IN THE MASSILLON MUNICIPAL COURT
MASSILLON, OHIO

LINDSEY SMITH **JEAN PHILLIPS**	:	**CASE NO. 2012-CVF-2488**
Plaintiffs, **NICOLE LAKE - Attorney**	:	
-vs-	:	**MAGISTRATE'S DECISION/RECOMMENDATION**
APPLEGATE PROPERTY MANAGEMENT **SENIAH CORPORATION** **LAKE CABLE VILLAGE** **FEDERAL HOME LOAN MORTGAGE** **MCKINLEY**	:	**Magistrate Amanda L. Kuhn**
Defendants	:	

Matter came before the court on all pending motions. Attorney Nicole K. Lake appeared for plaintiffs, Attorney Sarah S. Graham for defendant McKinley and Attorney Steven A. Chang for Federal Home Loan Mortgage Corporation.

A brief review of the facts is as follows: December 10, 2010, plaintiffs entered into lease agreement with defendant Seniah Corporation, defendant Applegate Property Management and Defendant Lake Cable Village Apartments. Plaintiffs deposited $670.00, at the beginning of the tenancy to serve as a security deposit.

In October 2011, the property was sold to defendant, Federal Home Loan Mortgage Corporation (hereinafter Freddie Mac), through foreclosure proceedings. At that time, defendant McKinley was hired to manage the residential property. In February 2012, plaintiffs vacated the premises, returned all keys, paid rent in full, left the apartment clean with no damage beyond normal wear and tear, left forwarding address and otherwise properly complied with the rental agreement.

When plaintiffs vacated the premises in February 2012, Freddie Mac was the owner of the property. However, in August 2012, Freddie Mac sold and transferred the property.

In October 2012, plaintiffs filed suit alleging defendants failed to comply with R.C. 5321, specifically triggering the statutory remedies of R.C. 5321.16(A); defendant wrongfully withheld security deposit. Pursuant to R.C. 5321.16(C), plaintiffs argue they are entitled to complete return of their security deposit, statutory doubling of that amount, interest, costs and attorney fees.

Defendants who have not made an appearance in the court have been disposed of accordingly. All remaining parties have motions for summary judgment before the court.

Ohio Civil Rule 56(C) sets forth the standard governing motions for summary judgment. In applying this standard, the Ohio Supreme Court has stated that summary judgment is appropriate when the following factors exist:

1. there are no genuine issues of material fact;
2. the moving party is entitled to judgment as a matter of law; and
3. reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made.

State ex rel. Grady v. State Emp. Relations Bd. (1997), 78 Ohio St.3d 181.

In the summary judgment context, a "material" fact is one that might affect the outcome of the suit under the applicable substantive law. *Turner v. Turner* (1993), 67 Ohio St.3d 337.

The party seeking summary judgment initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the non-moving party's claims. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The movant must point to some evidence in the record of the type listed in Civ.R. 56(C) in support of the motion. *Id.* Furthermore, when a motion for summary judgment has been supported by proper evidence, the non-moving party may not rest on the mere allegations and denials in the pleadings, but must set forth specific facts, by affidavit or otherwise, that demonstrates the existence of a genuine triable issue. *Jackson v. Alert Fire & Safety Equip., Inc.* (1991), 58 Ohio St.3d 48, 52.

"Disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 247-48.

The court will first reconsider defendant McKinley's motion for summary judgment. Defendant McKinley was named a defendant in this case as plaintiff argued defendant meets the statutory definition of a landlord pursuant to R.C. 5321.01(B). A tenant is to recover their wrongfully withheld security deposit from the landlord. Defendant could be considered a landlord under the revised code however, pursuant to the discussion *infra,* the court finds the tenant is to look to the new owner for the return of the security deposit, not a possible landlord. Defendant McKinley is not an owner and has never been an owner. Defendant McKinley was the management company for a short time when the apartment complex went through foreclosure. Accordingly, this court recommends granting defendant McKinley's motion for summary judgment as no issue of material fact is left to determine regarding defendant McKinley's liability in the wrongfully withheld security deposit.

At this point, the remaining parties are plaintiffs and defendant Freddie Mac. Plaintiffs argue Freddie Mac is responsible for the return of the security deposit as, at the time they left the premises and terminated the lease, Freddie Mac was the owner of the premises.

The prevailing issue in the case is, who is responsible to plaintiffs for the return of wrongfully withheld security deposit? The rental agreement/lease states in Section #16, Page 7, "[i]f the premises are sold during any term of this Lease, the Landlord will transfer the security deposit account to the purchaser and shall be relieved of all liability to Resident. Resident shall look solely to the new owner for return of security deposit." Defendant Freddie Mac states that they never got the security deposits nor received credit for the security deposits during the purchase of the property through foreclosure.

Numerous cases have been cited by the parties in strength of their argument. These cases include the following-but are not limited to: *Castlebrook, Ltd. V. Dayton Props. Ltd. P'ship*, 78 Ohio App.3d 340, 604 N.E.2d 808 (2nd Dist. 1992); *Tuteur v. P.&F. Enterprises, Inc.*, 21 Ohio App.2d 122, 133, 255 N.E.2d 284 (8th Dist. 1970); *UNF Corp. v. Deffet Rentals, Inc.*, 10th Dist. No. 81AP-337, 1981 Ohio App. LEXIS 12128, at *4. This court finds these cases informative and instructive.

The parties agree that traditionally (defendants – always) a security deposit is viewed as a pledge and as such the original landlord remains liable to the tenant for returning the deposit in accordance with the terms of the rental agreement. However, in this case the lease specifically dealt with the security deposit stating in Section #16, Page 7, of the lease states "[i]f the premises are sold during any term of this Lease, the Landlord will transfer the security deposit account to the purchaser and shall be relieved of all liability to Resident. Resident shall look solely to the new owner for return of security deposit."

In the matter at hand, defendant is aware of this lease provision but still argues that a new landlord is not liable for the return of the security deposit because: (1) the law in Ohio with respect to security deposits is that they are in the nature of pledges and that return of them does not run with the land but is a personal contractual obligation. See *Tuteur* in general; (2) under Ohio law, a new landlord is only liable for the security deposit if during the purchase of the premises the new landlord agreed to assume such liability or received a credit for the security deposit against the sale price; (3) Freddie Mac did not assume liability and did not receive a credit for the security deposit against the sale price.

Additionally, plaintiffs argue that when Freddie Mac bought the property, they take the property subject to all terms of the existing lease. Further, that the Federal Protecting Tenants at Foreclosure Act of 2009, reiterates the fact that in the event of a foreclosure, existing leases for

renters are honored to the end of the term of their lease. Thus, Freddie Mac assumed the liability because they assumed the existing rights that the tenant had subject to their lease that existed at the time of the foreclosure sale. The tenants' rights included looking to the new owner for the return of their security deposit. See Section #16, Page 7 of the Residential Lease Agreement. Further, plaintiffs argue that under state law, defendants remain liable for the security deposit because a purchaser of real estate, that is in possession of an actual tenant, is charged with the knowledge of, and acquires title subject to, the tenant's rights under the existing tenancy.

"It is well established that leases are contracts and, as such, are subject to traditional rules governing contract interpretation." Peter M. Iskin Ohio Eviction and Landlord-Tenant Law 4th ed. at 326-327; citing *Heritage Court, L.L.C. v. Merritt*, 187 Ohio App.3d 117, 122, 931 N.E.2d 194, 199; *Brown v. Spitzer Chevorelet Co.*, 181 Ohio App. 642, 653, 910 N.E.2d 490, 498 2009. The purpose of lease construction is to discover and effectuate the intent of the parties. *Id.* at 327. *Heritage* at 122, 123. The intent of the parties is presumed to reside in the language that the parties chose to use in their lease agreement. *Id.* When the language of a lease is clear and unambiguous, the court must follow and enforce the plain language of the lease as written, and not look beyond the plain language of the lease as written, and not look beyond the plain language of the lease to determine intent. *Id* at 327 *Brown* at 653.

"In interpreting the language of a lease agreement, common words are presumed to hold their ordinary meaning, unless '(1) manifest absurdity results, or (2) some other meaning is clearly evidenced from the instrument.'" Iskin at 328 citing *Heritage* at 123.
"Every residential rental agreement incorporates by operation of law the rights and duties that are established in R.C. Chapter 5321." Iskin at 328; *Shoemaker v. Whitt*, 129 Ohio App.3d 591, 595, 718 N.E.2d 932, 934 (Greene Cty. 1998); addition citations omitted. Further, "[r]esidential rental agreements also may incorporate the contract remedies that R.C. Chapter 5321 establishes. Iskin at 329, citing generally *Kelly v. Chillicothe Metro. Hous. Auth., No.* 10-00430 (Ohio Mun., Chillicothe, Apr. 5, 2011).

So, if we look at the basic facts in this case, we have an apartment complex that ends up in foreclosure. There were tenants residing in the apartment complex during the foreclosure proceedings. There is no indication that the purchaser of the apartment complex thought the complex was abandoned. Thus, the purchaser, Freddie Mac, should have been aware or was aware there were tenants actively living in units of the apartment complex. The tenants would have been subject to some type of rental agreement. The tenant would have had some type of security deposit arrangement under the rental agreement.

Further, Freddie Mac becomes the owner of this foreclosed apartment complex with tenants and corresponding rental agreements but gets no credit in the purchase price for security

deposits? A corporation buys a whole apartment complex with tenants and never reads the leases that they will take the property subject to? Defendant was buying residential premises. These are dwelling units. People live here. The fact that they have paid security deposits is not a shock. Did anyone read the leases? Presumably, that answer is in the negative because if someone would have read the leases it would be apparent that the lease had a unique clause addressing the recoupment of any security deposit.

The fact that this went through foreclosure will not bar plaintiffs from claims under R.C. 5321.15 and other contractual obligations. There is a lease. The lease is a contract. The lease specifically addresses what is to be done with the security deposit. Tenant is to look to the new owner for return of the security deposit. How were plaintiffs to protect themselves during the foreclosure action in assuring their security deposits got transferred to the new owner? Further, "It is the settled rule in Ohio that a purchaser of land which is in the actual possession of a third party, known to him, is chargeable with notice of any equitable title of the party in possession whatever the same may prove to be." *Endersby v. Schneppe*, 73 Ohio App.3d 212, 596 N.E.2d 1081 (3rd Dist. 1991). Citations omitted. Plaintiff's right to the security deposit is equitable.

The lease provision dealing with the security deposit is not an attempt by the contracting parties to waive Ohio law (security deposit is a personal pledge and does not obligate the subsequent purchaser) but was entered into by the parties as a valid provision in their lease. This was an additional term under the rental agreement. Pursuant to R.C. 5321.06, this is permissible. The provision is consistent with Chapter 5321 and is not prohibited by any other rule of law.

The lease provision included in the contract became so attached to, and inherent in the land that any subsequent owner would be obligated to perform it. This lease provision is of such a nature that it shall run with the land as the parties must have intended that this covenant should run with the land. There is no issue of contract interpretation. The lease is not ambiguous and must be enforced as written.

There was a definitive relinquishment of the right to go after the previous owner for the return of the security deposit and the duty would remain on the current owner.

Therefore, the magistrate recommends summary judgment be granted in favor of plaintiffs against defendant Freddie Mac. The court has read the rental agreement. It is not ambiguous. Regarding the security deposit, the tenant is to look to the new owner for return of any amount owing. Accordingly, all causes of action have been addressed and no issue of material fact is left to determine. The issue of damages will be set for a hearing in a subsequent entry.

DATE: 7/31/2013

HON. AMANDA L KUHN
MAGISTRATE

NOTICE: WRITTEN OBJECTIONS TO THIS DECISION MUST BE FILED WITHIN FOURTEEN DAYS OF THE FILING DATE OF THIS DECISION. THE OBJECTIONS MUST BE SPECIFIC AND STATE WITH PARTICULARITY THE GROUNDS OF THE OBJECTIONS. IF YOU OBJECT TO A FINDING OF FACT, A COPY OF THE TRANSCRIPT MUST BE PROVIDED TO THE COURT PRIOR TO CONSIDERATION OF THE OBJECTIONS. A TIMELY AND SPECIFIC OBJECTION IS NECESSARY TO ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF A MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW.

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