

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

Donna Dreher, :
Plaintiff, :
v. : CASE NO. 2004 CVI 043150
Jennifer Lauer, : MAGISTRATE PAAT
Defendant. :

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MAGISTRATE'S DECISION

This matter came before Magistrate Antonio B. Paat, Jr. on November 16, 2004. Plaintiff was self represented. Defendant was represented by counsel.

All parties and witnesses were sworn. The proceedings were tape recorded.

Based upon the evidence presented and considering the credibility of the witnesses, the magistrate makes the following Conclusions of Law and Decision.

CONCLUSIONS OF LAW

In a civil action, the plaintiff bears the burden of proving the complaint by a preponderance of the evidence. The defendant bears the burden of proving the counterclaim. Burden of proof is the necessity or duty to prove facts in dispute on an issue raised between the parties in a case. A preponderance of evidence is the greater weight of evidence which is more credible and convincing to the mind.

Here, plaintiff alleges that defendant, a former tenant, painted the rented apartment and failed to restore it to the original color prior to vacating the apartment. Plaintiff seeks judgment for the cost to repaint the apartment; \$1250.00.

Defendant alleges that plaintiff approved of the colors that defendant used to paint the apartment and that plaintiff agreed to allow the painting without the need to repaint the premises to the original color. Defendant seeks return of her security deposit, a half month of rent, and statutory damages.

Based on the magistrate's findings of fact and considering the credibility of the witnesses, the magistrate concludes that the defendant has established her case by a preponderance of the evidence.

Defendant proved that the walls in the apartment were white when she took possession and that she negotiated with plaintiff to paint the apartment to change the color. Plaintiff eventually approved of the colors used and approved of the paint job. Plaintiff did not require that the apartment be repainted white upon

defendant's vacancy.

Defendant established that plaintiff has improperly retained defendant's \$500.00 security deposit. Defendant also established that plaintiff agreed to return half of the rent for the month of July 2004, \$250.00, because defendant agreed to vacate the premises in the middle of that month to accommodate plaintiff's new tenants. Plaintiff has not paid the \$250.00.

Pursuant to O.R.C. 5321.16 plaintiff is also liable for an amount equal to the amount of the security deposit that was wrongfully withheld, which in this case is \$500.00. The statute also allows for judgment for attorney fees. Based on the evidence presented on the hearing date, the magistrate finds that defendant's attorney fees total \$750.00.

In summary, defendant has established that plaintiff is liable for the return of defendant's security deposit of \$500.00, statutory damages of \$500.00, \$250.00 for failure to return a half month of rent as agreed and attorney's fees.

DECISION

For the forgoing reasons, judgment for defendant in the amount of \$1250.00, attorney fees of \$750.00, court costs and interest from the date of judgment.

Plaintiff's case is dismissed.

A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law contained in this decision unless the party timely and specifically objects to that finding or conclusion.

Civ. R. 53(E)(3).


MAGISTRATE ANTONIO B. PAAT, JR.

DATED: January 4, 2005

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