

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

JUDGMENT ENTRY RECEIVED
FOR JOURNALIZATION

JAN 20 2022

EARLE B. TURNER, CLERK

VESTA CORPORATION
Plaintiff (s)

Date: January 4, 2022

-VS-

2021 CVG 004702

KIMBERLY M HARRIS
Defendant (s)

JUDGMENT ENTRY

{¶1.} This matter was heard at trial on 10/26/21 before Magistrate John P. Mills, to whom it was assigned by Judge W. Moná Scott pursuant to Ohio Rule of Civil Procedure 53 to take evidence on all issues of law and fact. All parties appeared with counsel. The Court has independently considered all evidence and testimony properly before the Court and makes the following ruling. As discussed herein the decision of the Magistrate is adopted and judgment is rendered in favor of the Defendant.

{¶2.} This dispute concerns the HUD subsidized rental property located at 7208 Carson Ave. in Cleveland. Defendant resides at Unit 2 of the property pursuant to a written lease with Plaintiff. Plaintiff seeks restitution of the property. On or about 2/22/21, Plaintiff served Defendant with a 10-day notice of termination as required by HUD regulations. The stated reasons for the termination were (1) property damage caused by Defendant's niece on 9/17/20 and (2) the discharge of a firearm inside Defendant's apartment, resulting in injury to Defendant's minor child. On 3/8/21 Plaintiff served Defendant with a three-day notice to vacate then instituted a complaint for forcible entry and detainer on 4/26/21. The Court will address the Plaintiff's basis in order.

{¶3.} Plaintiff's first witness, property manager Deidra Pierson testified that on 9/17/21 a vehicle struck the exterior wall of the building near where Defendant resides. The vehicle was apparently driven by Defendant's niece. Defendant was not in the vehicle at the time of the accident. Plaintiff assessed the property damages to Defendant pursuant to ¶11 of the lease agreement and based the present action in part on her inability to pay the cost of the damages assessed to her.

{¶4.} Ohio's Landlord and Tenant law, which was designed to balance the rights between landlords and tenants, governs the obligations with respect to residential leases such as this one. While parties to a residential lease are generally free to contract terms of agreement, any provisions of the lease agreement that are contrary to the Landlord-

Tenant Act are unenforceable. *See* R.C. 5321.06. The lease agreement between the parties describes the tenant's liability for property damage as follows:

11. Damages: Whenever damage is caused by carelessness, misuse, or neglect on the part of the Tenant, his/her family or visitors, the Tenant agrees to pay (a) The cost of all repairs and do so within 30 days after receipt of the Landlord's demand for the repair charges; and (b) rent for the period the unit is damaged whether or not the unit is habitable. . . . (internal formatting omitted).

{¶5.} This lease provision appears to make the tenant liable for any damage to the premises caused by the negligence of other parties, without any determination of tenant negligence. But the duty not to damage the premises is already addressed by statute: R.C. 5321.05(A)(6) provides that a tenant "personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises." *Id.* The landlord's ability to recover property damages is addressed at R.C. 5321.05(C)(1). But the quoted language is virtually identical to language described in *Kinn v. Showe Management Corp.*, 3rd Dist. Hancock No. 5-01-46, 2002 WL 462859 (March 27, 2002). In *Kinn*, the appeals court found that lease terms requiring a tenant to repay damages stemming from a fire were unenforceable under R.C. 5321.06 when there was no showing that the tenant herself was negligent or otherwise at fault for the damages.

{¶6.} The Court finds that Section 11 of the lease agreement is inconsistent with R.C. 5321.05(A)(6) and is unenforceable under these circumstances. Plaintiff provided the Court with no evidence that Defendant herself was negligent, and the evidence and testimony before the Court indicates that the acts in question (striking the wall of the premises with a vehicle) were conducted by a non-party to the lease agreement without Defendant's knowledge or consent. Plaintiff likewise presented the Court with no evidence that Defendant failed to prevent her niece from negligently damaging Plaintiff's building. This finding is consistent with both the logical reading of the statute and relevant case law. *See Allstate Ins. Co. v. Dorsey*, 46 Ohio App. 3d 66, 545 N.E.2d 920 (9th Dist. Summit 1988) (invalidating clause holding the tenant liable to the landlord for damage to property caused by the carelessness of any party); *Jenkins v. Boyce*, 94 Ohio Misc. 2d 98, 703 N.E.2d 392 (Mun. Ct. 1998) (disallowing provision imposing liability on tenant for damages resulting from criminal acts of trespassers).

{¶7.} R.C. 1901.13 provides that, "Whenever an action or proceeding is properly brought in a municipal court within Cuyahoga County, the court has jurisdiction to determine, preserve, and enforce all rights involved in the action or proceeding, and to hear and determine all legal and equitable remedies necessary or proper for a complete determination of the rights of the parties." R.C. 1901.13(B). Such equity considerations

support the resolution of this issue in Defendant's favor. See *S. Hotel Co. v. Miscott*, 44 Ohio App.2d 217, 337 N.E.2d 660 (1975) (municipal court may "weigh all equitable considerations in determining whether a forfeiture is to be declared."). This Court has previously applied similar equitable principles in favor of tenants when it is clear from the record they have had no direct hand in damaging a landlord's property under R.C. 5321.05(A)(6). See *Cuyahoga Metro. Hous. Auth. v. Harris*, 139 Ohio Misc.2d 96, 2006-Ohio-6918, ¶13, 861 N.E.2d 179, 181 (M.C.) (alleged lease violation for conduct of guest does not preempt the equity authority of the court to exercise its discretion to enter judgment in favor of an innocent tenant in an eviction action).

{¶18.} Ohio appellate courts are not unanimous in their application of R.C. 5321.05(A)(6); at least one court has upheld a lease provision that expressly provides for joint and several liability between tenants for each other's negligence. See *Wayne Mut. Inc. Co., et al. v. Parks, et al.*, 9th Dist. Summit No. 20945, 2002 -Ohio- 3990 (term imposing joint and several liability on tenants is not inconsistent with R.C. 5321.05(A)(6)). But the damage in this instance was caused by a tenant's guest who is not a party to the lease, rendering this distinction inapplicable.

{¶19.} The second basis Plaintiff raised as a cause for eviction is a shooting incident that occurred on 11/18/20. Plaintiff alleges that Defendant discharged a firearm in her unit in violation of Plaintiff's safety policies. Defendant denies that the shooting occurred within her apartment; Defendant states that an unknown person fired at her residence from outside.

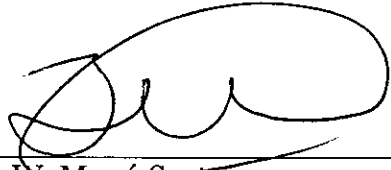
{¶10.} Plaintiff's second witness Joseph Perry was employed as a security guard at Plaintiff's property at the relevant time periods. Mr. Perry is a certified peace officer in Ohio and has familiarity and training with firearms. In relevant part, Mr. Perry testified that he was present at Defendant's unit following a reported incident involving a firearm. Mr. Perry was inside the unit for "approximately five to seven minutes" before Cleveland Police closed off the scene. Mr. Perry testified that he saw a bullet hole in a pillow, blood on a couch, and "bullet fragments" inside the unit. Mr. Perry did not, however, observe a handgun or other physical evidence that would allow the Court to conclude by a preponderance of evidence that a firearm was actually discharged inside, as opposed to outside the apartment. Defendant testified on this issue by stating that she was not present at the time of the shooting and otherwise denies that she violated safety policies by discharging a weapon in the premises.

{¶11.} Mr. Perry is not a qualified expert in ballistics and Plaintiff has not produced any other expert under Evid.R. 703 or HCLR 3.10. Unless testimony is within the comprehension of a layperson, expert testimony is necessary. *Ramage v. Central Ohio Emergency Serv., Inc.*, 64 Ohio St.3d 97, 102, 592 N.E.2d 828, 833 (1992) citing Evid.R. 702 and 703. The Court finds that Plaintiff's attempt to extrapolate the origin of

a bullet from circumstantial evidence, i.e. bullet fragments and holes, is beyond the comprehension of a layperson and an expert was required to establish such a conclusion. Simply put, the evidence before the Court is disputed and incomplete for the assumptions Plaintiff asks the Court to make.

{¶12.} Plaintiff's evidence and testimony does not establish that Plaintiff has met its burden of proof on its first and sole cause of action. Accordingly, judgment is rendered to Defendant. No further matters are pending before the Court; each party shall bear their own costs.

It is so ordered.



Judge W. Mona Scott
Housing Division

Service: Copies sent by regular U.S. mail to parties/counsel on 1/20/22 by Jm.

☒ Clerk to issue notice of Final Appealable Order