BRW:lmp 6/16/92

PORTAGE COUNTY MUNICIPAL COURT

RAVENNA DIVISION

STATE OF OHIO)
: SS CASE NUMBER: R92 CVG 1036
PORTAGE COUNTY)

SHELLEY & ROBERT ZEIDMAN)
)
PLAINTIFFS)
)
-VS-) JUDGMENT ORDER
)
VICKIE & JIM MCCARTY)
)
DEFENDANTS)

This case was before the Court on June 3, 1992, for a hearing on the Plaintiffs' Forcible Entry and Detainer Action and the Defendants' counterclaims for damages. Robert Zeidman and Shelley Zeidman represented themselves. The Defendants were present with Attorney Carol Crimi. Both parties testified and entered exhibits.

From the evidence presented the Court finds that the Plaintiffs are the owners of a duplex house located at 3555 Webb Road, Shalersville. The house is on approximately three acres of land, and there is a barn at the back of the property. On January 18, 1991, the Plaintiffs and the Defendants, through the services of a real estate agent, entered a rental agreement for one half of the house for a period of one year beginning January 22, 1991. Vickie McCarty testified that the agent assured her that they could plant a garden in a plot next to the barn and that they could use part of the barn for storage. There was also a properly functioning water softener in the house. The Plaintiffs did not meet or speak with the Defendants at this time.

The Defendants signed a lease which stated that the monthly rental was $455. The Plaintiffs entered as an

exhibit a lease, also signed by the Defendants, which stated on the front side that the monthly rental was $475 and on the back side that it was $455. The Defendants testified that they believed that the rent was $455 and that they would not have rented the house if they had been informed that it was $475. In March, 1991, the realtor informed the Defendants by letter that there had been an error in the lease and that the rent was $475 per month. A new lease was never executed. The Defendants paid $455 each month. Although the Plaintiffs complained and told the Defendants a number of times that the rent was $475, they continued to accept $455 each month.

During the summer of 1991 the Plaintiffs planted a garden, which Mrs. McCarty said saved the family $500 in food bills for that year. They stored several items, including the children's bicycles in the barn. In October, 1991, the water softener ceased to function properly and the house developed certain other problems. The Defendants contacted the Plaintiffs repeatedly about these problems, but the requested repairs were not performed.

In January, 1992, the Plaintiffs informed the Defendants that the rent was raised to $485 per month. The Defendants began paying that amount and continued to no avail to request repairs to the house. In March the Plaintiffs informed the Defendants that they would not be permitted any further use of the garden plot or the barn. On April 23, 1992, the Defendants placed their rental payment in escrow pursuant to the provisions of R.C. sec. 5321.07. On May 6, 1992, the Plaintiffs served the Defendants with a three-day notice to leave the premises, the grounds being "boat, dog, vehicles." Past due rent is not stated as a ground in that notice.

At the June 3 hearing Shelley Zeidman testified that the Plaintiffs' only ground for the forcible entry and detainer action was past due rent, that rent being $20 per month for all of 1991. She testified that the Defendants' rent was

current. Because the Defendants' rent is current and the Plaintiffs accepted $455 per month for all of 1991 and did not file this action until May 12, 1992, the Court denies the writ of restitution.

In their first counterclaim the Defendants pray for $500 for the Plaintiffs' violation of the covenant of quiet enjoyment by wrongfully excluding them from a portion of the premises. Although the real estate agent told the Defendants that they could use the garden and the barn, the lease states only that they are renting half of the duplex house. The Plaintiffs had become owners of the property within the past two years, and the agent based her statement upon past use of the property when it had been owned by another party. The Plaintiffs had never told the Defendants that they could use the garden or the barn. As owners, they were free to choose what part of the property they would rent to another and what part they would reserve for their own use. The Court finds that there was an unfortunate misunderstanding between the parties, but it cannot find by a preponderance of the evidence that the Defendants were wrongfully excluded from a portion of the property. The Court denies this claim.

In their second counterclaim the Defendants pray for rent abatement of $50 per month commencing October 1, 1991, because of the Plaintiffs' failure to maintain the premises in a fit and habitable condition. There was testimony that the water softener failed on or about October 1 and that there were also numberous electrical and plumbing problems which were not repaired until the end of May, 1992. The Court finds that these problems diminished the value of the premises and awards the Defendants $400 in rent abatement.

In their third counterclaim, the Defendants pray for $500 for retaliatory action by the Plaintiffs. The Defendants accepted rent of $455 per month for all of 1991 and never once filed an action based on past due rent. Then on May 6, 1992, thirteen days after the Defendants placed their rent in escrow, the Plaintiffs served them with a

notice to vacate. At the hearing, Shelley Zeidman stated that their only complaint was the $20 per month past due rent from 1991. The Court finds that the Plaintiffs' action was retaliatory and that the Defendants have suffered actual damages in the amount of $500. The third counterclaim is granted.

At trial, the Defendants amended their complaint to pray for $1162 in moving expenses to relocate in Texas. They stated that they have relatives there and that there are possible job opportunities for Mr. McCarty. The Court cannot find that the Defendants' decision to move to Texas can be directly attributed to any action of the Plaintiffs. This claim is denied.

The Defendants have requested reasonable attorney's fees. The Court finds that they are entitled to attorney's fees pursuant to R.C. sec. 5321.02. A hearing will be scheduled to determine this issue.

The Court orders the Plaintiffs to pay the Defendants $900 plus 10% interest per annum commencing the date of this judgment. The costs of this action are assessed to the Plaintiffs. The Court further orders the Plaintiffs to pay attorney's fees to be determined at a subsequent hearing.

SO ORDERED.

Barbara R. Watson

BARBARA R. WATSON,
PRESIDING & ADMINISTRATIVE JUDGE

cc: File
Attorney Carol Crimi
Mr. & Mrs. Zeidman