

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

Renee Grayson

DATE: February 12, 2002

Plaintiff

-vs-

CASE NO.: 2002 CVG 14619

Sherry Farmer

and

Dennis Farmer

Defendants

MAGISTRATE'S DECISION
AND JUDGMENT ENTRY

This case came to be heard January 29, 2003 before Magistrate David Dylan Roberts, to whom it was referred by Judge Raymond L. Pianka, to take evidence on all issues of law and fact.

Plaintiff appeared *pro se*. Defendants appeared *pro se*.

Findings Of Fact

1. Plaintiff is the owner of property at 1196 E. 83rd St. Cleveland, Ohio.
2. Mrs. Willa Cloud lived in the property as a tenant until January 2002.
3. The house was vacant for a period of time after Mrs. Cloud moved out and before Defendants moved in.
4. During this period, Plaintiff failed to keep the house heated and freezing temperatures caused pipes to burst.
5. Defendants entered into an agreement with Plaintiff some time before March 2002 for the rental of the property.

6. The monthly rent under the agreement was \$450.
7. Defendants did not give Plaintiff a security deposit.
8. Defendants paid Plaintiff \$450 for March rent and \$450 for April rent, for a total of \$900. Defendants did not make any other payments.
9. Plaintiff acknowledged that the property needed certain repairs, discussing with Defendant Dennis Farmer the possibility that Plaintiff would pay Dennis Farmer and his brother to make the agreed repairs.
10. The agreed repairs included repairs necessary because of the burst pipe, which caused water to leak, the water then causing damage where it flooded into the interior of the house.
11. Plaintiff and Defendant did not ever agree on specific work that Plaintiff would pay Defendant Dennis Farmer and his brother to do.
12. Defendant did some repairs himself and paid for some repairs to the property.
13. Plaintiff hired Fred Turner to make certain repairs in March 2002 as indicated on a receipt Plaintiff offered into evidence as *Plaintiff's Exhibit 2*.
14. Plaintiff hired T & K Construction, Inc. to tear out the living room floor where it had been damaged by water and to replace it with plywood as indicated on an estimate and receipt Plaintiff offered into evidence as *Plaintiff's Exhibit 4*.
15. The repairs Plaintiff arranged did not constitute all the repairs that Plaintiff agreed to do.
16. The repairs Plaintiff arranged did not constitute all the repairs that were necessary to keep the property in good repair.
17. Plaintiff filed this action June 10, 2002.
18. This Court set a hearing on Plaintiff's first cause of action for July 31, 2002.
19. Defendants chose voluntarily to stop staying overnight in the property on or before July 15, 2002 but did not agree to give up possession of the property.
20. Defendants appeared at the July 31, 2002 hearing to contest Plaintiff's first cause claim.

21. The parties agreed to meet with a mediator on July 31, 2002 to try to reach an agreed settlement of the Plaintiff's first cause.
22. The parties did agree to a settlement through an *Agreed Judgment Entry*, which each party signed on July 31, 2002.
23. Each party received a copy of the *Agreed Judgment Entry* on July 31, 2002.
24. The Court approved the *Agreed Judgment Entry*.
25. The *Agreed Judgment Entry* stated that Plaintiff could execute her writ of restitution only on or after August 7, 2002.
26. On July 16, 2002, Plaintiff permitted Mr. Fred Parker and members of his family to move into the property.
27. Beginning July 16, 2002, Mr. Parker did not allow Defendants full access to the property.
28. Defendants were, on certain occasions on or after July 16, 2002, permitted to enter the property to remove some of their belongings.
29. Defendants were not able, during these occasions, to remove all the belongings that they had in the property and wanted to keep.
30. With Plaintiff's consent, Mr. Fred Parker either removed and discarded or kept the belongings Defendants left in the property.

Conclusions Of Law

The Court finds for Plaintiff, in part, on her claim for rent, against Plaintiff on her claim for property damage, and for Defendant on Defendants' counterclaims. Judgment shall be for Defendant in the amount of \$279.

The Court finds for Plaintiff, in part, on her claim for rent. The Court finds that Defendants breached the parties' oral agreement for the rental of the property by not paying \$450 per month for each month they were in possession of the property. The Court finds that Defendants paid for March and April 2002 and that Plaintiff constructively evicted Defendants on July 16, 2002. Defendants therefore did not pay for May 2002, June 2002 and 15 days in July 2002, for a total rental obligation of \$1118, which amount is subject to set-off as stated below.

The Court finds against Plaintiff on Plaintiff's claim for property damage because Plaintiff failed to persuade the Court that Defendants caused any of the alleged property damage.

Plaintiff submitted five exhibits in support of her claim.

Plaintiff's Exhibit 1 was for the purchase of a new vanity for the bathroom. Plaintiff did not establish that Defendants damaged the old vanity in the bathroom. Defendants' testimony persuaded the Court that the vanity was damaged by water, which leaked because Plaintiff did not repair pipes that had burst from the cold during the time when the house was vacant.

Plaintiff's Exhibit 2 was for repairs to the bathtub in the bathroom and to replace pipes in the basement. Plaintiff did not offer any testimony to show that Defendants caused any damage to the pipes in the basement. Plaintiff testified that the Defendants caused the tub to leak but the Court found Plaintiff's testimony unpersuasive.

Plaintiff's Exhibit 3 was a receipt for electrical work completed before Defendants rented the property and therefore cannot support any claim.

Plaintiff's Exhibit 4 was for repairs to the living room floor, but Plaintiff admitted that the tenants did not do anything to cause the water damage to the living room floor and *Exhibit 4* therefore fails to support Plaintiff's claim.

Plaintiff's Exhibit 5 was for cleaning, trash removal, extermination, and washing and painting walls. Plaintiff's testimony did not persuade the Court that Defendant's caused Plaintiff to have a need to spray for roaches or set rattraps. Plaintiff's testimony also failed to persuade the Court that Defendants caused more than normal wear and tear on the walls.

Finally, Plaintiff cannot recover for the cost of cleaning or removing trash. Plaintiff herself testified that she allowed a Mr. Fred Parker to move into the property before August 7, 2002. Defendants testified that Mr. Parker did not give them access to the property so that they could retrieve their belongings, throw out trash or otherwise clean. Plaintiff offered no rebuttal to this testimony.

Plaintiff's five exhibits and her testimony failed to support her claim for property damage.

The Court finds for Defendants on Defendants' counterclaim. Defendants' counterclaim finds its support in Ohio Revised Code §5321.04, which requires landlords to keep property in good repair under the standards set forth in that section. Defendants'

testimony established that Plaintiff did not keep the property in good repair under the standards set forth in §5321.04. Defendants are entitled to damages under §5321.12.

The measure of Defendant's damages is the diminished value of rented property based on "the difference between the rental value of the property in its defective condition and what the rental value would have been had the property been maintained." *Id.* at 227, citing *Smith v. Padgett*, 32 Ohio St.3d 344, 513 N.E.2d 737 (1987). *Miller v. Ritchie*, 45 Ohio St.3d 222 (1989).

Defendant Dennis Farmer testified that, if he knew that the needed repairs would not be made, he would have expected to pay \$250 to \$300 per month to rent the property. Mr. Farmer's testimony, along with both Defendants' testimony about defects in the house, persuades the Court that the diminished value the property was \$250 per month.

Defendants are therefore entitled to a set-off of \$200 per month against the \$450 per month rent. The set-off applies to March, April, May, June and 15 days in July 2002. Defendants' total rental obligation is therefore \$1121. Defendants, having paid Plaintiff \$900 owe only \$221. (This \$221 is equal to Plaintiff's claim for \$1118 less \$897 in set-off at \$200 per month for four months and 15 days).

The Court also finds that Plaintiff violated Ohio Revised Code §5321.15(A), which forbids a landlord from attempting to regain possession using "self-help" instead of legal process through the courts. The Court also finds that Plaintiff violated Cleveland Codified Ordinance §375.07, which is analogous to Ohio Revised Code §5321.15(A).

Section 375.07 Landlord Denied Certain Remedies

(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.

(b) No landlord of residential premises shall seize the furnishings or possessions of a tenant, or of a tenant whose right to possession has terminated, for the purpose of recovering rent payments, other than in accordance with an order by a court of competent jurisdiction.

(c) A landlord who violates this Section shall be liable in a civil action for: at the tenant's option, either all damages caused to the tenant or to the tenant whose right to possession has been terminated, or damages of an amount not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00); and the tenant's reasonable attorneys' fees.

Plaintiff admitted that she authorized Mr. Fred Parker to enter the property on July 16, 2002 and to begin to live in it on July 22, 2002 despite the fact that this Court

had not granted Plaintiff a writ of restitution, Plaintiff agreeing on July 31, 2002 through the parties' *Agreed Judgment Entry* to leave Defendants in possession until August 7, 2002. Because Mr. Fred Parker refused to allow Defendants to enter the property, Plaintiff violated Ohio Revised Code §5321.15(A) and Cleveland Codified Ordinance §375.07. Under §375.07, Defendants may recover their actual damages or statutory damages. The Court finds that Plaintiff's conduct was not wanton or otherwise aggravated such that it would support an award of punitive damages.

Defendants did not offer testimony or evidence to prove the dollar value of their actual damages. Defendants testified that they were unable to remove items of furniture, including bunk beds and an armoire, and toys and clothes. But Defendants did not offer testimony concerning the value of these items.

Defendants may, therefore, elect to receive statutory damages. Ordinance §375.07 allows for statutory damages in an amount not less than \$50 or more than \$500. This Court has the discretion to determine the amount of the award.

The Court will award Defendants the full \$500 in statutory damages. The Court's decision is based on two factors.

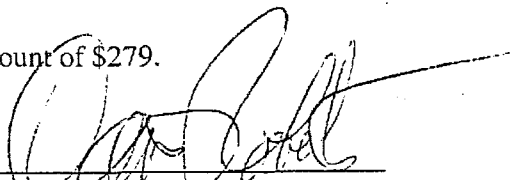
First, the Court is convinced that Defendants did lose valuable possessions because of Plaintiff's conduct. While unable to determine the dollar amount of Defendants' loss, the Court considers it likely that the value of the items exceeded \$500.

Second, the Court notes that Plaintiff permitted another family to move into the property 9 days before this Court's hearing on the issue of possession and allowed that family to remain in the property after the date of the Court's hearing despite agreeing to leave Defendants in possession for 8 more days under the parties' *Agreed Judgment Entry*. Thus, Plaintiffs interfered with Defendants' possession for a total of 17 days.

Judgment shall be for Defendants in the amount of \$279 (\$500 less the final outstanding rental obligation of \$221).

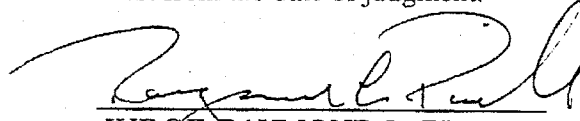
Decision

Judgment is rendered for Defendants in the amount of \$279.


MAG. DAVID DYLAN ROBERTS

Judgment Entry

The Magistrate's Decision is approved and confirmed. Judgment is rendered for Defendants in the amount of \$279, plus costs and interest from the date of judgment.


JUDGE RAYMOND L. PIANKA

IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS REPORT, AND MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THESE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this *Magistrate's Decision and Judgment Entry* was sent via regular U.S. Mail to the following on ___/___/___.

Plaintiff

Renee Grayson
424 E. 110th St.
Cleveland, OH 44108

Defendant

Dennis Farmer
Sherry Farmer
1181 E. 83rd St.
Cleveland, OH 44103