

FILED
PORTAGE COUNTY
MUNICIPAL COURT
DEC 5 3 17 PM '90

PORTAGE COUNTY MUNICIPAL COURT
RAVENNA DIVISION

STATE OF OHIO)
 : SS
PORTAGE COUNTY)

DELORES REED
CASE NO.: R90 GCV 0375
ERK

EARNEST L. MOUNTS)
)
 PLAINTIFF)
)
 -VS-)
)
 CLARA FOERG)
)
 DEFENDANT)

JUDGMENT ORDER

This case was tried to the Court on November 26, 1990. The Plaintiff was represented by Attorney Jerry Goodwin, and the Defendant was represented by Attorney Carol Crimi. Each party called witnesses and entered exhibits. The Plaintiff prays for \$1500 in unpaid rent. The Defendant has filed a counterclaim praying for \$5000 in damages suffered as a result of the Plaintiff's violation of Revised Code Section 5321.15. From the evidence presented the Court makes the following findings.

The Plaintiff is the owner of a house at 6608 Jones Avenue, Brady Lake, Ohio. The Defendant rented the premises for \$355 per month by an oral month to month tenancy. The Defendant failed to pay any rent for December, 1989, January, 1990, or February, 1990. On or about February 15 the Plaintiff served her with a three-day notice to vacate the premises, and the matter was set for an eviction hearing before the Referee of Portage County Municipal Court on March 22, 1990. On March 2, 1990, the Plaintiff removed the Defendant's belongings from the premises and stored them in a rental storage facility.

The Plaintiff testified that he removed the property because he believed that the premises had been abandoned. However, he also stated repeatedly that it appeared to him that the house was being used to store things. The Court finds that it is not possible for a party to use and simultaneously to abandon a house. If it was being used for any purpose, including the storage of belongings, then it was not abandoned. The Plaintiff showed a video tape that he had filmed of the premises immediately before removing the Defendant's belongings. The video tape showed framed photographs on the wall and on stands or tables. Beds and chairs were piled with clothes, and there were clothes hanging from racks. A teakettle was on the stove and there were live plants on a stand. Although the house would not have qualified to be featured in House Beautiful, it certainly did not appear to the Court that it had been abandoned. The Court finds that the Plaintiff's removal of the Defendant's belongings on March 2, 1990, was in violation of R.C. sec 5321.15. The Court

also finds that the Defendant owed the Plaintiff three months' rent at that time and that the Plaintiff had a right to a writ of restitution if he had followed proper procedure.

On the claim for past due rent, the Court finds for the Plaintiff and orders the Defendant to pay the Plaintiff \$1065.


On the counterclaim the Court finds for the Defendant. She has prayed for \$5000, but the Court cannot find that this amount has been proved by a preponderance of the evidence. In July she paid the storage service \$188.17 for the storage of her belongings. She stated at trial that the belongings are still in storage. She did not state how much is owed to the storage service but that amount can be easily determined. She did state that she has room for the property at the place where she is now living.

The Defendant stated that certain items of her furniture were damaged from the move and the method of storage, but she failed to state the value of the items before they were damaged and their value afterward, which would have been her measure of damage for the furniture. The Court cannot speculate what that loss amounts to.

The Defendant also stated that she had suffered illness as a result of her belongings being removed from the premises. She did, however, testify that she had had some health problems prior to that time and as a result had been unable to work full time. She presented no evidence, other than her own opinion, that her illness was the proximate result of the wrongful eviction. Furthermore, she presented no measure of the damage she suffered as a result of the illness. The Court therefore will not award any damages related to the illness.

On the counterclaim, the Court orders the Plaintiff to pay the Defendant the \$188.17 that she has already paid the storage facility together with the amount that is due and owing for continued storage of the property and the reasonable cost of transporting the property to her current place of residence. The Plaintiff is further ordered to pay reasonable attorney's fees directly to Western Reserve Legal Services. The costs of this action are to be shared equally by the Plaintiff and the Defendant.

SO ORDERED.


BARBARA R. WATSON, JUDGE

cc: File
Jerry Goodwin
Carol Crimi