

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

DATE: MAY 9, 2006

CASE NO.: 06-CVG-09092

JUDGMENT ENTRY

NELL A. KLEPETKO
Plaintiff(s)

RICHARD BETTS, et al.
Defendant(s)

-VS-

This Court granted judgment to the plaintiff on the first cause of action on after a hearing on April 20, 2006. Defendants now object to both factual and legal conclusions reached by the magistrate. For the follow reasons, the defendants' objections are overruled.

Defendants, in their first objection, argue that notice served by plaintiff failed to allow the defendants a period to cure, under R.C. 5321.11. A review of the magistrate's decision reveals that the magistrate did not grant the eviction for a violation of R.C. 5321.05 that materially affects health and safety, but, rather, for a breach of 5321.05(A)(6), that is, the removal and conversion of plaintiff's property from the premises. Accordingly, the tenants were not entitled to a period within which to cure their conduct. Defendants' objection on this point therefore is overruled.

Defendants' next objection is based upon complaints that they purportedly made regarding "suspected asbestos on basement pipes." While the substance of the objection is not clear, it appears that the defendants argue that the magistrate erred in failing to award judgment to the defendants on plaintiff's claim for possession, based upon the alleged retaliation.

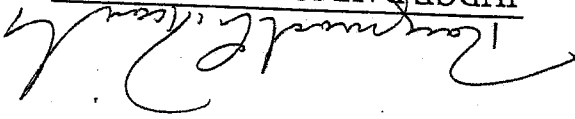
First, defendants' objections are unaccompanied by a transcript or affidavit of the evidence presented to the magistrate. Any objection to a magistrate's finding of fact must be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit that the evidence presented is consistent with defendants' argument, assuming that the is not necessarily a violation of City Code or a condition that materially affects health and safety. Thus, the complaint allegedly made by the defendants as set forth in the brief is insufficient to establish a retaliation defense. Third, even if the complaint occurred as argued by the defendants, and the condition did constitute a violation of code and materially affect health and safety, the magistrate still was not compelled to make a finding of retaliation, because, as defendants themselves acknowledge, these facts constitute only factors to be

considered by the Court, and are not dispositive on the issue of retaliation. For these reasons, the defendants' objections on the retaliation issue are overruled.

Next, the defendants argue that they did not convert plaintiffs' appliances, as determined by the magistrate, but, rather, that they were obligated to remove them because they were "old, broken, and covered with substances described as "mold."" Further, defendants argue, the plaintiff "never testified that the material in the basement had any value." Again, defendants' objections are unaccompanied by affidavit or transcript, as required by Civ. R. 53. Moreover, this argument, even if supported by affidavit or transcript, is not persuasive legally. The defendants are required to keep the part of the premises they use and occupy safe and sanitary. R.C. 5321.05(A)(1). The plaintiff is required to keep common areas in a safe and sanitary condition. R.C. 5321.04(A)(3). Reading the two provisions together, the Court is persuaded that the tenants' obligation to keep the premises safe and sanitary did not extend to removing plaintiff's personal property from the basement. If defendants believed that the appliances posed a health or safety hazard, they could have taken measures to terminate their rental agreement, deposit their rent with the Court, or seek an order from the Court regarding removing the appliances. However, the mere allegation that the appliances were broken and dirty is insufficient to support a finding by this Court that their removal by the defendants was justifiable. Nor is the plaintiff's alleged failure to testify to the monetary value of the appliances persuasive: defendants were not entitled legally to remove these items, and plaintiff's alleged failure to establish their value does not alter this conclusion.

For the foregoing reasons, defendants' objections to the magistrate's decision are overruled. The court's prior decision is affirmed. The defendants' motion for stay is denied.

The move out may proceed as scheduled on May 15, 2006.


JUDGE RAYMOND L. PIANKA
HOUSING DIVISION

A copy of this judgment entry was sent by regular U.S. mail to parties/counsel on _____ the _____ foregoing. In addition, an attempt was made to notify _____ by telephone on _____

RW - BAILEY SVC. 5/10/06