

IN THE ATHENS COUNTY MUNICIPAL COURT
ATHENS, OHIO

LAURIE HOUTSINGER and
STEPHEN ZIELINSKI,

Plaintiffs

Case No. RE 123

vs.

ALICE and ED RENZELLI,

Defendants.

FILED
THE ATHENS COUNTY MUNICIPAL COURT
DECISION
JUL 31 1987
CLERKS OFFICE
ATHENS COUNTY, OHIO

This cause came on for hearing pursuant to Plaintiff's application for rent escrow pursuant to Ohio Revised Code Section 5321.09, Defendant Renzelli's application for release of funds and award of attorney's fees pursuant to Ohio Revised Code Section 5321.09(D) and, Plaintiff's complaint for damages and injunctive relief.

The gravamens of the complaint include matters relevant to "master metered" residential rental units in addition to the more usual allegations regarding health and safety code violations.

A term in a rental agreement is not valid where inconsistent with or prohibited by Chapter 5321 of the Revised Code or any rule of law. Section 5321.06 O.R.C. The regulation alleged to be violated by the term in this lease requiring the tenant to pay for a master meter that services other tenants' units is 4901:1-18-07(G) requiring the landlord to be designated customer on new applications for such service. Insofar as the instant lease was entered into on September, 1986 with the service meter put in Plaintiff's name on September 8 or September 9, 1986 and the

regulation in question was journalized on October 7, 1986, with a later effective date, it is clear that this lease is not a "new application" so as to come within the scope of the regulation. The Court declines the invitation to declare the lease term in question illegal for the reasons that the lease here was entered into before the regulation became operative and the regulation by its own terms is prospective and applies only to new applications.

More troublesome is the claim relative to the electrical wiring at the residence in question. As part of discovery, the parties have discovered that the electric meters were not allocating electricity according to the representations of the landlord (herein Defendant). Specifically, these Plaintiffs paid for utilities not utilized by them. While there are various suggested formulas for determining or allocating electrical usage between the parties, the Court notes that the Defendant here is the party who misrepresented service to the Plaintiffs and it is Defendant here that, through privity of contract, is in the best position to recover any damages from the contractor.

The Court finds for Plaintiffs upon their claim for damages to the extent of 60% of Plaintiffs' total electric bill for the premises in question. While the proportion cannot exactly reflect the appropriate division between the parties, said figure does appear reasonable to reimburse Plaintiffs while at the time allowing to Defendant the benefit of the general rule that damages in Ohio reflect

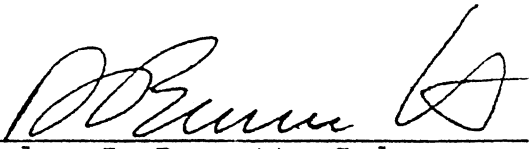
only harm actually suffered by Plaintiffs. 30 Ohio
Jurisprudence 3rd, Damages, Section 8.

As to the more usual damages, it is clear that the property in question was in violation of several code sections for at least the period of time from January 27, 1987 through March 13, 1987. In view of the inconvenience caused, the Court finds that rent should be reduced 20% to reflect lost use of the right to enjoyment of the premises by both Plaintiffs. For purposes of calculations, the Court assumes that each Plaintiff paid the sum of \$150.00 per month which would roughly approximate the \$ 450.00 per quarter rental payment.

The Court declines to award damages pursuant to Revised Code Section 5321.09(D). While the Court does not enjoin Defendant at this time based upon Defendant's testimony that appropriate repairs are proceeding as expeditiously as possible, it does not necessarily follow that Plaintiffs did not have good cause to file an application for rent escrow pursuant to R.C. Section 5321.09. Good cause to file cannot be doubted where Code violations are shown by Athens City Code inspections.

Counsel for the parties are directed to submit either an agreed final Journal Entry within seven (7) days or proposed journal entries within seven (7) days.

It is so ORDERED.



Douglas J. Bennett, Judge