

IN THE AKRON MUNICIPAL COURT
SUMMIT COUNTY, OHIO

BRIANNA KERRIGAN,

CASE NO. 21 CVH 01039

PLAINTIFF,

JUDGE JERRY K. LARSON

VS.

ORDER

CHRIS CAMPBELL,

DEFENDANT

FILED
2021 MAY 18 AM 7:52
AKRON MUNICIPAL COURT
JIM LARIA
CLERK

This cause came to be heard on Defendant's Objection to the Magistrate's Decision to grant Plaintiff's/Tenant's Request for a Court Order to release Escrowed Rent pursuant to O.R.C. 5321.07.

For the following reasons, this Court adopts the Magistrate's Recommendation.

As a preliminary matter this Court finds that the Defendant did not timely file his objections. However, in the interest of justice, the Court will grant leave to the Defendant to file his objections instante.

DEFENDANT'S OBJECTIONS:

Defendant's first two objections challenge various factual findings of the Magistrate. However, Defendant did not file a transcript. Due to the fact that Defendant did not file a transcript, the Court adopts the Magistrate's findings as being correct.

Defendant's third objection is that the Magistrate did not afford the Defendant due process in making various procedural rulings. However, the Court cannot adequately rule on the objection without a transcript. As such, the Court will presume regularity. There is nothing in the docket and journal entries which indicates a lack of due process.

The Defendant's objections are overruled.

CONCLUSION

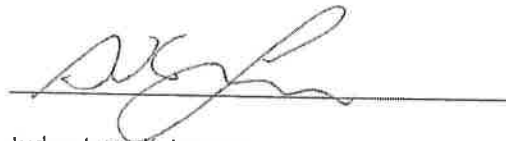
This Court adopts the Magistrate's Decision to grant Plaintiff's/Tenant's Request for a Court Order to release Escrowed Rent pursuant to O.R.C. 5321.07. The money held in this case by the Court shall be released to the Tenant/Plaintiff Brianna Kerrigan. The property located at 545 Stratford Ave,

Akron, Ohio, 44303 be inspected by the City of Akron Housing Division to ensure compliance with all relevant state and local housing codes.

If it is deemed that the property does not comply with all requirements for fit and habitable housing, the Landlord/Defendant Chris Campbell shall comply with all orders issued by the City of Akron Housing Division to correct identified conditions to make the property fit and habitable. Landlord/Defendant shall not re-rent the property until all conditions are corrected and satisfactory inspection is made by the City of Akron Housing Division.

The lease agreement may be terminated by Plaintiff/Defendant Brianna Kerrigan within 30 days of this order.

It is so ordered.

A handwritten signature in black ink, appearing to read "J. Lawson", is written over a horizontal line.

Judge Jerry K. Lawson

***Pursuant to Civ.R. 58(B), the Clerk of
Courts shall serve upon all parties
not in default for failure to appear
notice of this judgment entry and its
date of entry upon the journal of the
Court. FINAL APPEALABLE ORDER***

IN THE AKRON MUNICIPAL COURT
SUMMIT COUNTY, OHIO

BRIANNA KERRIGAN
Plaintiff

v.

CHRIS CAMPBELL, (DBA)
CONDUIT PROPERTIES LLC
Defendant

CASE NO. 21 CVH 01039

MAGISTRATES DECISION

AKRON MUNICIPAL COURT
JUL 16 2021
CLERK

2021 JUL 25 PM 12:15

FILED

This matter came before the Magistrate on March 23, 2021, for a hearing on Plaintiff's/Tenant's Request for a Court Order to release Escrowed Rent pursuant to O.R.C. 5321.07. Plaintiff, Brianna Kerrigan appeared and was represented by Attorney John Petit. Attorney Mytra Cottrill appeared on behalf of Defendant/Landlord, Chris Campbell *dba* Conduit Properties LLC. Defendant was also present.

Plaintiff filed a motion on February 23, 2021, requesting that the Court abate the amount of rent for the months of February and March to \$0.00. Plaintiff requested that the Court release the escrowed funds to her so she can move out of the premises to a new location for reasons that: the Defendant has not addressed the gas line to the stove not working, the furnace pilot light goes out multiple times a week causing the property to be freezing overnight, damages to the ceilings due to a sewage leak, and leaking of water from the roof coming into the house.

The Magistrate reviewed the Complaint, heard testimony from the Plaintiff, heard testimony from the Defendant, and accepted into evidence the following evidence from the Plaintiff:

1. Plaintiff's Exhibit 1—Emails

2. Plaintiff's Exhibit 2– Photos
3. Plaintiff's Exhibit 3– Email
4. Plaintiff's Exhibit 4– Photos
5. Plaintiff's Exhibit 5– Email

The Defendant did not present any evidence other than testimony.

FINDINGS OF FACT

The property at 545 Stratford Ave., Akron, Ohio 44303 is owned by the Defendant. Brianna Kerrigan, Plaintiff, was a tenant and had a written lease agreement for the premises. The written lease agreement was not provided to the Court by either party. At the hearing held on March 23, 2021, the Plaintiff testified that she had notified the Defendant of a number of issues with the property throughout her tenancy that the Defendant did not repair and that made the home uninhabitable for her and her two young, children.

The Plaintiff testified that she moved into the property in January 2019, and the monthly rent was \$755.00, which included a \$35.00 per month charge for her pet. She testified that she is current in her rent, that she notified her landlord of the issues that needed repaired, and that she was going to escrow her rent with the Court. The Plaintiff testified that she had complained about multiple issues with her rental unit and that she then received a Notice of Termination of the Lease on January 2, 2021, saying the lease would end on March 31, 2021. Plaintiff believes the Lease Termination was in retaliation for her complaints regarding the issues with the property. Defendant testified that he had to terminate the lease so that he could access the apartment above the Plaintiff's unit in order to make repairs.

Plaintiff testified that in November 2020, she and her children started to feel ill and she called Dominion who came and checked out the property and found there was a gas leak in the stove in the kitchen. She testified that the furnace goes out 3-4 times a week and they wake up in a freezing house, which requires her to go and re-light the pilot light to get the furnace running again. The Defendant testified that a repair person had been out to service the furnace in November 2020, December 2020, January 2021, and February 2021. Plaintiff testified that the pilot light continues to go out even after 4 service calls to inspect the furnace.

Plaintiff also testified that the gas line to the stove has not worked since January 2021 and that she is still unable to use the stove. Defendant testified that it is the tenant's duty to provide the stove, however, the issue is with the gas line to the stove and the Plaintiff has not been able to cook with the stovetop or oven since January 2021. Which party provided the actual stove is not at issue.

Plaintiff also testified that parts of the ceiling in her son's room had water that leaked through, but it appears those issues were resolved in November 2020. Plaintiff testified there was a raw sewage leak that occurred when the tenant upstairs would flush and that it caused her son's wall to be so wet that part of the wall crumbled. Plaintiff testified that the Defendant said they would need 30 days to repair the issue and Defendant testified that the Plaintiff would not allow access, but Plaintiff contends that the apartment is very small and they would not have room unless the repair were performed while they were out of the property and the Defendant did not offer alternative lodging for the time needed to make the repair.

Plaintiff testified that there were lead paint issues in the property and that the Landlord did replace one door that had excessive chipping, but did not remediate the other lead paint issues. There was testimony from both sides regarding a report from the City of Akron

Department of Neighborhood Assistance Housing Division, but neither party provided a copy of those findings to the Court.

Defendant testified that the Plaintiff mischaracterized the repairs and that the Plaintiff was not current on her rental obligation at the time she escrowed her rent with the Court. Defendant did not substantiate the claim that the Plaintiff was not current in her rental obligations and did not provide evidence or credible testimony regarding the status of rental payments. Defendant also testified that any time repairs are requested by his tenants that a work order is created and scheduled to be completed within 5-7 days. He testified that if it is a heating or plumbing issue they try to resolve them within 72 hours. Defendant testified that there were procedures for addressing issues, but did not provide any further evidence beyond testimony.

Plaintiff testified again on cross-examination by the Defendant's counsel, that she was current on rent when she deposited her rent with the Court. Defendant testified that he believed the Plaintiff was behind on rent, but could not provide an amount or evidence that she was delinquent in her rental payments.

CONCLUSIONS OF LAW

Under O.R.C. 5321.04, landlords must:

(1) Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety; (2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition; (3) Keep all common areas of the premises in a safe and sanitary condition."

Under O.R.C. 5321.05(B), tenants must:

(B) The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations, or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

A tenant may escrow rent with the municipal court when (1) the landlord fails to abide by O.R.C. 5321.04, the rental agreement or local health and safety laws; (2) the tenant notifies the landlord in writing of the defects in his property; and (3) the landlord fails to remedy the defects within "a reasonable time." See O.R.C. 5321.07. The escrowed rent may be released if (1) the defects have been remedied (2) the tenant was not current on his rent when the escrowing began or (3) there was no violation of ORC 5321.04, the rental agreement or local health and safety laws. *Chernin v. Welchans* (C.A.6, 1988), 844 F.2d 322.

Plaintiff complied with the above referenced notice requirements and informed her landlord of the need to remedy numerous issues with the property. The Defendant argues that the Plaintiff did not allow the Defendant access to make the requested repairs to the roof; however, the Defendant told the Plaintiff it would take 30 days to fix the damaged ceilings and did not provide her with alternate housing to make those repairs. There was testimony from both sides that the Defendant was aware there were issues with the furnace and pilot light, but even after four visits from a repairman, the pilot still would go out and leave the Plaintiff without heat during the winter months. There was also testimony that even if the Defendant did not have an obligation to provide the actual stove, it was still the Defendant's obligation to maintain the gas lines to the stove. Without a working furnace throughout the winter, without a functional and safe gas line to the stove, and without repairing the leak in the bedroom in a reasonable time, the evidence proves that the residence was uninhabitable at least during the winter months if not longer.

As of the date of this decision, there is currently \$1,494.90 in escrow. It is the recommendation of this Magistrate that money held in this case by the court be released to the Tenant/Plaintiff, Brianna Kerrigan. It is also the recommendation of the Magistrate that the

property located at 545 Stratford Ave., Akron, Ohio 44303, be inspected by the city of Akron Housing Division to ensure compliance with all relevant local and state housing codes.

If it is deemed that the property does not comply with all requirements for fit and habitable housing, the Magistrate further recommends that the Landlord/Defendant comply with all orders issued by the city of Akron Housing Division to correct identified conditions to make the property fit and habitable. Landlord/Defendant, Chris Campbell dba Conduit Properties LLC, shall not re-rent the property until all conditions are corrected and satisfactory inspection is made by the city of Akron Housing Division.

The Magistrate also recommends that the lease agreement may be terminated by Plaintiff Brianna Kerrigan within 30 days if not sooner.


MAGISTRATE JENNIFER D. TOWELL

The Parties have fourteen (14) days from the filing of this Magistrate's Decision to file written objections with the Clerk of this Court. Any such objections must be served upon all parties to this action and a copy must be provided to the Court. A party shall not assign as error on appeal the Court's adoption of any factual findings or legal conclusion under Civ. R. 53(D)(3)(a)(ii) unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

PURSUANT TO CIV. R. 58(B), THE CLERK OF COURTS SHALL WITHIN THREE (3) DAYS OF THE FILING OF THIS DECISION SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THIS MAGISTRATE'S DECISION AND ITS DATE OF ENTRY UPON THE JOURNAL OF THE COURT.

CC: BRIANNA KERRIGAN, PLAINTIFF
JOHN PETIT, ATTORNEY FOR PLAINTIFF

CHRIS CAMPBELL DBA CONDUIT PROPERTIES LLC, DEFENDANT
MYRA COTTRILL, ATTORNEY FOR DEFENDANT