Elyria Municipal Court

601 Broad Street, Elyria, OH 44035

Judge Gary C. Bennett ~ Judge Robert C. White

Clerk Eric J. Rothgery, J.D.

FILED

2020 JUL 21 AM 10: 39

CLERK OF
ELYRIA MUNICIPAL COURT

BY: WS

Civil Journal Entry

Case Number: 2016CVI02094

MARLENA DOUGLAS

Plaintiff

vs

CAMPOST PROPERTIES, LLC

Defendant

Magistrate's decision reviewed, adopted, and incorporated by reference herein. Clerk to journalize the Magistrate's Decision along with this order.

Defendant Gerald Camp is dismissed as a party and Campost Properties, LLC., is hereby substituted as the sole defendant.

Judgment is entered for Plaintiff against Defendant for $775 plus interest at 5% per annum from date of judgment plus court costs.

WS

JUDGE

CLERK TO SERVE ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR WITH NOTICE OF JUDGMENT AND DATE OF ENTRY UPON THE JOURNAL.

Copy to parties

c: Douglas
Campost Properties LLC
7-21-2020
WS

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STATE OF OHIO, LORAIN COUNTY, ss., - THE ELYRIA MUNICIPAL COURT

MAGISTRATE'S DECISION

MARLENA DOUGLAS,
Plaintiff

VS **CASE NO. 2016CVI02094**

CAMPOST PROPERTIES, LLC
Defendant

Pursuant to Rule 53 this matter was referred to the Magistrate for hearing and decision. Plaintiff and Defendant "Gerald Camp" appeared *pro se*. "Gerald Camp" is dismissed as a party defendant, with "Campost Properties, LLC," substituted as the proper defendant by the consent of Gerald Camp as its managing member. The limited liability company appeared without counsel as permitted by but subject to the limitations on advocacy at R.C. §1925.17.

FINDINGS OF FACT AND LAW

Plaintiff was a tenant of Defendant at 182 Parklane Drive, LaGrange, Ohio under a written lease between March 1, 2014 and July 31, 2016. At the end of her tenancy, Plaintiff gave sixty days' notice of her intention to vacate the then month-to-month tenancy as well as notice of her new address in writing. Defendant returned $40 of the $775 deposit with an itemization of its deductions for repairs. Plaintiff brings this action for the full amount of her security deposit.

Revised Code §5321.01(E) defines "security deposit" as "any deposit of money or property to secure performance by the tenant under a rental agreement." Section 5321.16(B) adds: "Upon termination of the rental agreement any property or money held by the landlord as a security deposit may be applied to the payment of past due rent and to the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with section 5321.05 of the Revised Code or the rental agreement." The General Assembly directs that "[a]ny deduction from the security deposit *shall be* itemized and identified by the landlord in a written notice *delivered to the tenant* together *with the amount due*, within thirty days after termination of the rental agreement and delivery of possession." *Id.* (emphasis added). Under this framework mandating return of the security deposit to the tenant unless the landlord

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demonstrates grounds otherwise, it was the Defendant that had the burden to prove the right to retain any part. When a new address for a tenant is given in writing, a tenant is entitled to double the security deposit as liquidated damages. R.C. §5321.16(C). Plaintiff contests that Defendant has any claim to any offset.

Revised Code §5321.05(A) sets forth the duties of tenants in Ohio, which include to "personally refrain and forbid any other person who is on the premises with [her] permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises." These statutory duties supersede "the landlord's common-law right to have the property returned in as good a condition as it was delivered to the tenant, absent normal wear and tear." Allstate Ins. Co. v. Dorsey, 46 Ohio App.3d 66, 68 (Summit 1988) (George, J. concurring). Defendant had the burden to prove Plaintiff's negligent or intentional conduct by a preponderance of the evidence as a basis to withhold any part of the deposit. She did not have to prove that she did *not* violate the statute or the terms of the lease.

Under this standard, Defendant failed to prove Plaintiff's intentional or negligent acts or omissions proximately caused the small tear in the linoleum in the kitchen floor. First, Plaintiff was emphatic that the tear was already present when she moved in. Defendant lacked photos or other contrary evidence, such as a move-in sheet, from the outset of her tenancy or the end of the prior one. In any case, Defendant's primary witness and managing member, Gerald Camp, blamed the tear on the foot of the appliances likely catching the linoleum the wrong way, when being moved in or out. "Negligence" by definition requires the breach of a duty of ordinary care. To impose liability on Plaintiff for damage that occurred in the course of ordinary living, that is, without a breach of due care, would violate both the standards of the current statutory scheme and the former common law one of "wear and tear" and improperly impose strict liability.

Defendant is also denied the cost to replace interior doorknobs that Plaintiff testified had regularly loosened and were tightened by her during her tenancy, the knob that broke and fell off the bi-fold doors, or the transition slip that "popped off" about a month after she moved in. Defendant did not prove her or her daughter's negligence or intentional wrongdoing. Had Plaintiff complained about these conditions, Defendant would most likely have been required to make such routine maintenance repairs in accordance with its duties under R.C. §5321.04. That she did not complain during her tenancy does not result in her strict liability at the end.

Defendant asks for the cost to replace the carpet in two rooms, as well as the cost and time to apply "Kilz" paint before the new carpet was installed, due to the smell of cat urine in those carpets. Defendant reasonably only asks for fifty percent of these expenses, taking into consideration its estimate of four and a half years of use at the time of replacement. After Plaintiff moved out, Mr. Camp advised Plaintiff in writing that he recognized the "ammonia smell from cat pee [which he] can tell *because our cat does it all the time too*." (emphasis added). Plaintiff disputes that her cats urinated in the house. She remembers that the prior tenant had a dog, which she urges may have been to blame. She insists the carpet was at best only in fair condition when she moved in and never smelled while she lived there, except when the carpets were washed, which smell she described as actually "musty" as if perhaps there was

water under the house. She points out that Mr. Camp before shampooing the carpet had only detected some cat smell in one room, but replaced the carpet in two.

This case presents the strange situation of a landlord admitting that this situation was specifically foreseeable and not necessarily preventable by the tenant, due to the statement by Mr. Camp, that "our cat does it all the time too." A landlord may not recover expenses that are the result of ordinary living.

Surprisingly, few reported court cases mention tenants being held liable for damage from pet urine, either under the common law or state landlord-tenant statutes. The most relevant case imposed liability for a tenant "*allowing* her cats" to "urinate and vomit throughout the property, not just in litter boxes," and "not providing more sanitary conditions," leaving an "actual permanent harm that affects the landlord's reversionary interest" because "cat urine is notorious for its noxious odor which is very hard to eliminate as well for being a health risk." Wright v. Mullen, No. 1430 MDA 2014, 2015 WL 7012978, at *6 (Pa. Super., July 17, 2015) (emphasis added). To "allow" seems to require either actual or implied knowledge and then acquiescence or at least some ability to prevent the foreseeable and a decision against prevention. The present case lacks evidence to even infer that Plaintiff ever "allowed" her cats to do this.

On the other hand, Defendant delivered to Plaintiff a "pet agreement" for her to sign that bound her "to immediately pay for any damage, loss or expense caused by their pet" in exchange for the privilege of having pets. Because landlords may bar pets in residential property leases and indeed the parties' lease here expressly prohibits pets without written approval, this type of agreement is not patently inconsistent with the provisions of the Landlord-Tenant Act, so as to run afoul of R.C. §5321.06. Normally, Plaintiff's failure to sign this separate agreement would render its terms unenforceable against her – especially because Defendant's lease states that it is the "entire agreement." However, the unsigned, separate "pet agreement" required and Plaintiff paid the specified amount of $100 for the privilege of having cats. This payment constituted her acceptance of its terms, rendering its terms as binding upon her as if she had signed. Mr. Camp, due to his candid familiarity with cat urine, was credible that cat urine led to this odor, albeit most noticeable with the shampooing of the carpet, and the need to replace the carpet. In other words, Plaintiff was not negligent, but is liable under the terms of the pet agreement.

Even in this situation, though, Defendant had to prove damages, that is, the extent of its loss by competent, credible evidence, taking into consideration all factors, such as the carpet's original useful life, reasonable use by the tenants after installation, and its age. For example, the ordinary, useful life of a carpet is likely diminished just by the allowance of pets in residential premises. This unit had at least two tenants in succession with pets. The best memory of Defendant's witnesses is admissible as to their recollection of the age of the carpet but is not a substitute for business records of the date of installation, which Defendant has surprisingly not retained such as for depreciation purposes. It would be remarkable if Defendant's witnesses independently remembered more than generally when this carpet was installed among the ten other units that they manage. The amount claimed is adjusted accordingly. Defendant may only

have a $250 offset against the security deposit for both the materials and labor related to the replaced carpet and the application of the Kilz.

Defendant is not entitled to any offset for removing weeds from the front beds. The parties' lease required the tenant to perform "lawn care." Defendant's witnesses found some tall weeds in the bed and thus doubt weeding was done in the weeks before she vacated. Defendant apparently expected her before she moved out to weed for the benefit of future tenants. Plaintiff specifically remembers spraying weed killer and weeding during that same period.[1] This Court need not decide this issue because the "lawn care" required in the lease does not remotely imply a duty by Plaintiff to care for the beds in any respect, including pulling weeds.

Defendant asks for cleaning expenses, though Plaintiff insists the premises were left clean by her. She removed her cats from the house to start to clean almost a month before she vacated. A claim for cleaning after this two and a half year tenancy is difficult to evaluate without photos to substantiate the need beyond the hours of ordinary cleaning that Mr. Camp conceded would be appropriate without charging Plaintiff.

This issue may highlight the downside of having a tenant longer than under the usual one-year lease. Defendant paid the expenses of cleaning to a professional cleaning business owned and operated by one of its members. At the hearing, that member was clearly upset at conditions found in the unit that Plaintiff claimed had been adequately cleaned. Her testimony implied that tenants should surrender the premises not only as if a professional cleaner like her had been hired at the end of the tenancy but *also regularly throughout the entire tenancy*. She did not say this explicitly but explained that her cleaning business is in demand and very successful because most people are too busy to clean to the level that her business delivers. In her mind, every tenant or homeowner should not only regularly vacuum but monthly take out and use all of the vacuum accessories to ensure that dust and dirt is removed from every one of the "cracks and crevices." Without this scrupulous attention on a regular basis, the conditions of which she complains most develop over years. Perhaps in a shorter tenancy, such as only for one year, a tenant's lack of attention would not be obvious and Defendant's thorough cleaning between tenants would address any modest dirt and dust build-up. After a longer tenancy, the omissions become more evident and the necessary remediation much greater. On the other hand, if most people are too busy to clean to this standard, Plaintiff cannot be expected to be different from them. Most people also cannot afford professional cleaners. It is doubtful that any court would permit a landlord to impose a standard of "professional" cleaning on a tenant in residential rental property. Defendant may not want to renew or extend its one-year leases if, after inspection, Defendant discovers its tenants do not adhere to the highest standards for regular cleaning or do not undertake to hire professional cleaners approved by Defendant.

Defendant claims an offset for hauling away and scrapping two tall metal tool carts on wheels left by Plaintiff in the garage. Plaintiff admits leaving these behind but explained that she

[1] She complains that though she occupied only one half of the duplex, throughout her years she performed nearly all of the outdoor maintenance. Since both tenants in this duplex had that use, the lawn and beds might be regarded as a "common area," rendering Defendant, not either of its tenants, principally responsible for its maintenance.

did not want to throw these out, believing Defendant or the next tenant would be grateful for her leaving the carts for their use. That is not a defense. She had a duty to remove all of her things from the premises when she vacated. She would be held liable but for two problems. First, Mr. Camp admitted that these would have been carted away at no cost to Defendant had he waited until a regular trash day to roll them to the street and did not suggest their temporary presence interfered with the marketability of the premises or habitability by a new tenant. Second, he admitted under cross-examination that he usually receives money for the salvage value for scrap like this, but could not remember if he received anything in this instance. Defendant may not avoid crediting the scrap value of these carts.

Defendant asks for an offset for repairing the wall near mini-blinds that were taken down by Plaintiff after she broke their slats. She bought replacement blinds but left them when she moved out without trying to install them. Her reluctance to install them was from finding the walls too "mushy" at the existing brackets. She did not want to risk worsening the situation. Mr. Camp conceded that the walls were indeed "crumbly" by the brackets.

Nothing suggests that breaking the blinds contributed in any way to the "mushy" or "crumbly" condition of the wall. The best that may be said for Defendant's claim is that, but for her breaking the mini-blinds, the condition of the wall would not have been *discovered* when it was. The parties agree that the broken blinds were the least expensive blinds sold in box stores like Walmart. Such minimally priced blinds are replaced by some landlords between tenancies as routine maintenance. If she had not removed them and bought a replacement for Defendant, the success of Defendant's claim for their replacement would depend on their age and useful life. Defendant would clearly *not* have any claim for repairing the wall, because its condition was not at all a consequence of Plaintiff breaking the mini-blinds. The wall had to be repaired sooner or later and, in either instance, such repair would be at Defendant's costs. At best, Defendant has a claim for the financial loss from having to address the wall sooner rather than later, the time value of which is impossible to gauge. To award any amount for the work on the wall would be a windfall to Defendant.

Defendant is not entitled the cost of patching and painting over holes in the wall from Plaintiff hanging pictures. The lease does not forbid or limit this ordinary use of the premises. After a nearly two and a half year tenancy, some drywall repair is to be expected before routine painting for the next tenant. This is a cost of doing business.

On the other hand, Plaintiff is responsible for missing or burned out bulbs for $21.82, which presumably worked when she moved in.

After the above deductions, Plaintiff was entitled to $503.18 of her $775 security deposit back, though Defendant returned only $40. Pursuant to R.C. §5321.16(C), Plaintiff is entitled to double the $463.18 which was not returned, that is, $926.36.

This award is "mandatory if the landlord wrongfully withholds a portion of the tenant's security deposit." Smith v. Padgett, 32 Ohio St.3d 344, 349 (1987). Public policy lies behind

this unusual award. The Ohio Supreme Court views this award as "akin to liquidated damages rather than punitive damages. These additional damages serve to compensate injured tenants for the temporary loss of the use of that money given to the landlord as a security deposit and for the time and inconvenience of having to sue for the recovery of money wrongfully withheld. In addition, the possibility of double damages creates an incentive for landlords to comply with the law." Klemas v. Flynn, 66 Ohio St.3d 249, 251-252.

However, Plaintiff's prayer for relief asked only for $775.00. Mr. Camp came to the hearing anticipating this to be his maximum liability and agreed to have the limited liability company substituted as a party and proceed without an attorney under that same expectation. To avoid unfair surprise to the limited liability company that voluntarily submitted to the jurisdiction of this Court, Plaintiff should be limited to that sum.

RECOMMENDATION

DEFENDANT GERALD CAMP IS DISMISSED AS A PARTY AND CAMPOST PROPERTIES, LLC., IS HEREBY SUBSTITUTED AS THE SOLE DEFENDANT.

JUDGMENT SHOULD BE ENTERED FOR PLAINTIFF AGAINST DEFENDANT FOR $775 PLUS INTEREST AT 4% PER ANNUM FROM DATE OF JUDGMENT PLUS COURT COSTS.

Magistrate

Copies to Parties