

IN THE MUNICIPAL COURT OF FRANKLIN COUNTY
COLUMBUS, OHIO

KELLY J. SCHULTZ, et al.,

Plaintiffs,

v.

LAWRENCE EARL WURDLOW,

Defendant.

CASE No. 2008 CVI 031737

JUDGE VanDerKarr

FRANKLIN
MUNICIPAL
COURT

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Judge's Decision and Report

This cause came on for hearing before Judge VanDerKarr on October 28, 2010. Attorney Paul Wilkins and certified legal intern Melissa Englund represented plaintiffs. Lawrence Earl Wurdlow appeared on behalf of himself. Based on the sworn testimony taken, the court finds as follows:

Findings of Fact

1. Plaintiffs are former tenants at defendant's property at 38 E. 17th Ave., Apt. #42, Columbus, Ohio 43201.
2. The plaintiffs are "tenants" as defined by R.C. 5321.01(A) and defendant is a "Landlord" as defined by R.C. 5321.01(B).
3. The apartment rented by plaintiffs was a "residential premises" as defined by R.C. 5321.01(C).
4. The original term of the tenancy ran from August 31, 2007 through August 31, 2008.
5. As provided by the terms of the rental agreement, the plaintiffs deposited with the defendant the amount of \$350.00 as a "security deposit" as defined by R.C. 5321.01(E).

6. Following an inspection by City Code Enforcement that revealed both plaintiffs could not continue to occupy the premises, plaintiffs and defendant entered into a written agreement terminating the lease on May 2, 2008.
7. On the 30th day of April 2008, possession of the premises was delivered to the defendant and on the 2nd day of May 2008, the rental agreement was terminated.
8. Plaintiff provided to the defendant in writing a forwarding address and returned all keys.
9. Defendant did not return the security deposit, but made a series of deductions from it for long distance charges (\$53.51), unpaid gas (\$41.34), the replacement cost of a couch (\$75), a lamp (\$15), and cleaning services (\$276.54). None of these charges have been substantiated by the evidence presented.
10. Plaintiffs returned the premises in better condition than they received it.

Conclusions of Law

The party who brings an action must prove the allegations in the complaint by a preponderance of the evidence. In a case such as this one, the tenant must prove the existence of a rental agreement, that a security deposit was paid, the lease has ended, the tenant provided to the landlord in writing a forwarding address, and the landlord has failed to return the security deposit. The landlord bears the burden of proving the right to withhold any portion of the security deposit pursuant to R.C. 5321.16.

Based on the evidence presented and after weighing the credibility and demeanor of the witnesses, the court concludes that the defendant wrongfully withheld \$350.00 from the security deposit. Plaintiffs entered their lease into evidence and provided testimony that proved that they entered into a rental agreement and were tenants of defendant, defendant was the landlord of the rented premises, they deposited with defendant a security deposit in the amount of \$350.00, the

rental agreement was terminated, plaintiffs provided defendant with written notice of a forwarding address, and defendant has not returned the security deposit to plaintiffs. Defendant provided no evidence to contradict any of the facts listed above and in fact, conducted the trial as if all of these facts were true. Therefore, plaintiffs have met their burden of proof for the return of their security deposit.

Defendant provided testimony about damages to the apartment allegedly done by the plaintiffs and produced several documents, including photographs and an invoice for repair and cleaning of the premises in support of his allegations. Plaintiffs also produced pictures of the premises taken at the time they moved out of the premises and provided testimony of the condition of the premises at the time they moved into the apartment and while they lived there.

This Court finds plaintiffs' testimony and evidence persuasive and defendant's unpersuasive. The evidence provided by all parties shows an apartment in terrible disrepair. All of the appliances, fixtures and furniture in the apartment are old and barely useable. The photographs of the kitchen counter, peeling paint, and the exterior light and stairs illustrates the deplorable condition in which defendant maintained the property.

In contrast to the poor maintenance of the property, plaintiffs' pictures show that they left the premises as clean as could be expected under such conditions. While plaintiffs testified that the premises were delivered to them in a very dirty condition, they produced pictures of the bathroom, kitchen sink, microwave, and stove that showed that they returned the apartment to defendant in a clean condition.

Defendant produced pictures that he alleged showed that plaintiffs left the premises dirty and in need of repair. However, his documents are directly contradicted by his photographs, plaintiffs' photographs and other evidence. For instance, defendant produced a picture of a sink

with some dirt in it. In contrast, plaintiffs produced photographs of a clean sink free of dirt and debris. Defendant produced a picture of a floor lamp that he alleged was damaged by plaintiffs. However, plaintiff's pictures show the lamp standing and lit.

For these reasons, the Court finds that defendant has not sustained his burden to prove the damages that he alleges were caused by plaintiffs and the court awards plaintiffs the full amount of their security deposit of \$350.00 plus an additional \$350.00, court costs interest, and attorney fees pursuant to R.C. 5321.16.

Because the security deposit was wrongfully withheld and because plaintiffs complied with the notice provisions of R.C. 5321.16, plaintiffs are entitled to an award of reasonable attorney fees pursuant to the statute and to Ohio case law. *Smith v. Padgett* (1987) 32 Ohio St.3d 344. In determining a reasonable award of attorney fees, the court should consider "the time spent by an attorney and a reasonable rate to be charged for that time." *Yarber v. Cooper* (1988) 61 Ohio App. 3d 609, 615, (quoting *Bierlein v. Alex's Continental Inn, Inc.* (1984) 16 Ohio App. 3d 294, 302, 474 N.E.2d 1273). The court should then consider the factors listed in Ohio Rules of Professional Conduct 1.5(a):

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent.

Not all of these factors will be applicable in all cases. The trial court has the discretion to determine which factors to apply and in what manner that application will affect the calculation of fees. *Bittner v. Tri-County Toyota, Inc.* (1991) 58 Ohio St. 3d 143,145, 569 N.E.2d 464.

The court has examined the Summary of Plaintiffs Attorney's Fees and the testimony of expert witness Edward Forman. Mr. Forman testified that he has known plaintiffs' attorney Paul Wilkins since they were in law school; that Mr. Forman was admitted to practice law in Ohio in 2003; that he is a landlord as well as a lawyer; that he has experience with landlord tenant law; that he has called Mr. Wilkins to request advice on landlord tenant issues; that he is co-counseling a class action with Mr. Wilkins; that he is familiar with Mr. Wilkins' skill as an attorney; that Mr. Wilkins' hourly rate of \$200 is well below the hourly rate charged by Mr. Forman and underrates Mr. Wilkins' skill and experience as an attorney; and that the total amount requested in attorney fees is reasonable. The court finds Mr. Forman to be an expert witness and his testimony persuasive. The hourly rates for the work completed by Mr. Wilkins of \$200.00 and \$75.00 for his legal interns are reasonable.

Turning to the factors listed in Ohio Rules of Professional Conduct 1.5(a), the court finds that the award of attorney fees of \$14,782.50 is reasonable considering the labor required to represent plaintiffs and the nature and length of the professional relationship between Mr. Wilkins and plaintiffs. Mr. Wilkins has represented plaintiffs for more than two years. In that time period, Mr. Wilkins was required to commit an extraordinary amount of time to obtain discovery and respond to confusing and unclear motions filed by defendant. Defendant was largely responsible for the large number of hours spent by Mr. Wilkins through his refusal to provide discovery, his many motions and appeal.

Mr. Forman testified to the experience, reputation, and ability of the Mr. Wilkins as well as the fee customarily charged for similar legal services. This court agrees that Mr. Wilkins is an experienced and able attorney who is charging a reasonable hourly rate. Mr. Forman further testified that the total amount charged for this case by Mr. Wilkins is more than reasonable. The court agrees.

Finally, the court rules the amount in controversy in this case is less important than the other factors. The amount of attorney fees awarded under a consumer protection statute does not need to have a direct relationship to the dollar amount of the judgment. *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d at 144. While the amount in controversy is relatively low, the actions of defendant during the course of litigation justify this award of attorney fees.

Based on the appropriate law contained in all these sources of authority, based on the amount recovered in connection with the wrongful withholding, and based on the particular circumstances involved in litigating this dispute, the court concludes that an award of \$14,782.50 for attorney fees is reasonable.

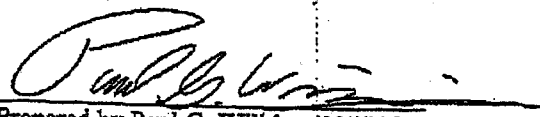
Decision

Judgment in favor of the plaintiffs and against defendant in the amount of \$700.00 plus attorney fees of \$14,782.50 and interest. Costs charged to defendant.

Date

12-29-10


Judge VanDerKarr


Prepared by Paul G. Wilkins (0075461)
Attorney for Plaintiffs