

CLEVELAND HEIGHTS MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

Mark Sertich
Plaintiff(s)

vs.

Kionna Jackson
Defendant(s)

Case No: CVG1801089

MAGISTRATE'S DECISION

Procedural History: This case was tried as a Small Claims matter on March 25, 2019. It was filed as a Forcible Entry and Detainer [FED] action. The First Cause was settled so this trial had to do with claims for monetary relief filed by both parties against one another. This Magistrate entered a decision dated May 13, 2019 but held open the issue of attorneys' fees. Because that issue was still open the court decided to have another hearing to decide those fees and the issue raised by Defendant regarding the reduction in value. That hearing was held on November 18, 2019 and this is the Magistrate's decision based on that hearing and the prior ruling.

Evidence Presented: In the court's original decision it was found that the dwelling was habitable when Ms. Jackson moved in but at some point, became uninhabitable because there was an infestation of roaches, rats and bedbugs. The court then granted Defendant a 20% reduction in the value of her leasehold only for past due rent and only on her share of that past due rent.

The court found that the landlord withheld the security deposit properly because of the damage done to the unit by Defendant but that the landlord had also violated Ms. Jackson's right to 24-hour notice before he came for an inspection, awarding her \$500.00 for that breach. The court also granted Mr. Sertich \$1,197 in damages. Those findings are undisturbed by this decision entered today.

There was little evidence presented regarding attorneys' fees and briefing only on the substantive issue of whether the reduction in leasehold value should apply to the entire rent paid to the landlord or only to that portion paid by this government subsidized tenant.

Findings of Fact and Legal Analysis: First, Plaintiff moved in in July 2016. At that time the court found the apartment habitable. However, shortly after she moved in Plaintiff began complaining about roaches coming in to her unit from another unit in the same building. She asked Mr. Sertich for help in combating this invasion. In the May 13 decision this court wrote: "On September 4, 2016, about 8 weeks after she moved in Defendant texts Plaintiff "So what's going on about the bugs? . . . These bugs have to go. All of them." Exhibit G; Page 10. In November there's a text from the landlord to the tenant – "Hello, next door bombed for roaches how are u doing on it? Have you bombed? Will u been away [sic] for half day if u want us to bomb." Ex. G; page 14. Later, "I have this pest man number to give u. He's pretty reasonable for both units." To which Mr. Sertich replied "Can't afford pest man – have u used bombs etc – what is going on?" Exhibit G; page 18; February, 2017. Later – "Your roaches are coming out of the walls into my appliances. I've had my brand-new refrigerator services [sic] twice. On the service invoice it states that your roaches are getting into the motor causing it to not work properly. Brand new microwave, brand new coffee maker, and brand-new toaster have been destroyed by your roaches. I CAME WITH NEW APPLIANCE ROACH FREE AND DIDN'T HAVE ROACHES EVER BEFORE." Exhibit G; page 19; April 2, 2017; emphasis in original."

The court further wrote: "It is the landlord's duty to maintain a habitable place. The roaches alone would be enough to cause this court to grant Counter-Plaintiff some damages. But in this matter, there were also rats in the garage in overstuffed furniture left behind by a prior tenant and never cleared out, and bedbugs in the house when Ms. Jackson moved in. This court has found that the unit was uninhabitable or better when Defendant

moved in. The habitability clearly got worse with roaches invading and ruining her appliance and falling from the ceiling shortly after she moved out."

Plaintiff argues in his brief that Ms. Jackson caused the infestation. The above findings clearly rebut that argument. Mr. Sertich did the least he could – providing bombs and refusing to hire an exterminator – rather than deal with a problem that got so much worse that his own cleaning person complained of bugs falling on her from the ceiling when she cleaned the unit after Ms. Jackson moved out. The tougher question is when did the apartment become uninhabitable. Clearly at the point Ms. Jackson's appliances were affected the apartment was not habitable. But this court finds the violation began in February 2017 when Mr. Sertich refused to use a professional service to take care of this problem.

As to whether to apply the 20% reduction in value to the total rent or merely Ms. Jackson's portion this court finds that Defendant has the better argument and stronger precedent. The date the apartment became uninhabitable is found to be February Of 2017 and the unit remained uninhabitable until Ms. Jackson moved out in September of 2018, a period of 19 months. The rent was \$1,185.00 and the monthly reduction is \$237.00 resulting in an award to Defendant of \$2,133.00.

Conclusion and Recommendation: First the amount due the Plaintiff is \$1,197.00. The security deposit of \$1,185.00 was therefore properly withheld and Plaintiff may retain the deposit and also deserves the \$12.00 difference from Defendant. However, the court also awarded Defendant \$500.00 for the breach of the inspection notice law meaning Plaintiff owes the Defendant \$488.00.

Finally, as to the reduction in value Plaintiff is order to pay to Defendant \$2,133.00 for a total judgment of \$2,621.00 from Plaintiff to Defendant.



Gary A. Benjamin, Magistrate

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(A)(II), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(B).

JUDGEMENT ENTRY

Upon review by the court, no objection having been filed within the time provided, the Magistrate's Decision is hereby approved

SO ORDER.

JAMES J. COSTELLO, JUDGE