

IN THE MUNICIPAL COURT OF DAYTON, OHIO
CIVIL DIVISION

2011 AUG 15 AM 10:32

GLORIA GAITAWE,
Plaintiff,

CASE NO: 11 CVG 891

JLETR

Vs.

MAGISTRATE'S DECISION
AND JUDGMENT ENTRY

LAKIESHA MAYS, et al,
Defendant,

This matter came before the Court on August 8, 2011, for the second cause of an eviction trial. Plaintiffs appeared represented by counsel. Defendant appeared represented by counsel.

Based upon a review of the evidence presented and weighing the credibility of the witnesses, the Court finds that Plaintiffs have proven their case for back rent by a preponderance of the evidence, however after offsetting the security deposit, the Court awards damages against Defendant in the amount of \$0.00 on Plaintiffs' claim. The Court further finds that Defendant has proven her counterclaim and awards damages against Plaintiffs in the amount of \$1,020.00, after offsetting the \$125.00 already received.

The parties entered into a lease agreement for the subject property with monthly rent of \$500.00 and a security deposit of \$500.00. The Court finds that Defendant did owe rent for the period after January 15, 2011, however, after offsetting the security deposit, the Court grants judgment on Plaintiffs' claim for \$0.00. The Court finds that the security deposit was properly withheld and no double damages will be awarded.

The Court did not find either Plaintiff or Defendant to be entirely credible. The Court relies heavily on the independent testimony of the taxi driver, Lee Hahosid, who stated that he took Defendant to the property on February 3, 2011 and saw household items outside on the porch and that Defendant came back to the taxicab and stated she could not enter the property because the locks were changed. Plaintiffs filed an eviction action that same day and did not have legal authority to remove Defendant's belongings or change the locks. The Court finds that Plaintiffs proceeded with an illegal eviction and owes damages to Defendant for the personal items that were taken. Defendant is on a fixed income and the Court does not believe that Defendant would have thrown her newly purchased items away.

The Court will not allow Defendant to recover hotel and food charges for her own mistaken belief that bed bugs can cause blindness. Defendant had moved out of the property due to bed bugs but had lied to Plaintiffs by telling them there were no bed bugs to treat at the property. Defendant can not now complain that the property was not treated.

Plaintiffs argue that Defendant agreed to settle the matter by returning \$125.00 to Defendant in exchange for the return of the keys to the property. The Court finds this agreement to have been made under duress and is not binding.

The Court finds that Defendant may recover damages for her converted bedroom furniture, clothes, bathroom accessories, table and chairs, microwave, tv and dvd in the amount of \$1,145.00, after offsetting the \$125.00 already paid, judgment is granted to Defendant in the amount of \$1,020.00. Due to Defendant's credibility issues,

the Court will not award damages for food or other items, mental suffering and emotional distress, punitive damages, attorney fees or any other items listed in the counterclaim.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that Defendant recover damages against Plaintiffs, jointly and severally, in the amount of \$1,020.00, plus statutory interest of 4% from the date of judgment, costs paid by each party.

SO ORDERED.



MAGISTRATE

JUDGMENT ENTRY

THE COURT HAS INDEPENDENTLY REVIEWED AND HEREBY ADOPTS THE MAGISTRATE'S DECISION AND AWARDS DAMAGES IN THE AMOUNT DETERMINED BY THE MAGISTRATE:



JUDGE

A party shall not assign as error on appeal the Court's adoption of any factual finding or legal conclusion in the Magistrate's Decision, whether or not specifically designated as a Finding of Fact or Conclusion of Law, unless the party timely and specifically objects in writing to that factual finding or legal conclusion within fourteen (14) days of the filing of the Decision, as required by Civil Rule 53(D)(3)(b).

Cc:

Plaintiff or Counsel for Plaintiff
Defendant or Counsel for Defendant