**CLEVELAND MUNICIPAL COURT**
**HOUSING DIVISION**
**CUYAHOGA COUNTY, OHIO**
**Judge Raymond L. Pianka**

**Nafeesah Walker** **DATE: July 27, 2006**

**Plaintiff**

**-vs-** **CASE NO.: 2006 CVH 4305**

**Tomi Enterprises; and**
**Craig Brown; and**
**Gary Brown; and**
**Margaret Brown**

**Defendants** **JUDGMENT ENTRY**

The Court, having reviewed the *Magistrate's Decision* of September 26, 2006 under Ohio Rule Of Civil Procedure 53(E)(4), adopts that decision.

Judgment is rendered for Plaintiff against Defendant Tomi Enterprises, Inc., Defendant Craig Brown and Defendant Gary Brown in the amount of $185,804 plus costs with interest from the date of judgment. Judgment is for Defendant Margaret Brown on Plaintiff's claims against her.

**JUDGE RAYMOND L. PIANKA**

SERVICE

A copy of this *Judgment Entry* was sent via regular U.S. Mail to the following on __/__/__. _____.

Attorney for Plaintiff
Thomas P. Owen
Marion Building
1276 West 3rd, Suite 411
Cleveland, OH 44113

Defendants
Tomi Enterprises
Craig Brown
Gary Brown
Margaret Brown
16828 Harvard Ave., Suite 28012
Cleveland, OH 44128

Tomi Enterprises
c/o Agent Derek Brown
Craig Brown
Gary Brown
Margaret Brown
59 John St.
Bedford, Ohio 44146

Tomi Enterprises
Craig Brown
Gary Brown
Margaret Brown
2962 S. Moreland Blvd.
Cleveland, OH 44120-2716

**CLEVELAND MUNICIPAL COURT**
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**Plaintiff**

**-vs-** **CASE NO.: 2006 CVH 4305**

**Tomi Enterprises; and**
**Craig Brown; and**
**Gary Brown; and**
**Margaret Brown**

**Defendants** **MAGISTRATE'S DECISION**

The Court held a default hearing in this case July 27, 2006. The parties appeared before Magistrate David D. Roberts, Judge Raymond L. Pianka having referred the case to Magistrate Roberts to take evidence on all issues of law and fact.

Plaintiff appeared with counsel. Defendants did not appear.

**Findings Of Fact**

1. In 2005, Plaintiff was renting an apartment for herself and her children at 2962 South Moreland, Cleveland, Ohio.

2. The address of the property entitled Defendant to send her children to the Shaker Heights City Schools.

3. Defendant Tomi Enterprises became the owner of the building while Plaintiff was still living in her apartment.

4. Defendants Craig Brown and Gary Brown were the representatives of Tomi Enterprises.

5. Defendant Craig Brown filed a lawsuit against Plaintiff in this Court February 3, 2006, *Craig Brown v. Nafeesah Walker*, 2006 CVG 1375.

6. Defendant Craig Brown's complaint alleged that Plaintiff had failed to pay rent for January 2006.

7. The Court held a hearing in that case February 3, 2006. Defendant Craig Brown and Plaintiff both attended the hearing.

8. Plaintiff provided to the Court documentation of a recent bankruptcy filing.

9. The presiding magistrate announced that the Court would stay the case because of the automatic stay that a bankruptcy filing puts in place.

10. The magistrate filed a recommendation that the case be stayed, which the judge adopted that same day, February 3, 2006.

11. Defendant Craig Brown spoke to Plaintiff while they were both in the courthouse and threatened to do whatever it would take to force her to move.

12. When Plaintiff returned to her apartment later that day, she found that someone had turned off the electrical service to her apartment.

13. The loss of electricity caused Plaintiff's groceries to spoil.

14. On February 7, 2006, Defendant Craig Brown telephoned Plaintiff claiming that he needed to gain access to her apartment to stop a water leak that was causing water to drip into the apartment below hers.

15. Plaintiff arranged for her brother to let Defendant Craig Brown and Defendant Gary Brown into the apartment.

16. Plaintiff's brother let Craig and Gary into the apartment.

17. Craig and Gary tricked Plaintiff's brother into standing near an exit door, and then physically forced him through the door, closing it behind him.

18. Defendants then changed the locks on Plaintiff's door and boarded up an entrance.

19. Plaintiff came that day to try to enter her apartment; she was able to remove the boards but found that her key would not work the new lock.

20. Plaintiff called the police who responded but did not force entry into the apartment for Plaintiff.

21. Plaintiff picked up her children from school and took them to stay at their grandmother's house.

22. The next day, February 8, 2006, Plaintiff filed this lawsuit, seeking a court order that she be allowed to enter her apartment.

23. The Court granted a temporary restraining order on that day.

24. Defendants did not ever comply with the restraining order.

25. Some days later Plaintiff's brother was able to force entry into the apartment to retrieve a limited number of Plaintiff's belongings.

26. Approximately two weeks later Plaintiff hired a locksmith to force entry into the apartment.

27. Upon entering the apartment, Plaintiff found that Defendants had gone through all the belongings in the apartment.

28. Defendants had taken some of the items, especially items that Plaintiff had put into boxes in the event that she would need to move.

29. Defendants took other items in a deliberate effort to render Plaintiff's belongings useless. Defendants took the drawers from a dresser, leaving the dresser. Defendants took pillows from the couch. Defendants took one shoe from each pair of children's shoes belonging to Plaintiff's children.

30. Defendants took items or memorabilia from Plaintiff, including poems her children had written, art they had made, certificates they had earned at school trophies that they had won, and photographs of them and of Plaintiff as a child.

31. Defendant Craig Brown and Defendant Gary Brown were present on the day that Plaintiff retrieved what was left of her belongings from the apartment.

32. Plaintiff's mother was present and told Defendants that what they had done was wrong.

33. Defendants told Plaintiff's mother that they had no remorse and were instead proud of what they had done; they boasted that they had done the same thing on many occasions over the course of 30 years as landlords.

34. Plaintiff suffered the inconvenience of living with her mother but taking her children to Shaker Heights City schools.

35. Defendants contacted the Shaker Heights City schools to inform the schools that Plaintiff was no longer living at her address, causing Plaintiff to have to communicate with school counselors and the registrar about her plight.

36. Plaintiff's children were emotionally upset at home and at school, frequently crying, embarrassed, uncomfortable and ashamed because they had been forced from their home and had lost their belongings.

37. Plaintiff eventually moved to a new apartment.

38. The property Defendants own and manage has 14 units, which rent for approximately $685 per month, a total of $9590 per month or $115,080 per year.

**Conclusions Of Law**

The Court concludes that Defendants Tomi Enterprises, Inc., Craig Brown and Gary Brown violated Ohio Revised Code §5321.15(A) by threatening to use force to remove Defendant from the property, by intentionally causing the termination of electric service to her apartment and by boarding up the apartment and changing the locks. These Defendants are liable to Plaintiff for damages under §5321.15(C). Plaintiff did not provide any testimony proving that Defendant Margaret Brown participated in the violation of Plaintiff's rights as a tenant. The Court will use "Defendants" to mean Defendants Tomi Enterprises, Inc., Craig Brown and Gary Brown.

The Court concludes that Plaintiff's actual damages were $16,774 in lost personal property as listed on *Plaintiff's Exhibit 1*. The Court concludes that some of the damages listed on *Plaintiff's Exhibit 1* were not proximately caused by Defendants' actions, such as the cost of extra gasoline or the need to drop a college course.

Defendants violation of O.R.C. §5321.15(A) supports an award of punitive damages because Plaintiff proved that the acts were made with malice. *Brookridge Party Center, Inc. v. Fisher Foods, Inc. (1983), 12 Ohio App.3d 130, 12 OBR 451, 468 N.E.2d 63; Allen v. Lee (1987), 43 Ohio App.3d 31, 538 N.E.2d 1073.* Malice is shown by evidence of hatred, ill will, revenge, or "a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm." *Preston v. Murty (1987), 32 Ohio St.3d 334, 336, 512 N.E.2d 1174, 1176; Villella v. Waikem Motors, Inc. (1989), 45 Ohio St.3d 36, 37, 543 N.E.2d 464, 466.* Defendants expressed their hatred to Plaintiff by threatening her and boasting to her mother of what they had done. They acted out of revenge when she prevented an eviction from going forward. They showed ill will by damaging her belongings so that they would not be useful to her, throwing out one of a pair of shoes, taking the drawers from a dresser. Their actions were the very definition of malice.

The determination of the amount of punitive damages is within the discretion of the trier of fact as long as the award is not based upon passion and prejudice. *Saberton v. Greenwald (1946), 146 Ohio St. 414, 32 O.O. 454, 66 N.E.2d 224; Levin v. Nielsen (1973), 37 Ohio App.2d 29, 66 O.O.2d 52, 306 N.E.2d 173.* The Court may consider a variety of factors, including but not limited to:

the relationship between the parties,
the probability of recurrence unless the conduct is deterred,
the harm that is likely to occur from similar conduct,

the harm that actually occurred,
the reprehensibility of the conduct,
the nature of the wrong,
the removal of any financial profit so that future conduct results in a loss,
the financial status of the parties,
the deterrence value,
a reasonable relationship between compensatory and punitive damages,
whether the wrong is a single occurrence or a pattern of wrongful conduct.

*Myer et al. v. Preferred Credit, Inc.* (2001), 117 Ohio Misc.2d 8, ¶66 (Harrison County Court of Common Pleas). The trier of fact must also take into account the financial circumstances of the party against whom punitive damages are to be awarded.

Each of these factors supports a larger, not smaller, award of punitive damages against Defendant Tomi Enterprises, Defendant Craig Brown and Defendant Gary Brown. Defendants' relationship to Plaintiff was one of landlord to tenant, giving Defendants greater power and greater responsibility and making their intentional violation of that power all the more reprehensible. The evidence demonstrates that Defendants' actions were part of a conscious pattern of mistreating tenants, suggesting that only a sizeable award of punitive damages will stop Defendants from doing the same thing again to another tenant. The type of conduct, using force to drive a tenant from the tenant's home, is likely to cause great harm to future tenants. The actual conduct did cause great harm to Plaintiff, most particularly emotional harm to her and her children. For all these reasons, the conduct is reprehensible and the nature of the wrong supports a larger award of punitive damages. A larger award will also prevent Defendants from benefiting from their abusive self-help tactics to illegally evict their tenants. The financial status of the Defendants, owners of a large, valuable apartment building, supports a larger award. A larger award may also serve to deter Defendants from repeating their illegal behavior. All the evidence suggests that that behavior is part of a pattern of wrongful conduct and not a single occurrence. The punitive damages should bear a reasonable relationship to Plaintiff's compensatory damages of $16,774 but need not be limited to any particular multiple of this amount. *TXO Prod. Corp. v. Alliance Resources Corp.* (1993), 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366. The Court can make a rough estimate of Defendants' income based on the $115,080 per year that the property could command in rent.

Considering all these factors, the Court awards punitive damages of $167,740. At ten times the amount of Plaintiff's actual damages, the award is reasonably related to those damages. At not more than two years of the building's income stream, the award is not excessive compared to Defendants' income. The Court emphasizes again that each and every factor to be considered when awarding punitive damages supports a larger, not smaller award. Defendants committed exactly the abuse that O.R.C. §5321.15(A) is meant to prevent.

Defendants' violation of O.R.C. §5321.15(A) also supports an award of reasonable attorney fees. Plaintiff's attorney filed his *Notice Of Fees* August 9, 2006 with an itemization of 12.9 hours at $100 per hour. When determining the amount of a

reasonable attorney's fee, the Court considers the factors in Code Of Professional Responsibility DR 2-106(B), including the time and labor required, the difficulty of the claims involved, the fee customarily charged in the locality for such legal services, the amount involved and results obtained, and the experience, reputation and ability of the lawyer. The Court begins by calculating the lodestar amount, which is the number of hours reasonably expended on the claim multiplied by an hourly rate. The Court can then adjust the lodestar amount based on the factors in DR 2-106(B). *Latio v. Rapien*, No. C-970887, 1998 WL 655482 at *1 (Ct. App. Hamilton Cty. Sept. 25, 1998).

This Court begins its analysis with a lodestar amount of $1290 based on 12.9 hours at $100 per hour and then considers modifying the award upward or downward based on the factors in DR 2-106(B). The Court finds that 12.9 hours is a reasonable number of hours for Plaintiff's counsel to have expended on Plaintiff's claim. The Court does not find that the factors in DR 2-106(B) support either an increase or decrease in the lodestar amount. DR 2-106(B)(1). The Court finds that the $1290 is proportionate to the results obtained in this litigation, a judgment for $184,514. DR 2-106(B)(4).

Plaintiff's final damages are $185,804 as the sum of $16,774 in compensatory damages, $167740 in punitive damages and $1290 in attorney fees.

**Decision**

Judgment is rendered for Plaintiff, jointly and severally, against Defendant Tomi Enterprises, Inc., Defendant Craig Brown and Defendant Gary Brown in the amount of $185,804 plus costs with interest from the date of judgment. Judgment is for Defendant Margaret Brown on Plaintiff's claims against her.

**Magistrate David D. Roberts**

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(E)(3). 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 via regular U.S. Mail to the following on __/__/__. _____.

Attorney for Plaintiff
Thomas P. Owen
Marion Building
1276 West 3rd. Suite 411
Cleveland, OH 44113

Defendants
Tomi Enterprises
Craig Brown
Gary Brown
Margaret Brown
16828 Harvard Ave., Suite 28012
Cleveland, OH 44128

Tomi Enterprises
c/o Agent Derek Brown
Craig Brown
Gary Brown
Margaret Brown
59 John St.
Bedford, Ohio 44146

Tomi Enterprises
Craig Brown
Gary Brown
Margaret Brown
2962 S. Moreland Blvd.
Cleveland, OH 44120-2716