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

H-1 Management LLC **DATE: July 3, 2007**

Plaintiff

-vs- **CASE NO.: 2006 CVG 28200**

Ferrisha Perryman

Defendant **MAGISTRATE'S DECISION**

The Court held a trial in this case April 5, 2007. Plaintiff appeared through counsel. Defendant appeared with counsel. The parties appeared before Magistrate David D. Roberts, Judge Raymond L. Pianka having referred the case to Magistrate Roberts to take evidence on all issues of law and fact.

Findings Of Fact

1. Plaintiff and Defendant entered into a lease in October 2005, a copy admitted into evidence as *Plaintiff's Exhibit A.*

2. Defendant provided a security deposit of $520.

3. Plaintiff and Defendant also entered into a *Housing Assistance Payments Contract* (*HAP Contract*) with the Cuyahoga Metropolitan Housing Authority (CMHA), a copy of the HAP Contract introduced into evidence as *Defendant's Exhibit 1.*

4. Under the HAP Contract, CMHA would pay $520 of the $520 contract rent and Defendant would pay $0.

5. The (CMHA) terminated the subsidy under the lease effective July 31, 2006.

6. After learning that CMHA was terminating the subsidy payments, Defendant made an effort to enter into a lease and HAP Contract with another landlord.

7. Defendant did not pay any money directly to Plaintiff.

8. Defendant vacated the property and returned possession to Plaintiff November 20, 2006.

9. Defendant left items of personal property in the property that Plaintiff had removed at a cost of $250 as stated on *Plaintiff's Exhibit O.*

10. Defendant removed copper pipe from the property that Plaintiff had to restore at a cost of $3000 as stated on *Plaintiff's Exhibit O.*

11. Defendant tampered with an electrical meter at the property causing Plaintiff to have to pay a $65 charge to the electrical provider as shown on *Plaintiff's Exhibits M and N.*

12. Plaintiff failed to keep sufficient heat on for the property for two weeks shortly after Defendant moved in.

13. Plaintiff failed to repair a water leak and water damage that CMHA observed during an inspection in June 2006 as stated on *Plaintiff's Exhibit B.*

14. The leak had existed since Defendant moved into the property.

15. Plaintiff's failure to repair the leak caused CMHA to terminate subsidy payments under the HAP Contract.

16. Plaintiff made an effort to repair the leak and water damage but the repairs did not completely correct the problem.

17. To mop up the water that came from the leak Defendant would have had to have mopped daily for approximately 15 minutes each day.

18. Defendant did not mop up water every day, causing mold to develop. She did not clean the mold as required by CMHA on *Plaintiff's Exhibit B.*

19. Plaintiff made repairs to the exterior of the property as required by *Plaintiff's Exhibit B.*

Conclusions Of Law

The Court finds for Plaintiff, in part, on its claims and for Defendant, in part, on her claims, with final judgment for Plaintiff in the amount of $2150 as the difference between Plaintiff's damages of $2795 and Defendant's damages of $645. The Court orders Defendant to pay costs.

I. Plaintiff's Claims

The Court grants judgment to Plaintiff, in part, on its claims, with damages in the amount of $2795.

A. Plaintiff's Claim For Rent

Plaintiff failed to prove that Defendant owes any unpaid rent. Plaintiff introduced into evidence *Plaintiff's Exhibit A*, a lease that Defendant signed with Plaintiff. But Plaintiff did not contest that it also signed a Cuyahoga Metropolitan Housing Authority *Housing Assistance Payments Contract* (*HAP Contract*) introduced by stipulation as *Defendant's Exhibit 1*. The HAP Contract states that if the *HAP Contract* terminates, the lease between the parties terminates automatically. *HAP Contract*, Part C(9) and (17) at p. 9, 10. CMHA terminated the HAP Contract effective July 31, 2006, thus terminating the parties' lease automatically. *Plaintiff's Exhibit I.* From that point on Defendant occupied the property without an agreement.

A landlord in Plaintiff's circumstances may bring an unjust enrichment claim. However, Plaintiff did not include such a claim in its complaint. Plaintiff could move under Civ.R. 15(B) to amend its pleadings but has not done so. The Court concludes that the parties did not try this issue by express or implied consent. The Court bases this conclusion on the fact that Defendant, though able to cross-examine Plaintiff's witness and to present evidence in rebuttal, did not have notice before trial of the specific basis for Plaintiff's unjust enrichment claim and thus lacked a "fair opportunity to address the tendered issue" and might have offered additional evidence if Defendant had known that Plaintiff was pursuing this theory. *State ex rel. Evans v. Bainbridge Twp. Trustees* (1983), 5 Ohio St.3d 41, 47, 448 N.E.2d 1159.

Even if Plaintiff had filed a complaint for unjust enrichment it failed to prove such a claim. To prove a claim of unjust enrichment, a party must demonstrate that:

> (1) he conferred a benefit upon the defendant,
> (2) the defendant had knowledge of the benefit, and
> (3) circumstances render it unjust or inequitable to permit the defendant to retain the benefit without compensating the plaintiff.

Hambleton v. R.G. Barry Corp. (1984), 12 Ohio St.3d 179, 183, 12 OBR 246, 465 N.E.2d 1298. Possession of rental property is an obvious benefit and the occupant

clearly knows of the benefit. Plaintiff's burden would thus be to prove that circumstances made it unjust or inequitable to permit Defendant to retain this benefit without compensating the landlord. Were it evaluating such a claim, the Court would conclude that it was not unjust for Defendant to retain the benefit of occupying the property without paying Plaintiff for it. Plaintiff was at fault for the termination of the lease and the cancellation of the subsidy payment it received. Plaintiff did not repair the defects listed on *Defendant's Exhibit 2* that CMHA determined to be landlord responsibilities. Defendant also proved that she made an effort to move from the property after the subsidy was canceled, supporting the conclusion that it would be unjust to make her pay Plaintiff. *Plaintiff's Exhibits F, G* and *H.*

B. Plaintiff's Claim For Property Damage

1. Plaintiff's Claim In Not Limited By *Cranfield v. Lauderdale*

The Court concludes that *Cranfield v. Lauderdale* (1994), 94 Ohio App.3d 426 (8th Dist.) does not limit Plaintiff's claims in this case because Plaintiff has met the appropriate *Cranfield* standard of showing that its damages are for items that are reasonably necessary to restore the property.

In *Cranfield v. Lauderdale* (1994), 94 Ohio App.3d 426, the Eighth District Court of Appeals applied a general rule of damages to a landlord's claim against a tenant. The general rule of damages was that a party can prove damages to real property based on the cost to restore the damaged property so long as the restoration cost does not exceed the diminution in fair market value. This is a rule familiar to most lay people in the context of auto insurance claims. If the cost to repair a damaged car is greater than the value of the car, insurance need only pay the value of the car, not the repair cost. One says the car is "totaled." *Cranfield* makes clear that a plaintiff landlord has the burden of production on this issue and must offer evidence demonstrating that the loss in market value would be greater than the costs of repair. *Id.* at ¶

Defendant argued at the close of Plaintiff's case that the Court should rule that Plaintiff failed to meet this burden because it did not offer any testimony about the decline in market value of the subject property. The Court agrees that Plaintiff failed to provide any testimony about the decline in market value due to the property damage. But the Court is not ready to rule against Plaintiff on this basis. The Eighth District Court of Appeals has itself stated that "[i]t is the experience of this court the implications of *Cranfield* are unknown or confusing to a significant segment of the bar." *Beal v. Allen* (2002), 2002 WL 1821959, 2002 -Ohio- 4054 at ¶90. In this decision the Court will seek to dispel some of that confusion by analyzing the general rule of damages stated in *Cranfield.*

A review of the case law upon which *Cranfield* is based and the Eighth District decisions that have limited *Cranfield* demonstrates that the rule of damages stated in *Cranfield* must be applied in two ways depending on the factual context. Where the cost of repair is of the same order of magnitude as the market value of the real property, the court must compare the total repair cost to the total diminution in market value due to

property damage. Where the cost of repair is not of the same order of magnitude as the market value of the property, and may indeed be a tiny fraction of that value, the court must determine whether a particular item of repair is reasonably necessary to restore the property but does not need to try to reach a conclusion about the uncertain decline in market value that would result if the item were left un-repaired.

The precedents that support *Cranfield* establish the first of these methods of review, the court comparing repair cost to diminution in value from property damage because the values are in the same range. *Cranfield* took this general rule of damages from *Ohio Collieries Co. v. Cocke* (1923), 107 Ohio St. 238, 140 N.E. 356. That decision took the rule as a given, quoting a treatise: *Sedgwick on Damages* (9th Ed., 1922) § 932. *Id.* at 250. *Ohio Collieries* concerned a mining company that caused fissures in the earth to open up under a farmhouse. The Court held that the trial court adequately instructed the jury to award damages based on the cost of repair and restoration unless that cost exceeded the diminution of market value from the damages in which case the jury should award the amount of the diminution in value. The jury needed to compare the diminution in value of the land to the total cost of restoring it because the two values were in the same range. *Id.* at 251. The precedents from other appellate districts that are cited in *Cranfield* also apply this rule of comparing like to like. In *Reeser v. Weaver Bros., Inc.* (1992), 78 Ohio App.3d 681, 605 N.E.2d 1271. the Second District Court of Appeal held that an owner of recreational land used for fishing had the burden of proving the diminution in value of that land caused by the massive release of chicken feces from defendant's egg farm and could not recover the extensive cost of environmental clean up without meeting this burden. In *Klein v. Garrison* (1951), 91 Ohio App. 418, 108 N.E.2d 381, the Second District held that the trial court could not grant the plaintiff damages based on the cost of topsoil the defendant had removed from vacant land without considering whether the removal of the topsoil had improved the market value of the land by making it flatter and easier to build on. In *Hague v. Saltsman* (1989), 1989 WL 50691, the Ninth District Court of Appeals district held that the plaintiff had the burden of proving the diminished value of a 31 year old apartment building that the defendant had occupied for nine years before the plaintiff could recover over $5000 for work done to repair and restore the property.

The general rule of damages that emerges from these cases becomes unworkable when the finder of fact is no longer comparing like to like. "It is unreasonable to require proof of the change in market value, however, in small claims court cases where the restoration cost is a very small figure in relation to the market value. That is, it is unlikely that the changed market value of a house could be calibrated so finely that it would decline in units as small as $410." *Hines v. Somerville*(1995), 1995 WL 614502 (8th Dist.). For this reason, the Eighth District Cases that apply *Cranfield* where repair costs are small in comparison to the property's value do not require the plaintiff landlord to provide specific information about the decline in property value that would result if a particular defect were left un-repaired. Instead the cases require that the plaintiff landlord prove that the repairs are reasonably necessary to restore the property. The $410 in damages in *Hines* compared to a monthly rent of $300. In *Hart v. Pervan* (2002), 2002 WL 31528735, 2002-Ohio-6219 (8th Dist.), the alleged damages were $275 and the

monthly rent $525. In *Orbas v. Whiteside* (1996), 1996 WL 547942 (8th Dist.) the $442 in damages compared to a monthly rent of $800. These Eighth District decisions are in accord with decisions from other districts that hold that the rule in *Ohio Collieries* need not be rigidly applied. *Arrow Concrete v. Sheppard* (1994), 96 Ohio App.3d 747, 645 N.E.2d 1310 (4th Dist.) *Curtis v. Vazquez* (2003), 2003 WL 22763578, 2003-Ohio-6224 (11th Dist.) *Adcock v. Rollins Protective Services Co.* (1981), 1 Ohio App.3d 160, 440 N.E.2d 548 (1st Dist.).

The "reasonably necessary to restore" standard that emerges from these cases does not mean that any relatively low cost repair is reasonably necessary. In *Hines*, the trial court found that replacing carpet was reasonably necessary where the tenants had damaged carpet with cigarette burns and stains that would not come clean. In *Hart*, the trial court found that it was reasonably necessary to remove kitchen tiles that the tenant had installed without permission. In *Orbas*, the trial court found that it was reasonably necessary to paint and repair walls and ceilings and to replace carpet where there was "extensive damage." *Orbas v. Whiteside* (1996), 1996 WL 547942 at 2.

All three of these cases were brought as small claims cases and the *Hines* and *Hart* courts stated that the standard *Cranfield* analysis should not be applied in small claims cases because the jurisdictional limit for small claims ensures that the repair costs sought will be low enough not to implicate the standard *Cranfield* analysis. *Hines* at 4. *Hart* at 5, quoting *Hines*. But the reasoning of the cases applies equally to cases that are not brought as small claims cases but have repair costs of a much smaller order of magnitude than the value of the underlying real property. It is the difficulty of judging the effect on market value from an item left un-repaired that demands a flexible test, not the flexible procedure and evidence rules of the small claims forum. Nothing in the Rules of Civil Procedure or Ohio Rules Of Evidence makes it reasonable to "require proof of the change in market value . . . calibrated so finely" that the change in value can be compared to the costs of individual repairs.

The holding in *Cranfield* is itself in accord with the more flexible approach of asking if repairs are reasonably necessary to restore the property. The plaintiff in *Cranfield* failed to meet this standard because he provided no evidence at all that would allow the court to determine that the cost of each item was reasonable. "[T]he evidence presented by the landlord . . . consisted solely of the cost of repairs or restoration." 94 Ohio App.3d 430. By contrast, the trial court in *Orbas v. Whiteside* was able to consider each item and reduce the repair costs as necessary.

2. Plaintiff's Damages

Plaintiff proved three items of property damage, totaling $3315. Plaintiff proved that Defendant took the copper pipes from the property, that she tampered with the electrical meter and that she left behind items of personal property that Plaintiff needed to remove. The cost to replace the copper pipes was $3000. The cost to restore the electrical meter was $65. The cost to remove the items Defendant left behind was $250. The Court concludes that each of these repairs was reasonably necessary to restore the

property. The copper pipes and electrical meter are necessary to provide services and therefore essential to any property. The removal of a former tenant's belongings is also reasonably necessary to prepare a rental property for a new tenant.

Defendant is entitled to credit for her security deposit of $520, making Plaintiff's final damages $2795.

The evidence supporting the Court's conclusion that Defendant took the copper pipes was circumstantial and not direct. But sufficient circumstantial evidence can support a party's claim for an intentional act. *Universal Sports, Inc. v. Lightning Rod Mut. Ins. Co.* (1985), 1985 WL 4733 (9th Dist.). Plaintiff's witness testified that she went to the premises on the same day that Defendant returned the keys. Upon arriving she saw that the copper pipes had been removed but saw no sign of any forced entry. Defendant testified that the pipes were present when she moved out and that she had no knowledge of what happened to them. The Court found Plaintiff's witness credible and found Defendant to lack credibility on this issue. Defendant did not appear to be making an effort to actually consider what she knew about how the pipes were taken. Instead, she appeared to be pleased with the idea that she could simply state that she did not know what had happened to them. The Court concludes from these facts that it is more likely than not that Defendant took, or allowed someone to take, the copper pipes.

Defendant asked Plaintiff's witness if Plaintiff had received any money from insurance for the damages, including the loss of the copper pipe. Plaintiff's witness stated that she did not know. A defending party may introduce evidence of certain kinds of insurance payments to support a claim for set-off. O.R.C. §2315.20. But a party proving damages does not have the burden of responding if the defending party does not introduce the evidence. Thus, Plaintiff was not required to prove the absence of insurance proceeds (or that the proceeds should not be considered a set-off).

Plaintiff failed to prove that Defendant caused Plaintiff to have to hire an exterminator. Plaintiff's witness testified that the property was infested with roaches but did not convince the Court that Defendant had caused the infestation. To the contrary, Plaintiff's failure to repair water leaks may have caused or exacerbated the roach infestation by providing the roaches with a source of water.

Plaintiff also failed to prove that Defendant caused Plaintiff to have to replace carpet at a cost of $2000. Plaintiff's witness testified that Defendant caused burn holes and stains on the carpet and that it cost $2000 to replace the carpet. But Plaintiff did not provide any evidence of the useful life or value of the damaged carpet. Plaintiff's witness testified on cross-examination that she had no documentation of the cost of the damaged carpet or the date it was installed. As a result, the Court cannot make even a rough estimate of the depreciated value of the carpet. Plaintiff also failed to show that replacing the carpet was reasonably necessary to restore the property. Plaintiff did not offer into evidence any pictures showing the location or size of the carpet stains. Plaintiff thus failed to meet the more flexible application of the rule of damages in *Cranfield.*

II. Defendant's Counterclaims

The Court grants judgment to Defendant, in part, on her counterclaims with damages in the amount of $645.

A. Breach Of O.R.C. §5321.04(A)(4), *Ex Contractu* Claim; and Breach Of Contract

Defendant's first 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. Defendant's testimony established that Plaintiff did not keep the property in good repair under the standards set forth in §5321.04. Defendant is therefore 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." *Miller v. Ritchie* (1989), 45 Ohio St.3d 222, 227, citing *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 513 N.E.2d 737. The damages for Defendant's second counterclaim are the same.

Defendant testified that, if she knew that the property would come with the defects that Plaintiff failed to repair, she would consider $250, not $520 to be a fair market rent for the property, making her damages $2430, $270 per month for nine months ($4680 paid for a $2250 value). The Court concludes that the fair rental value of the property was $4035, making Defendant's damages $645.

The Court concludes that a lack of heat for two weeks diminished the value of the property by 75% for those two weeks or $195. The Court concludes that the defects listed on *Defendant's Exhibit 2* and as owner responsibilities diminished the fair rental value by $50 per month for the nine months from November 2005 to July 2006 or $450. Defendant's damages are therefore $645. The Court concludes that the persistent leaking caused only $50 per month in reduced rental value because Defendant testified that she was able to mop up the water when it leaked. She testified that it took daily mopping but only for 15 or 20 minutes. She admitted that the ensuing water damage and mold came when she failed to keep cleaning up the water. *Defendant's Exhibit 2* lists cleaning as her responsibility and shows that the she did not perform the required cleaning by the inspection date. The Court concludes that Defendant has no damages for the months after July 2006 because she paid no rent for those months. The Court will not grant Plaintiff a set-off for those months for the reasons stated above in the Court's discussion of Plaintiff's failure to make out a claim for unjust enrichment.

C. Negligence *Per Se*

Defendant did not prove any damages from Plaintiff's negligence. Her complaint alleges that her washer and dryer were damaged and clothes ruined but she did not

provide any evidence at trial on this issue. *Defendant's Answer and Counterclaim* at ¶33. Defendant also alleged that she was damaged by the loss of the subsidy provided to her by CMHA. The Court concludes that the loss of the subsidy did not damage Defendant since she occupied the property without paying rent or incurring an obligation to pay rent. For these reasons, the Court grants judgment to Plaintiff on Defendant's negligence *per se* claim.

D. Breach of O.R.C. §5321.16 (Security Deposits)

The Court grants judgment to Plaintiff on Defendant's claim that Plaintiff owes her interest on her security deposit. Defendant argues that her $520 security deposit is in excess of her monthly rent, triggering O.R.C. §5321.16, which states:

> Any security deposit in excess of fifty dollars or one month's periodic rent, whichever is greater, shall bear interest on the excess at the rate of five per cent per annum if the tenant remains in possession of the premises for six months or more, and shall be computed and paid annually by the landlord to the tenant.

Defendant entered into a *Housing Assistance Payments Contract* (*HAP Contract*) with Plaintiff and the Cuyahoga Metropolitan Housing Authority under which the monthly contract rent was $520, her share being $0 and the federal subsidy payment being $520. Defendant is therefore arguing that her security deposit of $520 should be compared to the $0 due from her each month. The Court disagrees. The Court concludes that "one month's periodic rent" under the HAP contract was $520, not $0. The security deposit was therefore equal to, and not in excess of, one month's rent and did not trigger the requirements of O.R.C. §5321.16.

Decision

The Court grants judgment to Plaintiff in the amount of $2150 plus costs with interest from the date of judgment.

Magistrate David D. Roberts

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE

MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this *Magistrate's Decision* was sent via regular U.S. Mail to the following on 7/3/07. cpfc.

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CMHA
CUYAHOGA METROPOLITAN HOUSING AUTHORITY

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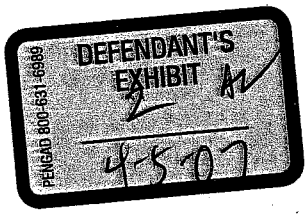
Contha Carr

June 07, 2006



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AB
A-46
6-20-06

Denise D Houston
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Cleveland, OH 44110

Ferrisha L Perryman
10504 Harvard Avenue
Cleveland, OH 44105

Contract #: S052180

INSPECTION FAIL NOTICE

Repairs listed below under (tenant) are the repsonsibility of the family. All other repairs are the responsibility of the landlord (owner). A re-inspection will be made on **Tuesday, June 20, 2006**, between **9:00 am - 11:00 am**. If the repairs are not completed by the re-inspection date, the unit will no longer qualify under the Housing Choice Voucher Program and will be abated.

Area	Responsible	*Location of item* Floor	F/C/R	L/C/R	Description of Failed Item
Bedroom or Any Other Room Used for Sleeping (regardless of type of room)					
	Owner		Pass		Outlet - Not Grounded ground bedroom#1 and bedroom #2 outlets properly
Building Exterior					
	Owner		Pass		Defective Paint Present paint front stairs; Defective Paint Present - Porch
General Health and Safety					
	Resident		Fail		Accumulation of mold present tenant nust clean entire unit opon next inspection (
	Both		Pass		cut front and back yard grass
			Fail		clean trash and debris from around entire unit
Heating and Plumbing					
	Owner		Fail		Duct Work - repair water leak to basement coming from ducts
Kitchen					
	Owner		Fail		Ceiling - Water damage/hole/major crack(evidence of water leaking)
	Resident		Fail		Replaster cracks/holes in ceiling or walls by light switch
	Resident		pass		Sink - repair kitchen sink faucet which is broken
Other					
	Resident		Fail		(GC) Accumulation of excessive mold in bathroom(mushrooms growing) this is a sign of mold in bathroom #2 nd floor
			Fail		install dryer vent to dryer (dryer hose)
	Both		Fail		install smoke detector in basement
	Owner		Pass		Switch - Missing/Broken/Loose install cover plate to wires hanging by furnace

** L/C/R = Left or Center or Right of Unit ** F/C/R = Front or Center or Rear of Unit

If the person sending this letter to you is unavailable, either of the following may assist you:

A. Mitchell @ ext. 2875 D.Mahone @ ext. 2876 L. Gaiter @ ext. 2873
S. Hill @ ext.2874 J.Glen @ ext. 8210 D. Buford @ ext. 2872