

IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO

Andrew Johnson, et al.,
Plaintiffs,

Case No. 2008 CVF 023275

vs.

Morelli Properties LLC,
Defendant.

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JUDGMENT ENTRY

This matter came on for trial to the court on March 20, 2009. All parties were represented by counsel. Sworn testimony was taken, exhibits were admitted by stipulation and a record was made of the proceedings.

Plaintiffs Andrew Johnson, Justin Taggart and Mike Kordel were tenants under a residential rental agreement with Defendant landlord Morelli Properties LLC for a one-year lease beginning on September 1, 2006 and ending on August 25, 2007 for a townhouse apartment located at 90 West 5th Avenue in Columbus. Plaintiff Kathy Johnson paid a security deposit in the amount of \$895.00 on behalf of the tenants. At the end of the lease, the tenants vacated the apartment in a timely manner and returned all the keys. Thereafter, in a timely manner, Defendant returned \$326.27 of the security deposit to Plaintiff Kathy Johnson along with an itemized statement explaining the deduction of \$593.73. Of this amount Plaintiff tenants agree that \$78.73 was properly retained by Defendant to pay a water bill that they owed, but they contest the balance of \$515.00 that Defendant withheld. On these facts, the parties are in agreement.

Of the \$515.00 at issue, \$30.00 was charged as a fee for re-keying the locks at the conclusion of the tenancy, \$21.00 was charged for missing or burned out lights, \$14.00 was charged for broken door stops and the balance of \$450.00 was charged for cleaning, as represented by Defendant's Exhibit W.

The Plaintiffs presented the testimony of tenant Andrew Johnson and co-signer Kathy Johnson. According to these two witnesses, they along with four or five other individuals were involved in moving the tenants out and cleaning the apartment at the termination of the lease. Andrew Johnson testified that they began the process at 10:00 a.m. and that he and his parents didn't leave until 10:00 p.m., Kathy Johnson confirmed that she and her husband helped the tenants clean the unit and that they worked all day. Both asserted that the apartment was clean when the tenants moved in and clean when they moved out.

Defendant also presented the testimony of two witnesses, McRedmond Morelli and John Gustafson. Morelli is the principal shareholder and managing partner of Defendant. He personally showed the apartment to Plaintiffs and negotiated the lease with them; accepted the deposit check from Kathy Johnson and visited the apartment on move-out day. Morelli testified about two checklists, a move in checklist (Defendant's Exhibit R) and a move out checklist (Defendant's Exhibit S) in relation to this case. The move in checklist was used by these tenants when they moved in to note any problems with the apartment. Morelli sent the move out checklist to the tenants about ten days prior to the termination of the lease. Plaintiff Andrew Johnson acknowledged receiving the move out checklist during his testimony. Morelli testified in detail as to his observation upon inspecting the apartment after the tenants had vacated. Plaintiff's Exhibit G showed a before and after tenancy walk through narrated in each case by Morelli. John Gustafson testified that he was hired by Defendant to clean the apartment after the tenants vacated and he confirmed by his observations the various items testified to by Morelli.

There were two concepts that were focused on during the trial of this case: the concept of normal wear and tear and the concept of cleanliness.

Burned out light bulbs and broken door stops are beyond normal wear and tear and Plaintiffs are clearly obligated for the amounts charged against the security deposit for those items.

Defendant clearly adheres to a high standard of cleanliness. The question is what is required by the lease agreement, the contract between the parties. Perusal of the lease agreement shows two provisions, paragraphs #9 and #10, which arguably relate to this issue. Paragraph #9 states: "Maintenance and repair will be the responsibility of the Lessee(s) to keep and maintain the leased premises and appurtenances in good and sanitary condition and repair during the term of this lease In particular, Lessee shall keep the fixtures in the apartment or on or about the leased premises in good order and repair; keep the furnace clean; keep the walks free from dirt and debris. . . ." Paragraph #10 states: "Lessee(s) agree to maintain the leased premises in the same condition, order and repair as they are at the commencement of the lease term, excepting only reasonable wear and tear arising from the use thereof under this agreement. Lessee(s) shall comply with all sanitary laws, ordinances, rules and orders of appropriate government authorities affecting cleanliness, occupancy and preservation of the demised premises"

The testimony of John Gustafson shows that Defendant hired him to clean all nine of Defendant's units. Obviously, as a conscientious landlord, Defendant thoroughly cleans his apartments before re-renting them. It is reasonable to infer that he has this work done regardless of the degree of cleanliness left by the departing tenants. This is undoubtedly a solid business

practice, but it is part of his overhead and is not a cost to be borne out of the security deposit of departing tenants. None of the provisions of the lease agreement gives notice of the standard of cleanliness demanded by Defendant. Nor does any of the testimony suggest that the condition of the premises was not sanitary in the common understanding of the word; there was no suggestion that the condition of the premises at move out would have aroused the concern of government health officials, for instance. The provision of a move out checklist ten days prior to lease termination can not unilaterally vary the terms of the lease agreement. The \$450.00 at issue for cleaning charges was not appropriately withheld from the security deposit.

Defendant also withheld \$30.00 for re-keying the locks upon Plaintiffs departure. This is a provision which appears in the lease in paragraph #20. The court finds that this contractual provision is in violation of the provisions of R.C. 5321.16(B) which specifically delineates the uses to which a security deposit may be put: "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 non-compliance with section 5321.05 of the Revised Code or the rental agreement." Re-keying locks between tenancies is probably a good practice, and offers protection to successive tenants as well, perhaps, as to the landlord in terms of potential liability for negligence. It does not, however, fall within the allowable deductions set forth in the law.

\$515.00 of the money that was withheld from Plaintiff's security deposit has been contested by Plaintiffs. The court finds that deductions for light bulbs and door stops are appropriate, but that the balance of \$480.00 was wrongfully withheld.

The one remaining issue to be determined by this court is the question of attorney fees to be awarded to Plaintiffs. Plaintiffs' counsel has submitted an affidavit and supporting documentation indicating that she expended five hours on this case representing Plaintiffs and that her rate for this work is \$175.00 per hour. She also asserts that law clerks acting under her supervision expended 46.7 hours and values their time at \$75.00 per hour.

This court finds \$175.00 per hour is a reasonable hourly rate of compensation and that five hours were reasonably expended in this case by counsel in pursuing the wrongfully withheld security deposit. The amount to be awarded as a result of the work of legal interns is more problematic. As conceded by Defendant, the rates asserted appear to be reasonable. But the time expended is a different matter. While it is true that there is a cost benefit to having a legal intern do certain work on a case at \$75.00 per hour, rather than an attorney at \$175.00 per hour, it is also true that, due to inexperience, the legal intern likely will not be as efficient at each task as an attorney might have been. One example is found in the attachment labeled Exhibit A to

Plaintiff's motion for Attorney Fees on the second page. On the dates of July 10, July 11 and July 15, 2008, the intern claims for 2.3 hours for preparation of a motion to strike. The basis for the motion was that McRedmond Morelli, an individual who is not an attorney, had filed an answer to the complaint on behalf of Defendant Morelli Properties, LLC. The issue was a clear question of statutory law and the intern's efforts produced a one-page memorandum. An attorney at \$175.00 per hour might have spent .5 hours producing this motion and memo at a cost in attorney fees of \$87.50. A legal intern, at \$75.00 per hour, expends 2.3 hours on the same work resulting in a requested fee of \$172.50. The court is happy to recognize the value of legal interns in reducing costs in cases, when that is the actual effect; it also recognizes that there is value to the legal intern of being "hands on" with a real case and having to research legal issues in context of a real factual situation. It is not willing to charge opposing parties for the latter value, and therefore allows one hour of time for this work.

There are also a number of matters asserted in Exhibit A which are disallowed entirely. Plaintiffs filed a motion for summary judgment. There were clearly disputed issues of material fact and the motion was denied. Time was claimed for drafting a memo in support of a motion for default judgment on July 1, 2008, September 11, 2008, September 24, 2008 and September 25, 2008 and for drafting a motion to transfer on July 9, 2008. Neither of these motions was filed, nor was there ever a legal basis in the case for either of them to have been filed. Claims for time relating to these matters is disallowed. There appears to be some work done on December 1, 2008 and January 20, 2009 on drafting a motion to join a third party; the court disallows that time because the third party is not a tenant and therefore not covered by R.C. 5321.16.

After making these adjustments, the court concludes that \$75.00 per hour is a reasonable hourly rate of compensation for interns and that 33 hours were reasonably expended in this case in pursuing the wrongfully withheld security deposit.

Counsel's rate of \$175.00 per hour times five hours equals \$875.00; the legal interns' rate of \$75.00 per hour time 33 hours allowed equals \$2,475.50 for a total of \$3,350.00 in attorney fees.

But this mathematic calculation does not end the inquiry. Rather, the court is governed by the reasoning of the Ohio Supreme Court as expressed in the case of *Bittner v. Tri-County Toyota, Inc.* (1991) 58 Ohio St.3d 143, 569 N.E.2d 464. That case involved the Consumer Sales Practices Act (R.C. Chapter 1345) rather than the Landlord-Tenant Act (R.C. Chapter 5321) but the issue was the same as that which is before the court today; making an appropriate award of attorney fees where those fees are statutorily permitted to be assessed as costs of the case. The syllabus of the case states: "when awarding reasonable attorney fees pursuant to R.C.

1345.09(F)(2), the trial court should first calculate the number of hours reasonably expended on the case times an hourly fee, and then may modify that calculation by application of the factors listed in DR2-106(B)." The Code of Professional Responsibility has been replaced by the Ohio Rules of Professional Conduct but Prof. Cond. Rule 1.5(a) is verbatim with DR2-106(B) as regards the factors to be considered in determining the reasonableness of the fee.

In reviewing those factors, the court is of the opinion that the time and labor involved in this case were reasonable considering that the case did not involve novel or difficult questions. Further, the experience and ability of Plaintiff's counsel is consistent with the hourly rate charged in the case. Most of the rest of the factors contained in Prof. Cond. Rule 1.5(a) seem not to apply here, as they are more appropriate to a dispute between a lawyer and client over fees charged. The one remaining factor is (4), the amount involved and the results obtained. The amount of damages awarded by the court after trial is the amount of the security deposit wrongfully withheld, doubled in accordance with R.C. 5321.16 to a total of \$960.00. The allowable attorney fees of \$3,350.00 are more than three times the amount of the award. But the court is of the opinion that this amount is reasonable, looking to the *Bittner* case by analogy. Quoting from *Bittner*,

In order for private citizens to obtain redress under the Act, they first must be able to obtain adequate legal representation. Private attorneys may be unwilling to accept consumer protection cases if the dollar amount they are permitted to bill their adversary is limited by the dollar amount of the recovery, especially since monetary damages in many instances under the Act are limited to \$200. An attorney may expend inordinately large amounts of time and energy pursuing a claim that reaps relatively small monetary benefits for a prevailing plaintiff. We agree with the observation of the United States Supreme Court when it said: "A rule of proportionality would make it difficult, if not impossible, for individuals with meritorious * * * claims but relatively small potential damages to obtain redress from the courts." *Riverside v. Rivera* (1986), 477 U.S. 561, 578, 106 S.Ct. 2686, 2696, 91L.Ed.2d 466.

In addition to addressing an individual wrong, pursuing a claim under the Act may produce a benefit to the community generally. A judgment for the consumer in such a case may discourage violations of the Act by others. Prohibiting private attorneys from recovering for the time they expend on a consumer protection case undermines both the purpose and deterrent effect of the Act.

Bittner, op cit at 144.

The amounts at issue in many landlord tenant cases may also be relatively small and limiting the attorney fees available might discourage attorneys from taking these cases. It occurs to the court that the Landlord-Tenant Act, like the Consumer Sales Practices Act, is designed in part to discourage violations of the act such as those committed by Defendant in this case. The

provision in the act both for double damages and for the award of attorney fees strongly supports this conclusion.

Defendant cites the decisions in *Whitestone v. Stittsworth* (January 23, 2007) Franklin App. No. 06AP-371 and in *Ridenour v. Dunn* (June 29, 2004) Franklin App. No. 03AP-611 as setting standards for the award of attorney fees in landlord-tenant cases.

In *Whitestone*, the trial court awarded \$5,989.76 in attorney fees when the wrongfully withheld security deposit was \$700.00 and the statutorily doubled award was \$1,400.00. In *Ridenour*, the attorney fees awarded were \$1,000.00 and the wrongfully withheld security deposit was \$255.00, doubled to \$510.00 in accordance with the statute.

In both cases, the Court of Appeals did not find the attorney fee award, on its face, to be an abuse of the trial court's discretion. In each instance, the case was remanded to the trial court for further proceedings. In *Ridenour*, the case was remanded so that the trial court could provide a more specific and detailed explanation of the manner in which it arrived at the attorney fee award. And in *Whitestone* the case was remanded because the court of appeals was "unable to determine which of the DR2-106(B) factors, if any, the trial court applied."

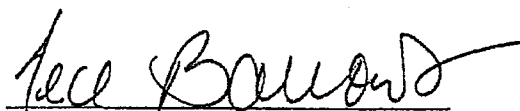
In this case, the court has found that the hourly rates are reasonable, that the time expended, as adjusted was reasonable and that comparing the amount involved and the results obtained in light of the public policy expressed by the General Assembly in providing not only double damages but also reasonable attorney fees, an award of attorney fees in the amount of \$3,350.00 is reasonable.

Judgment for Plaintiffs Kathy Johnson, Andrew Johnson, Justin Taggart and Mike Kordel and against Defendant Morelli Properties, LLC in the amount of \$480.00 for wrongfully withheld security deposit, and for Plaintiffs Andrew Johnson, Justin Taggart and Mike Kordel for statutory damages of \$480.00 pursuant to R.C. 5321.16(C) and attorney fees in the amount of \$3,350.00 for a total of \$4,310.00 plus costs and interest from the date of judgment at the rate of 5%.

It is so Ordered.

This is a final, appealable order.

The court hereby directs the Municipal Court Clerk to serve upon all parties notice of this judgment and its date of entry upon the journal.



JUDGE TED BARROWS

October 6, 2009

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