

**CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
W. MONÁ SCOTT, JUDGE**

**DANNY JOHNSON
Plaintiff (s)**

Date: January 15, 2020

-VS-

2019 CVG 008127

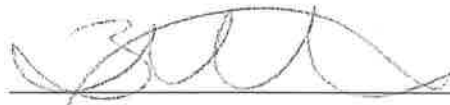
**SAMIRA RAHIM
Defendant (s)**

JUDGMENT ENTRY

The Court, having reviewed the *Magistrate's Decision* of January 15, 2020 under Civ.R. 53, approves and adopts that decision.

Judgment is for Defendant on Plaintiff's claims.

Judgment is for Defendant on all seven of her counterclaims with damages in the amount of \$14,865 plus court costs with interest from the date of judgment and an award of reasonable attorney fees to be determined after Defendant's attorneys have filed a statement of their hours worked and proposed hourly rate.



**W. Moná Scott, Judge
Housing Division**

SERVICE

A copy of this judgment entry and order was sent by regular U.S. mail to the addresses of record for parties/counsel on 1/21/20 by mm.

☐ Clerk to issue notice of Final Appealable Order

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**DANNY JOHNSON
Plaintiff (s)**

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**SAMIRA RAHIM
Defendant (s)**

MAGISTRATE'S DECISION

The Court set this case for trial December 12, 2019. Plaintiff appeared without an attorney and Defendant with her attorneys before Magistrate David D. Roberts, then-judge Ronald J.H. O'Leary having assigned Magistrate Roberts to hear all questions of fact and law, current Judge W. Moná Scott continuing the assignment.

The Court grants judgment in favor of Defendant in the amount of \$14,865, along with an award of reasonable attorney fees, and grants judgment to Defendant on Plaintiff's claims.

Defendant raised before trial the question of Plaintiff's failure to comply with discovery. Plaintiff admitted to the Court that he had not complied with any of Defendant's discovery requests, even after the Court had granted Defendant's motion to compel and ordered him to. As a sanction for his failure to comply at all with discovery, the Court will adopt proposed findings of fact submitted by Defendant. As an additional sanction for failing to comply with discovery, the Court will also award Defendant her reasonable attorney fees for pursuing the discovery to which Plaintiff failed to respond. The Court also sustained Defendant's objections to Plaintiff offering testimony in support of his claims on each topic Plaintiff raised in support of his claims.

FINDINGS OF FACT:

- {¶1.} Plaintiff Danny Johnson (Plaintiff), as owner of 9921 Sophia Avenue, Cleveland, Ohio 44105 (the premises), rented the premises to Defendant pursuant to a written rental agreement.**
- {¶2.} Plaintiff has had problems with water services at the premises since on or about February 27, 2018 when the City of Cleveland Division of Water charged Plaintiff with a tampering fee at the premises.**
- {¶3.} Defendant resided in the premises with her two minor children from on or about April 23, 2017 through July 1, 2019. Defendant paid a security deposit of \$850.**

Defendant was a participant in the Housing Choice Voucher Program (HCVP) administered by the Cuyahoga Metropolitan Housing Authority (CMHA).

- {¶4.} Plaintiff signed a Housing Assistance Payment contract (HAP contract) with CMHA.
- {¶5.} The contract rent for the premises was \$927 per month.
- {¶6.} Under the HAP contract, Defendant was responsible for \$473 per month and CMHA paid the difference between \$927 and the amount Defendant was responsible for, until CMHA abated the contract (that is, stopped sending payments) and then canceled the contract.
- {¶7.} Under the HAP contract, Plaintiff was responsible for paying for water and sewer service.
- {¶8.} On or about March 18, 2019, Plaintiff received a disconnection notice from the City of Cleveland, Division of Water for services at the premises, a true and accurate copy of the notice admitted into evidence as Defendant's Exhibit 18.
- {¶9.} On or about April 7, 2019, the City of Cleveland Division of Water terminated water services to the premises due to Plaintiff's failure to pay the water and sewer charges.
- {¶10.} Plaintiff refused to pay to have the water services restored. He was fully aware that by refusing to pay to have the water services restored, he was causing Defendant and her children to have no water service.
- {¶11.} On or about April 16, 2019, the City of Cleveland Division of Water charged Plaintiff another tampering fee.
- {¶12.} On April 4, 2019, Defendant tendered her rent portion to Plaintiff. Plaintiff proceeded to return her rent portion.
- {¶13.} Defendant complained to Plaintiff about the lack of water at the premises.
- {¶14.} On May 20, 2019, Plaintiff posted a 3-day notice to vacate at the premises.
- {¶15.} Plaintiff served the 3-day notice to vacate in retaliation for Defendant complaining about the lack of water at the premises.
- {¶16.} Plaintiff's failure to restore water to the premises was willful.
- {¶17.} Plaintiff arranged for the City of Cleveland Division of Water to restore water service at the premises on or about June 24, 2019.

- {¶18.} By agreement of the parties, Defendant vacated the premises on or about July 1, 2019.
- {¶19.} On or about July 11, 2019, Plaintiff received from Defendant a written request for the return of her security deposit.
- {¶20.} Plaintiff did not return Defendant's deposit or send an itemized statement of deductions from it.
- {¶21.} Defendant was forced to obtain water from other sources for herself and her children to bathe, toilet, prepare meals, and perform housekeeping tasks such as washing dishes. She purchased jugs of water and carried water from gracious neighbors' homes for the needs of herself and her children.
- {¶22.} Defendant suffered humiliation and embarrassment when her children asked why they did not have water.
- {¶23.} Defendant suffered humiliation and embarrassment when other neighbors saw her lugging water or learned of the water service termination.
- {¶24.} Defendant missed five days of work due to problems that the water service termination created that she needed to address. She lost wages of \$292.60.
- {¶25.} The termination of water service caused an infestation of roaches in the premises.
- {¶26.} Defendant was unable to take her stove and refrigerator when she vacated the property due to the roach infestation.
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- {¶27.} Defendant suffered the loss of appliances worth \$400.
- {¶28.} Defendant paid \$100 to store her personal property at Storage Solutions.
- {¶29.} Defendant suffered the diminished value of the premises for 77 days, as follows:
- i. Inability to flush toilet (for three family members): \$12.00 per day
 - ii. Inability to bathe (for three family members): \$9.00 per day
 - iii. Inability to wash hands before meals: \$4.50 per day
 - iv. Inability to wash dishes (three meals): \$4.50 per day
 - v. Total: \$2310 (\$30 per day for 77 days)
- {¶30.} Defendants suffered inconvenience and discomfort damages of \$50 per day for 77 days for a total of \$3850.
- {¶31.} Defendant suffered actual damages of being forced to vacate the premises of \$250 (\$100 for a U-Haul rental and \$150 for movers).
- {¶32.} Defendant's security deposit was \$850.

CONCLUSIONS OF LAW:

- {¶33.} Plaintiff filed to prove his claims against Defendant. He could produce no testimony or evidence in support of his claims because he willfully failed to participate in the discovery process which Defendant was entitled to use to prepare her rebuttal and defenses to his claims and so the Court sustained Defendant's objections to each topic Plaintiff raised.
- {¶34.} Accordingly, the Court will grant judgment to Defendant on Plaintiff's claims.
- {¶35.} Defendant proved her seven counterclaims, Counts I-IV, for breach of landlord duties under R.C. 5321.04, breach of lease, and negligence per se, Counts V-VI for retaliation, and Count VII for wrongful withholding of the security deposit. Her total damages are \$14,865.
- {¶36.} Plaintiff breached his duty under Ohio' landlord tenant statute R.C. 5321.04, committed negligence per se, and breached his lease obligations to Defendant, by failing to keep water service on at the subject premises; it was his obligation to pay the water bill and he did not.
- {¶37.} Defendant's damages include the diminished value of the property during the time the water was not on and the consequential damages of the nuisance of living without water service. These damages include \$2310 for the specific inconveniences stated in ¶29, \$3850 for inconvenience and discomfort generally, \$293 for lost wages, \$400 for appliances that could no longer be used because of the roach infestation that ensued due to the lack of water, and \$250 caused by having to vacate the property before the end of the lease.
- {¶38.} Plaintiff also acted with malice in refusing to address the problem of restoring the water service, supporting an award of punitive damages. *Brookridge Party Center, Inc. v. Fisher Foods, Inc.* (1983), 12 Ohio App.3d 130, 12 OBR 451, 468 N.E.2d 63; *Allen v. Lee* (1987), 43 Ohio App.3d 31, 538 N.E.2d 1073. Malice is shown by evidence of hatred, ill will, revenge, or "a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm." *Preston v. Murty* (1987), 32 Ohio St.3d 334, 336, 512 N.E.2d 1174, 1176; *Villella v. Waikem Motors, Inc.* (1989), 45 Ohio St.3d 36, 37, 543 N.E.2d 464, 466. Although the Court does not conclude that Plaintiff intended for Defendant and her family to suffer, he certainly consciously disregarded their suffering. The lack of water service also had a great probability of causing substantial harm due to the health risk to Defendant and her children from the lack of functioning toilets and sinks for washing their hands. The ensuing infestation of roaches also posed a great probability of causing substantial harm because of the health risks associated with roaches.
- {¶39.} The determination of the amount of punitive damages is within the discretion of the trier of fact as long as the award is not based upon passion and prejudice.

Saberton v. Greenwald (1946), 146 Ohio St. 414, 32 O.O. 454, 66 N.E.2d 224; *Levin v. Nielsen* (1973), 37 Ohio App.2d 29, 66 O.O.2d 52, 306 N.E.2d 173. The Court may consider a variety of factors, including but not limited to:

the relationship between the parties,
the probability of recurrence unless the conduct is deterred,
the harm that is likely to occur from similar conduct,
the harm that actually occurred,
the reprehensibility of the conduct,
the nature of the wrong,
the removal of any financial profit so that future conduct results in a loss,
the financial status of the parties,
the deterrence value,
a reasonable relationship between compensatory and punitive damages,
whether the wrong is a single occurrence or a pattern of wrongful conduct.

Myer et al. v. Preferred Credit, Inc. (2001), 117 Ohio Misc.2d 8, ¶66 (Harrison County Court of Common Pleas).

{¶40.} The punitive damages should bear a reasonable relationship to Plaintiff's compensatory damages but need not be limited to any particular multiple of this amount. *TXO Prod. Corp. v. Alliance Resources Corp.* (1993), 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366.

{¶41.} The Court concludes that some of the above factors support a larger award: the landlord tenant relationship between Plaintiff and Defendant imposed on him a special duty to honor Defendant's rights; his cavalier attitude toward the water shut-off suggests he may allow water to be shut off for future tenants; the harm likely to occur from a water shut-off is great because of health concerns; Plaintiff's financial status as a property owner supports a larger award. Other factors support a smaller award: neither Defendant, nor her children, did experience serious health issues from the water shut-off; the Court believes that Plaintiff did not want or intend that the water should be shut-off and so finds that his conduct was not as reprehensible as is the case when landlords deliberately shut off water service; Plaintiff did not benefit financially from the shut-off since it caused him to lose the Housing Choice Voucher subsidies paid to him; the Court did not hear evidence that Plaintiff's failure to keep the water on was part of a pattern of wrongful conduct.

{¶42.} The Court concludes that an award equal to six months of rental income from the subject property, which is \$5562, is a proper amount for punitive damages in this case. It will not overwhelm Plaintiff but will act as a deterrent to stop him from repeating his conduct. This amount bears a reasonable relationship to the compensatory damages awarded in this case. The Court also concludes that Defendant is entitled to an award of reasonable attorney fees.

{¶43.} Defendant proved her counterclaims, Counts V and VI, for retaliation under R.C. 5321.04 and Cleveland Codified Ordinance 375.08. Plaintiff filed to evict Defendant because she continued to complain to him about his failure to restore the water service after it was shut-off. He caused Defendant to have to defend herself against that claim.

{¶44.} Defendant is entitled to an award of reasonable attorney fees under R.C. 5321.04 and C.C.O. 375.08. She is also entitled to \$500 statutory damages under C.C.O. 375.08.

{¶45.} Defendant proved her counterclaim, Count VII, for wrongful withholding of her security deposit.

{¶46.} Plaintiff wrongfully withheld Defendant's security deposit. When Defendant vacated the property and requested that her deposit be returned, he did not return it or send an itemized statement of deductions from it as Ohio's landlord tenant statute requires. R.C. 5321.16. Defendant is therefore entitled to \$1700 in damages for the wrongful withholding and an award of reasonable attorney fees.

{¶47.} Defendant's total damages are \$14,865 as the sum of:

- | | |
|--------|---|
| 1. | \$2310 for the specific inconveniences stated in ¶29; and |
| 2. | \$3850 for diminution in the value of the premises from the inconvenience and discomfort generally of the water shut-off; and |
| 3. | \$293 for lost wages; and |
| 4. | \$400 for appliances that could no longer be used; and |
| 5. | \$250 in moving costs for having to vacate the property before the end of the lease; and |
| 6. | \$5562 in punitive damages; and |
| 7. | \$500 statutory damages for retaliation; and |
| 7. | <u>\$1700</u> for wrongful withholding of the security deposit |
| Total: | \$14,865 |

{¶48.} The Court will make an award of reasonable attorney fees as follows. Defendant may present to the Court a statement itemizing of the attorney time spent on her case and a proposed hourly rate for each attorney who worked on the case. Defendant shall file the statement by February 21, 2020. Plaintiff shall have to March 6, 2020 to file a brief in opposition. The Court will then make an award of reasonable attorney fees, holding a hearing on the issue if necessary.

{¶49.} The award of attorney fees is based on Plaintiff's failure to comply with discovery, his filing this eviction action in retaliation for Defendant's complaints to him about the water shut-off, his acting with malice in failing to restore the water service, and his wrongful withholding of Defendant's security deposit. The Court concludes that all of Defendant's attorney hours spent on this case can be included in the award.

RECOMMENDATION:

{¶50.} Judgment is for Defendant on Plaintiff's claims.

{¶51.} Judgment is for Defendant on all seven of her counterclaims with damages in the amount of \$14,865 plus court costs with interest from the date of judgment and an award of reasonable attorney fees.



Magistrate David D. Roberts
Housing Division

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(D)(3)(b). 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 by regular U.S. mail to the parties on

11/21/20.

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