defendant was responsible for conversion. Plaintiff testified that several pieces of the allegedly converted property was outside the trailer, open for any individual to take and evidence that Defendant was involved was based upon weak circumstantial assumption or complete conjecture. In addition, Plaintiff provided inadequate support for her claimed damages as her testimony regarding valuations was largely based upon unsupported "Google" research and now testimony regarding the age or conditions of the items.

Finally, Plaintiff provided no testimony to support her claim for actual and punitive damages for violation of the common law covenant of quiet enjoyment. When Plaintiff's counsel inquired about any other ways this situation may have harmed Plaintiff other than the aforementioned hotel stay and allegedly converted property, Plaintiff responded that it did not affect her in any other way.

Based upon the foregoing, Plaintiff is entitled to recover the amount of \$617.29 for her hotel stays from October 3 through October 14, 2020 caused by Defendant's violation of the Landlord Tenant Act.

Defendant's Damages Counterclaim

Defendant's counterclaim seeks damages for rent owed pursuant to the month-to-month rental agreement with Plaintiff and/or Nathan Olp, along with payment of electrical and water utilities from October 1, 2020 to present. The undisputed testimony of Defendant established that the monthly rent for the premises was to be \$250.00 per month commencing on October 1, 2020. Therefore, Plaintiff is liable for rent for the months of October through December 2020, as well as January through March 2021 for a total of \$1,500.00.

Regarding the payment of utilities, Defendant testified that Plaintiff and/or Nathan Olp were to pay the electric and water bills for the premises. Plaintiff argued that she was not liable for utilities, but she testified on cross-examination that the premises electricity was turned off a week ago because she did not pay the bill. While this insinuates that Plaintiff may have known of her responsibility to pay the electricity bill in March of 2021, it is not helpful in determining the parties' agreement at the inception of the tenancy. All of the utility bills presented to the Court remained in the Defendant's name and Defendant clearly had the ability to shut off electrical service to the premises in October 2020; therefore, the Defendant presented insufficient evidence to establish a binding agreement between the parties regarding the payment of utilities.

The Court further finds that damages incurred by Defendant for unpaid rent shall be offset by the damages incurred by the Plaintiff. The decision to permit a setoff of judgments is within the trial court's discretion. See, generally, 32A Ohio Jurisprudence 2d (1975) (276, Judgments, Section 744; and *Thomas v. Papadelis*, 16 Ohio App.3d 359, 360, 476 N.E.2d 726, 729 (9th Dist.1984); citing, *Diehl v. Friester*, 37 Ohio St. 473 (1882). Therefore, Defendant is entitled to recover the amount of \$882.71 being \$1,500.00 in unpaid rent offset by \$617.29 in damages to Plaintiff.

Plaintiff's Motion for Attorney Fees Pursuant to R.C. 5321.15

Several Ohio appellate courts have found that when a landlord violates R.C. 5321.15(A) or (B), R.C. 5321.15(C) mandates the award of reasonable attorney fees. "Pursuant to R.C.

5321.15(C), a landlord is liable for the necessary legal fees incurred by a tenant who seeks legal redress for a landlord's violation of R.C. Chapter 5321." *Crenshaw v. Rowland*, 196 Ohio App.3d 717, 2011–Ohio–5942, 965 N.E.2d 341, ¶ 13 (6th Dist.), quoting *Thomas v. Papadelis*, 16 Ohio App.3d 359, 360, 476 N.E.2d 726 (9th Dist.1984). Accord, *Filyo v. Cannon*, Fifth Dist. No. 95 CA 1, 1995 WL 776946 (Dec. 21, 1995); *Ingram v. Gasser*, 2d Dist. No. CA 12235, 1991 WL 30227 (Mar. 6, 1991). When a tenant has actually incurred no out-of-pocket attorney fees, the amount of fees determined to be proper should be awarded directly to the attorney or organization that provided the legal services. *Lewis v. Romans*, 70 Ohio App.2d 7, 433 N.E.2d 622 (1980); *Gaitawe v. Mays*, 2nd Dist. Montgomery No. 25083, 2012-Ohio-4749, ¶ 10.

Plaintiff's motion for attorney fees seeks the award of attorney fees at the rate of \$140.00 per hour for her counsel's time dedicated to this matter. Plaintiff's counsel's supervisory attorney provided testimony regarding the calculation of the abovementioned hourly rate for an attorney with one-year of experience based upon similar awards and regional adjustments. Plaintiff requests that her counsel be compensated for 7.2 hours of work incurred prior to the issuance of a preliminary injunction or, alternatively, for 17.15 hours for the entirety of the case including the damages claims.

Based upon the forgoing, the Court finds that an award of attorney fees is required in this case and the reasonable amount of attorney fees is \$1,008.00 being 7.2 hours at the hourly rate of \$140.00 per hour. The aforementioned attorney fees are reasonable based upon the testimony presented to the Court regarding the applicable hourly rate. The Court further believes that lesser amount of time incurred being 7.2 in this matter is the reasonable basis for the attorney fees as this was the amount of legal fees required to return Plaintiff to possession of the property. Any award beyond this amount, the Court believes is unreasonable as a large portion of Defendant's damages claims were unpersuasive and the time expended unnecessary.

Pursuant to R.C. 5321.15(C), a landlord is liable for the necessary legal fees incurred by a tenant who seeks legal redress for a landlord's violation of R.C. Chapter 5321. This provision is designed to deter unconscionable conduct on the part of a landlord by forcing the landlord to assume these expenses. *Thomas v. Papadelis*, 16 Ohio App.3d 359, 360–61, 476 N.E.2d 726, 729 (9th Dist.1984). If Defendant were permitted to set off the award of attorney fees (\$1,008.00) and damages against the judgment for unpaid rent after the abovementioned setoff for Plaintiff's damages (\$882.71), Defendant would have to pay only \$125.29. The bulk of the setoff would

come from the attorney fees. Thus, permitting a setoff would enable Defendant to avoid paying a significant portion of the attorney fees incurred as a result of his unconscionable conduct. This would only weaken the policy objectives of R.C. 5321.15(C). *Id.*

Additionally, a setoff should not be granted against attorney fees if those attorneys who contributed their skill and services in obtaining the judgment would be prejudiced thereby. *Id.*; *citing*, 32A Ohio Jurisprudence 2d (1975) 282, Judgments, Section 752. The facts of this case lead to the conclusion that such prejudice would occur. Therefore, Defendant is not entitled to a setoff of the awarded attorney fees.

DECISION

Judgment is granted to Defendant Alan Olp, and against Plaintiff Jina Cupp in the amount of \$882.71 (\$1,500.00 in damages to Defendant offset by \$617.29 in damages to Plaintiff), plus interest at the rate of 3% per annum from the date of judgment.

Plaintiff is awarded attorney fees in the amount of \$1,008.00 to be paid to her counsel from Community Legal Aid Service, Inc. by Defendant.

Each party shall bear their respective court costs.

IT IS SO ORDERED.

 3/26/2021
MICHAEL W. RICKEPT, JUDGE