

IN THE MUNICIPAL COURT, CHILlicothe, OHIO

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MUNICIPAL COURT - LRA
CHILlicothe, OHIO

MICHAEL MILBURN AND
ELIZABETH MILBURN,
Plaintiffs,

CASE NO: 03 CVH 208

vs.

JEFF HENNESS AND
HENNESS CONSTRUCTION, INC.
Defendants.

JUDGMENT ENTRY

* * * * *

The Magistrate's Decision of December 22, 2003, is hereby adopted. Judgment is granted to the Plaintiffs Michael and Elizabeth Milburn and against Defendants Jeff Henness and Henness Construction, Inc., in the amount of \$491.24, plus interest from the date of judgment, and costs.

DATE: 1 29 04

Alan B. [Signature]
JUDGE

PROOF OF SERVICE

The Judgment Entry was served on all parties or their attorneys on the 31 day of

January, 2004.

Gretchen S. Steele
Deputy Clerk

IN THE MUNICIPAL COURT, CHILlicothe, OHIO

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MAG.

MICHAEL MILBURN AND
ELIZABETH MILBURN,
Plaintiffs,

CASE NO: 03 CVH 208

vs.

JEFF HENNESS AND
HENNESS CONSTRUCTION, INC.
Defendants.

MAGISTRATE'S DECISION
Findings of Fact and
Conclusions of Law

* * * * *

The undersigned, pursuant to the Order of this Court appointing her Magistrate herein submits the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. This matter was heard on Oct. 14, 2003 and on Nov. 5, 2003, with the parties submitting post-trial briefs on Nov. 21, 2003. The Plaintiffs were present at all hearings and represented by James Buchanan Attorney. Defendants were also present and represented by Douglas Sladoje, Attorney
2. Plaintiffs (Milburns) rented an apartment at 2501 Maple Grove Rd., Chillicothe. Ohio, from the Defendants (Heness) in March 2000. A one year lease was believed to have been signed but could not be located. On October 1, 2001, a second lease was signed for a 6 month term, and called for rent of \$615.00 per month. The lease also called for late fees of \$50.00 per month. The Milburns had given a security deposit of \$700.00, which Henness has retained.
3. Shortly after renting the apartment, Milburns decided to rent a self-storage unit from Henness at a rate of \$40.00 per month. They paid this at the same time as the apartment rent, which was usually around the 15th of each month
4. No new lease was signed at the end of six months, but the Milburns continued as month-to-month tenants. Sometime near the end of April or early May 2002, Milburns told Henness in a phone conversation that they were moving. Milburns did vacate the apartment around May 18, 2002, and had a car removed from the lot by May 22, 2002. Milburns did not empty the storage unit as they intended to continue renting this for awhile.
5. At the time Milburns vacated the apartment, they owed rent for April and May 2002, in the amount of \$1230.00. They also failed to pay the self-storage unit rent for April, May, and June 2002.
6. In early June 2002, Henness, on his own and then through his attorney, contacted the Milburns at their new address in an attempt to collect the back rent and claimed damages. (See Pl. Ex. 6 through 9). The parties began negotiations on the amount, with Milburns contacting Henness' attorney on several occasions.

7. Sometime around the end of June 2002 or early July 2002, Milburns discovered that the storage unit had a new lock added and they were unable to gain entrance. Henness admitted at trial that he added his own lock to the unit July 1, 2002. Henness told Milburns that he was using the property in the self-storage unit as "collateral" until they paid the full amount due for the apartment and the self-storage unit.
8. Milburns had various items of personal property stored in the unit including furniture, tools, maternity clothes, camping gear and Christmas decorations. (See Pl. Ex. 11). The Milburns requested a return of this property on more than one occasion but Henness refused unless they paid in full for the apartment rent and damages as well as the storage unit rent. Henness then told Milburns to deal with him and not his former attorney. On August 2, 2002, Henness agreed to let Milburns get camping gear out for an upcoming trip if they made a payment. Henness accepted a payment of \$350.00 from Milburns of which he applied \$250.00 to the apartment rent and \$100.00 to the self-storage unit. The receipts given show a balance of \$60.00 still owing on the storage unit. Henness decided how to apply the payment and chose not to allow the self-storage unit rent to be paid in full. The unit was locked back up and Milburns were denied any further access to it. Henness refused to let Mrs. Milburn retrieve her maternity clothes or any Christmas decorations.
9. On February 11, 2003, the Milburns filed a complaint in Replevin to retrieve their personal property. On February 28, 2003, Henness released the property to Milburns after they paid him an additional \$340.00, under protest, which presumably paid the storage fees through February 2003. All property was returned and was not damaged.
10. Milburns claim damages for the loss of use of their property from July 2002 until Feb. 2003. Their Amended Complaint alleges actual damages of \$1,498.00, and compensatory damages of \$2,000.00. Testimony from Mrs. Milburn estimated the market value of items that they replaced during this time to be \$700.00, but did not itemize these amounts or have any receipts, invoices or estimates to substantiate this value. These items were in fact returned in February unharmed. Milburns presented no other evidence to support their loss of use damages.
11. Milburns acknowledged at trial that they probably owed late fees even though Henness had not demanded them before the tenancy ended. The Counterclaim of Henness prays for late fees for three months in the amount of \$150.00, which are found to be reasonable.
12. Henness also claims \$18.51 for an electric bill but failed to present any evidence to support this claim.
13. Henness further claimed damage to a bath tub which he repaired at a cost of \$150.30. Henness failed to prove that Milburns damaged the tub, or the reasonable cost of repair.
14. Henness also claims \$537.51, as the cost to replace carpet in one room. Milburns admit that their dog did cause some damage, but that the carpet also had water damage from a bad exterior door seal. This problem was reported to Henness by Milburns. No photos or other evidence of the extent of the damage to the carpet were presented by Henness. Milburns acknowledge that they owe for ½ of the cost of carpet replacement in the amount of \$268.76.
15. Milburns were denied access to the self-storage unit as of July 2002. Henness is not entitled to claim future rent for any month after he placed his own lock on the unit.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties.
2. The Milburns do owe rent to Henness for the apartment in the amount of \$1,230.00, for the months of April and May 2002. They further owe for storage unit rent from April 15, 2002 to July 1, 2002, in the amount of \$100.00.
3. Henness is entitled to late fees under the lease for three months in the amount of \$150.00.
4. Henness is also entitled to damages to the rental going beyond reasonable wear and tear in the amount of \$268.76, for carpet replacement.
5. The total owed to Henness for rent and damages is \$1,748.76. The Milburns paid a security deposit of \$700.00, and also paid Henness \$350.00 on Aug. 2, 2002, and \$340.00 on Feb. 28, 2003. They are entitled to be credited for these amounts, leaving a net damage amount due to Henness on his Counterclaim of \$358.76.
6. The Milburns were denied access to and use of most of their personal property from July 2002 until February 28, 2003. The Court finds that this "holding as collateral" of the personal property in the storage unit to force payment of rent and damages for the apartment, was in fact a violation of R.C. Sec. 5321.15(B). This action also constituted common law conversion. Milburns are entitled to all damages caused by this violation. R.C. 532.15(C). *Meacham v. Miller*, 79 Ohio App.3d 35 (Jackson 1992); *Gordon v. Morris*, No. 2000-CA-69 (Ct. App. Green Co. 2001);
7. The Milburns claim for actual damages and compensatory damages are troublesome. The Court is certain that they were harmed by the loss of use of their personal property, but the evidence at trial failed to support any reasonable basis for compensatory damages. Replacement values and market values were vaguely testified to, but do not adequately prove loss of use damages. Where the fact of damage has been proven, the failure to prove the amount of damages does not preclude the award of nominal damages. *O'Neil v. Walburg*, 70 Ohio App.2d 30 (1980). The term "actual damages" includes "nominal damages". *Quillet v. Johnson*, 34 Ohio Op. 308 (1947). Nominal damages are properly awarded where "a legal right is to be vindicated against an invasion thereof which has produced no actual loss of any kind, or where, from the nature of the case, some injury has been done, the extent of which the evidence fails to show." *Lacey v. Laird* 166 Ohio St. 12, (1956); *Meacham v. Miller*, 79 Ohio App.3d 35, 40. In this case the Milburns are entitled to nominal damages in the amount of \$100.00, for Henness' conversion and violation of R.C. Sec. 532.15(B).
8. Milburns have proven that they are entitled to punitive damages. A tenant is entitled to punitive damages when nominal damages have been awarded and has proven that the landlord has acted with malice. *Meacham* and *Gordon*, supra. Actual malice includes a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm. *Preston v. Murty*, 32 Ohio St.3d 334 (1987). Evidence presented at trial proved that Henness acted with a conscious disregard for the rights of the Milburns which does constitute malice. He held their property for at least 7 months and only returned it after a replevin suit was filed, and money was paid under protest. He had the benefit of legal counsel as early as June 2002, and stated that he had some basic knowledge of landlord-tenant law. Punitive damages are found to be appropriate in the amount of \$750.00.
9. Milburns are entitled to a judgment on their Complaint in the amount of \$850.00, which

when off-set against the judgment to Henness on the counterclaim of \$358.76, leaves a net judgment to Milburns of \$491.24.

DECISION

It is the Decision of the Magistrate that Judgment be granted to the Plaintiffs Michael and Elizabeth Milburn and against Defendants Jeff Henness and Henness Construction, Inc., in the amount of \$491.24, plus interest from the date of judgment, and costs.

Date: 12-22-03

Joe Singh Math
MAGISTRATE

PROOF OF SERVICE

This Magistrate's Decision was served upon all parties or their respective Attorneys on

Dec. 23, 2003

DATE: Dec. 23, 2003

Gretchen S. Steele
Deputy Clerk

NOTICE

Objections to the Magistrate's Decision must be filed in writing within 14 days.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THIS DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CML RULE 53.