

IN THE MAHONING COUNTY COURT
AREA NUMBER 2
BOARDMAN TOWNSHIP, OHIO 44512

DEMAR REALTY INC

CASE NUMBER: 03 CVG 00191

Plaintiff(s)

vs.

Judgment/Journal Entry

JAUWANA MURPHY

Defendant(s)

HEARING HELD ON OBJECTIONS TO MAGISTRATE'S
REPORT. COURT ORDERS:

(1) Judgment for DEFENDANT.

(2) Case dismissed at Plaintiff's costs

9/19/03
Date

MAHONING COUNTY
COURT #2

SEP 19 2003

Joseph M. Houser
JUDGE/MAGISTRATE

FILED
ANTHONY VIVO, CLERK

IN THE MAHONING COUNTY COURT
 AREA NO. 2
 BOARDMAN TOWNSHIP, OHIO

DEMAR REALTY INC.

 PLAINTIFF

 vs.

 JAUWANA MURPHY

 DEFENDANT

)
)
)
)
)
)
)
)
)
)

CASE NO. 03 CVI 191

 MAGISTRATE'S DECISION

THE PROCEEDINGS

Case called for hearing on Plaintiff's complaint for restitution for damages.

PRESENT WERE

Plaintiff and Attorney James E. Lanzo
 Defendant and Attorney Patricia Dougan

FINDINGS OF FACT

1. The underlying facts are not in dispute. Defendant is, and of all times relevant hereto, has been a tenant of Plaintiff. Defendant began tenancy August 1, 2002. In November 2002, Defendant phoned Plaintiff complaining of a roach infestation. The Defendant secured the services of an exterminator who placed traps for the stipulated sum of \$115.00.

2. The Defendant testified she saw these "baby" cockroaches. She denies they were waterbugs. Upon questioning by the Court, Defendant indicated she saw no roaches from August 1, 2002 to the observation date in November 2002. She further indicated she has seen none since such date. The parties stipulated to the former testimony of the exterminator, admitted at the prior first cause hearing, which was dismissed, that no evidence of cockroaches was observed. The Plaintiff testified she has had no prior claim of roaches by other tenants in this multi-unit building.

CONCLUSION

It is Plaintiff's position she should not be responsible for exterminating charges, as the Defendant's request for such service was not well founded. The Magistrate notes however that it was Plaintiff who wanted the exterminating services. It is beyond dispute that a landlord has a duty to provide a leased premise, which is safe, habitable and free of health hazards. Here the lease agreement provides that the Defendant had an obligation to report all maintenance problems promptly (Paragraph 8 of the lease agreement). At least one court has held that extermination of cockroaches falls within the meaning of "maintenance." See River Terrace Condominium Assn. v. Lewis 33 Ohio App 3d 52 (Court of Appeals Hamilton County; 1986)

The Magistrate has had the benefit of observing the demeanor and manner of testifying of all witnesses. The Magistrate does not find that the Defendant acted with any improper purpose in notifying the Plaintiff of what she suspected were cockroaches. It appears Defendant did do what was required under the lease. Under the circumstances the Magistrate does not find that this decision will open the floodgates of litigation as counsel for the Plaintiff would argue.

DECISION

Judgment for Defendant. Case dismissed at Plaintiff's costs.

7/15/03
Date

Donald J. DeSanto
Donald J. DeSanto, Magistrate

Pursuant to Rule 53 of the Ohio Rules of Civil Procedure the parties have fourteen (14) days within which to file objections to the Decision of Magistrate.

MAHONING COUNTY
COURT #2

JUL 15 2003

FILED
ANTHONY VIVO, CLERK