

FILED
PORTAGE COUNTY
MUNICIPAL COURT
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DELOROS REED
CLERK

PORTAGE COUNTY MUNICIPAL COURT

KENT DIVISION

STATE OF OHIO)

: SS

CASE NUMBER: K90 CVG 1043

PORTAGE COUNTY)

KENWOOD COURTS APARTMENTS)

PLAINTIFF)

-VS-)

JUDGMENT ORDER

KIMBERLY WILLIAMS)

DEFENDANT)

On August 12, 1991, this case was before the Court for trial on the Plaintiff's second cause of action and on the Defendant's counterclaims. The trial was not completed on that date and further evidence was presented on August 20, 1991, at which time the trial was completed. On both dates the Plaintiff was represented in Court by Attorney Peter Kratcoski. The Defendants were present with their Attorney Carol Crimi. The Court heard the testimony of several witnesses, and a number of exhibits were entered.

The Plaintiff prays for \$317 in rent and \$425.70 damage to the premises. The Defendants pray for \$9,945.26 to compensate them for damages that flowed from the Plaintiff's failure to maintain the unit in decent condition. The Defendants also pray for attorneys fees.

The Defendants were participants in the Section 8 Existing Housing Program established under 42 U S C 1437 f. Under the terms of this program, the Plaintiff entered a Housing Assistance Payment Contract with Portage Metropolitan Housing Authority on October 1, 1988. The contract provided that PMHA would pay the Plaintiff a rental subsidy which would cover all except \$30 of the Defendant's rental obligation for a unit owned by the Plaintiff. The Defendants were responsible for the remaining \$30. During the time that the Defendants lived there the unit was plagued with problems, the most significant of which were repeated flooding and sewage backing up into the kitchen sink.

Although the Defendants' unit, as well as several other units failed to meet PMHA standards at its 1989 inspection, PMHA approved it for rental subsidy because the apartment complex was scheduled to change ownership in the near future and improvements were anticipated. Furthermore, non-renewal of the subsidies

would have worked a hardship on tenants receiving Section 8 assistance. At its 1990 inspection, the unit again failed to meet standards. The Plaintiff was given a month to make repairs, and the unit was re-inspected. Again it failed, and on September 30, 1990, PMHA cancelled its contract with the Plaintiff. PMHA then sent a form letter to the Defendants informing them that they should vacate the unit as soon as possible and that they would be responsible for the full amount of the rent as long as they remained there. The Defendants had vacated by November 2, 1990. They paid no rent for October.

It was the intent of Congress, when it enacted 42 U S C 1437 f, to help low income families secure decent housing. Once a landlord has committed a unit to a low income tenant by entering a H A P contract, that tenancy can be terminated only under certain limited conditions. See 24 C F R sec. 882.215. The purpose of these restrictions on termination is to assure the low-income tenant stability in establishing a home. At trial no evidence was offered that the Plaintiff intended to terminate the Defendant's tenancy for good cause, or in fact that it intended to terminate the tenancy at all. The Plaintiff simply failed to make the repairs necessary for the H A P contract to continue and thereby lost the rental subsidy for the Defendants' unit. The form letter sent from PMHA was not part of the H A P contract nor of the agreement between the Plaintiff and the Defendants. Furthermore, it was contrary to the purpose and intent of 42 U S C 1437 f. The Court finds that because the Plaintiff did not terminate the tenancy for good cause, the Defendants had a right to continued occupancy of their unit. It was the Plaintiff's own actions, or lack thereof, that caused it to lose the rental subsidy. The Defendants cannot therefore be held responsible for more than their family contribution of \$30. Plaintiff claims that Defendants owe for two days' rent in November. It is uncontroverted that they had moved out by November 2. If they were in the unit at all in November, it was on the first. The family contribution for one day is \$1. The Court therefore orders the Defendants to pay the Plaintiff \$31 in rent.

The Plaintiff also claims certain damages. The Court will consider each of these separately. First there is the claim of \$95 to replace locks because the Defendant failed to return keys.

Kim Bailey testified that she turned in the keys by placing them in an envelope and slipping them under the office door. The claim that the keys were not returned has not been proved by a preponderance of the evidence. This claim will therefore not be allowed. Next is the claim of \$12.50 for trash removal. Kim Bailey testified that she cleaned the unit after moving out. The Plaintiff failed to show that it had actually expended \$12.50 for the removal of trash from the unit. This claim will not be allowed.

There are claims of \$159.80 and \$95.90 for replacement of carpeting in the living room and the bedroom because of a hole in the living room carpet and a stain on the bedroom carpet. Testimony at trial indicated that the hole in the living room

carpet was where a glued-on patch, which was there when the Defendants moved in, had been and had come loose through normal wear and tear. The stain on the bedroom carpet had also been there when the Defendants moved in. These claims will not be allowed. Finally, there is a claim of \$62.50 for damage to closet doors. Kim Bailey admitted that that damage had been done. That claim will be allowed.

The Court will next consider the counterclaims of the Defendants. They claim that the Plaintiff is responsible to them for damages caused by its breach of the lease and of the warranty of habitability and its violation of obligations imposed by 5321.04 ORC. The Defendants presented evidence regarding the numerous problems with the unit as well as with the common areas and their repeated futile attempts to have these conditions corrected. The Court finds from this evidence that the Defendants suffered damages as a result of the Plaintiff's breach of its obligations. The Court will address each of these claims separately.

First there is a claim of \$1480.51 for water damage to furniture. Kim Bailey testified that her unit was repeatedly flooded and that certain items of furniture could not be moved out of the water. As a result they were eventually damaged. John Jastromb, an expert in furniture restoration, presented an estimate of \$1480.51 to repair the damaged items. The Plaintiff urges that if this Court allows any recovery for damage to the furniture, it should apply the diminution of value rule. Although that is generally the correct rule, it is somewhat difficult to apply in this case. Kim Bailey testified that she purchased some of the antique items from garage sales for relatively low prices. She spent a great deal of time refinishing those items, thereby increasing their value. Other items had been handed down in her family and are difficult to value. The Defendants do not plan to sell the furniture but rather to keep it for their own use and enjoyment. They can be made whole only if the furniture is restored to its condition before the water damage. Adcock v. Rollins Protective Services Company (Hamilton 1981) 1 Ohio App 3d 160 holds that the injured party shall be fully compensated. The claim for repairs to the furniture will be allowed.

Kim Bailey also testified that she had purchased an item of furniture for \$500. After it had been damaged by the flooding, she sold it for \$125. This claim for \$375 will be allowed.

Mrs. Bailey also claims \$280.50 for water damage to a guitar strap and stuffed animals that she had been advised to purchase for the education of her handicapped child. These items became waterlogged and moldy so that they could not be used. This claim will be allowed.

Next the Defendants claim \$132 in moving expenses and \$206.37 as interest on a loan that they were forced to obtain for for their first month's rent and security deposit so that they could move. If the Plaintiff had made the repairs necessary for the renewal of the H A P contract, the Defendants would not have incurred these expenses. This claim will be allowed.


The Defendants next claim \$100 per month rent abatement for the time that they occupied the premises. This claim is based upon diminished value of the premises that the Defendants experienced while they lived there. The Plaintiff urges that because their rent was subsidized, the Defendants are not entitled to an abatement even if the value of the premises was diminished. The Court does not agree. With the enactment of 42 U S C 1437f Congress intended that a tenant should be afforded decent housing. The value of that housing should be equal the full rental value of the unit being subsidized. If because of the landlord's actions the value of the premises is diminished, then the Congressional intent is frustrated. The tenant is entitled to an abatement. The Court will allow this claim of \$2784.

Because the H A P contract was not renewed, the Defendants were forced to find other housing. There is an extreme shortage of housing for low-income people in this area. The Defendants made a diligent effort to find other housing under the Section 8 program but were unsuccessful. On November 1, 1990, they entered a lease for a unit that rents for \$500 a month. Their utilities average \$175 per month. Had they remained in the Section 8 program, their family contribution would have been \$236 per month. They pray for \$2634, which represents the difference between their family contribution amount and the amount that they have had to pay for rent and utilities for a period of six months. The Defendants were forced to incur these expenses solely because the Plaintiff failed to make the repairs which would have permitted the H A P contract to be renewed and thus would have permitted the Defendants to continue to receive the benefit of their rent subsidy. This claim will be allowed.

Finally the Defendants pray for \$2000 for intentional infliction of emotional distress. At trial the Defendants presented evidence that their unit was repeatedly flooded. In addition to the flooding, there were plumbing problems, lack of screens and air conditioning, as well as many other miscellaneous problems with the unit. Although the Plaintiff responded to many of the formal complaints, the response was frequently not timely or repairs were not completed. The flooding problem was never fully corrected. Kim Bailey testified that she was so frustrated by her futile attempts to have problems corrected that she finally stopped reporting them. She described the distress that she and her family suffered because of the physical condition of unit and the frustration that they experienced. The Court finds that the unit simply was not in decent condition and no serious effort to make it so was ever undertaken by the Plaintiff. The Court will allow this claim.

The Defendants are ordered to pay the Plaintiff \$93.50 for past due rent and damage to closet doors. The Plaintiff is ordered to pay the Defendants \$9892.38 plus 10% interest per annum commencing the date this judgment is filed. Costs of this action are assessed to the Plaintiff.

SO ORDERED.



BARBARA R. WATSON, JUDGE

cc: File
Attorney Peter Kratcoski
Attorney Carol Crimi