

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO  
JUDGE W. MONÁ SCOTT

MIRANDA SANCHEZ  
Plaintiff (s)

Date: August 25, 2021

-VS-

2021 CVI 006506

MARY TOMPKINS  
AKA GALINA MCJUNKINS  
Defendant (s)

MAGISTRATE'S DECISION

This case was before the Magistrate for a virtual hearing upon Plaintiff's Small Claims Complaint against Defendant. Present were Plaintiff Miraida Sanchez, Plaintiff's attorney Deborah Coleman and Defendant Mary Tompkins. The parties attempted mediation with a staff attorney but were unable to come to an agreement.

Plaintiff, former tenant, brings this action against the Defendant, former landlord, for an illegal lock-out, attorney fees and reimbursement of rent pursuant to a violation under R.C. 5321.15.

In addition, Plaintiff seeks damages for missing personal items based upon the tort of conversion. Defendant disputes the conversion claim arguing that Plaintiff never contacted her to retrieve the remainder of her personal belongings.

Defendant claimed that Plaintiff owed one month's unpaid rent for January 2021. However, Defendant did not file a counterclaim against the Plaintiff.

FINDINGS OF FACT:

- {¶1.} Defendant is the owner of residential property that is a duplex with the address of 1070 E. 171<sup>st</sup> Street, Cleveland, Ohio 44119. Defendant lives in the downstairs unit.
- {¶2.} Through a verbal agreement, the Plaintiff moved into the upstairs unit sometime in November 2020. The agreed upon rent was \$550.00 per month. The Plaintiff's last rent payment was made on April 5, 2021. (exhibit D)
- {¶3.} On or about April 10, 2021, while Rent-A-Center was at Plaintiff's unit to unhook and remove a stove that Plaintiff was renting, there was an issue with a gas leak. Authorities were called out to shut off the gas. When Defendant returned home from work, she discovered that there was no hot water or heat. Defendant was really upset about this incident.

- {¶4.} On April 11, 2021, Defendant notified Plaintiff that she was terminating the tenancy and wanted Plaintiff to vacate by June 1, 2021. (exhibit E)
- {¶5.} On April 16, 2021, Defendant notified the Plaintiff that now she must be out by “next week” due to an argument over some personal matters that were posted on Facebook by the Plaintiff. (exhibit F)
- {¶6.} On April 24, 2021, in the morning, Plaintiff was able to move some of her belongings. Later that day, at 2:51 pm, Defendant informed Plaintiff that she was no longer allowed in the house unless Defendant was present. (exhibit G)
- {¶7.} Plaintiff testified that she returned to the premises around 4:00 pm or 5:00 pm on April 24, 2021 to collect the rest of her belongings. Plaintiff stated that the key no longer worked to open the door. Plaintiff stated that she called the police but Defendant would not answer the door. Defendant stated that this was a lie.
- {¶8.} Plaintiff did not attempt to contact Defendant any further in order to collect her personal belongings. Plaintiff’s reason was that the parties worked different shifts. So, knocking on Defendant’s door at a time when Defendant would be home would be difficult.
- {¶9.} Defendant did not attempt to contact the Plaintiff in order to retrieve her personal belongings. Defendant’s reason was that she no longer had cell phone service. Plaintiff had shut off Defendant’s cell phone, which was a gift from the Plaintiff.
- {¶10.} On or about May 1, 2021, Defendant boxed up Plaintiff’s personal items and “put all her stuff on the front lawn.” Defendant stated that she still has the Plaintiff’s social security card and passport. Defendant testified that knew well enough not to put those important documents on the lawn.
- {¶11.} Plaintiff prepared a list of the items that she was unable to retrieve. In addition, Plaintiff looked up the cost of each item, many of which were purchased after she moved into the premises, for a total cost of \$3,214.65. (exhibit A)
- {¶12.} As an example of her research, Plaintiff provided a detailed screen shot from Amazon with a photograph, price and description for item number 13, an area rug for \$168.89. (exhibit B)
- {¶13.} Defendant disputed only one item on the list. Specifically, number 27, the Adidas jackets. She stated that those may have belonged to her niece. Plaintiff stated that these were not the ones that belonged to Defendant’s niece.

#### CONCLUSIONS OF LAW:

- {¶14.} Plaintiff moved for an order to compel the Defendant to return the social security card and passport to the Plaintiff. However, a small claims division does not have jurisdiction in an action for replevin pursuant to R.C. 1925.02 (A)(2)(a)(i).



- {¶15.} Plaintiff withdrew the demand for punitive damages as a small claims division does not have jurisdiction over actions for recovery of punitive damages pursuant to R.C. 1925.02 (A)(2)(a)(iii).
- {¶16.} R.C. 5321.15(A) provides that no landlord of a residential premise shall initiate any act, including exclusion from the premises or threat of any unlawful act against a tenant for the purpose of recovering possession of residential premises. A landlord who violates this section is liable in a civil action for all damages caused to a tenant, together with reasonable attorney fees.
- {¶17.} To terminate a month-to-month tenancy, R.C. 5321.17(B) requires a landlord to provide the tenant notice of termination at least 30 days prior to the periodic rental date.
- {¶18.} At first, Defendant provided at least 30 days prior notice to the Plaintiff. However, Defendant later shortened it from June 1, 2021 to April 24, 2021, which was clearly not 30 days.
- {¶19.} On April 24, 2021, Plaintiff was excluded from the premises by the Defendant, whether it was by a lock-out or by the text message sent to Plaintiff threatening her not to come back to the property without Defendant present. Defendant's actions constituted a violation of R.C. 5321.15(A). As a result of the violation, Plaintiff is entitled to a refund of 6 days of rent paid for April 24<sup>th</sup> through April 30<sup>th</sup>, 2021, at the daily rate of \$18.33, for a total of \$109.99.
- {¶20.} When a tenant prevails on an R.C. 5321.15(A) claim, under R.C. 5321.15(C), the tenant is entitled to recover "reasonable attorneys fees." The attorney fee award is mandatory, if the tenant prevails on the R.C. 5321.15 claim. *Gaitawe v. Mays*, 2012-Ohio-4749; *Crenshaw v. Rowland*, 196 Ohio App.3d 717, 965 N.E.2d 341 (6th Dist. 2011); *Lewis v. Romans*, 70 Ohio App.2d 7, 433 N.E.2d 622 (8th Dist. 1980).
- {¶21.} "[E]vidence of reasonableness 'may take the form of testimony, affidavits, answers or other forms of sworn evidence. As long as sufficient evidence is presented to allow the trial court to arrive at a reasonable attorney fee award, the amount of the award will not be disturbed absent an abuse of discretion.'" *Cleveland v. CapitalSource Bank*, 8th Dist. Cuyahoga No. 103231, 2016-Ohio-3172, ¶ 13, quoting *R.C.H. Co. v. 3-J Machining Serv.*, 8th Dist. Cuyahoga No. 82671, 2004-Ohio-57, ¶ 25.
- {¶22.} "When a tenant has actually incurred no out-of-pocket attorney fees, the amount of fees determined to be proper should be awarded directly to the attorney or organization that provided the legal services." *Gaitawe v. Mays*, 2d Dist. Montgomery No. 25083, 2012-Ohio-4749, ¶ 10, citing *Lewis v. Romans*, 70 Ohio

App.2d 7, 10, 433 N.E.2d 622 (8th Dist.1980) (awarding fees directly to Legal Aid Society where tenant it represented did not incur any legal expenses)

{¶23.} Conversion is "the wrongful control or exercise of dominion over the property belonging to another inconsistent with or in denial of the rights of the owner." *Tabar v. Charlie's Towing Serv., Inc.*, 97 Ohio App.3d 423, 427-428, 646 N.E.2d 1132 (8th Dist.1994).

{¶24.} In order to establish conversion, the owner of the property must show the following: (1) she demanded the return of the property from the possessor after the possessor exerted dominion or control over the property; and (2) the possessor refused to deliver the property to its rightful owner. *Pointe at Gateway Condo. Owner's Ass'n v. Schmelzer*, 2013 Ohio 3615 (Ohio App. 2013)

{¶25.} On April 24, 2021, Defendant exerted control over Plaintiff's personal property. Defendant kept Plaintiff from getting her personal property. On the same day, Plaintiff demanded access to get her property, which Defendant denied. Furthermore, after only one week, without providing any notice to the Plaintiff, Defendant threw everything out.

{¶26.} The measure of damages in a conversion action is the value of the converted property at the time it was converted. *Pointe at Gateway Condo. Owner's Ass'n v. Schmelzer*, 2013 Ohio 3615 (Ohio App. 2013)

{¶27.} Since most of the items were purchased after Plaintiff moved in, the items would be close to the same value at the time Defendant exerted control over the items. After researching the items online, Plaintiff estimated the total value of the items at \$3,214.65. Defendant did not dispute this figure.

#### RECOMMENDATION:

{¶28.} Judgment in favor of the Plaintiff and against the Defendant is the amount of \$3,324.64 plus costs.

{¶29.} Defendant is ordered to pay attorney fees, in an amount to be determined, to the Legal Aid Society.

{¶30.} By September 30, 2021, the parties shall submit evidence in order for the calculation of reasonable attorney fees.

  
Magistrate, Housing Division

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY  
MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY



TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this Magistrate's Decision was sent by regular U.S. mail/email to the parties on 9/8/21. dmr