

**IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO**

**Brock Mealer et al
(Plaintiff),**

v.

**Robert Schneider
(Defendant).**

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Case Number: 2007 CVI 024982

Magistrate Mark A. Hummer

Magistrate's Report and Decision

This cause came on for hearing before Magistrate Hummer. Attorney Andrew Ruzicko represented plaintiff. Attorney Charles Underwood represented defendant. At the outset of the hearing, without objection, Mark Jones was added as a named defendant. Over the objection of defendant, Matt Kinder was added as a named plaintiff. During the trial, without objection, Patty Schneider was added as a named defendant. Approximately 5 1/2 hours of sworn testimony was taken on August 8, 2007 and September 17, 2007. Based on that testimony, the magistrate finds as follows:

Findings of Fact

1. Plaintiffs are former tenants at a property at 127 Clinton Avenue in Columbus. Plaintiffs originally rented from Buckeye Real Estate for a lease term that was to run from September 2004 through August 2005.
2. On or about January 12, 2005, plaintiffs renewed the lease agreement with Buckeye Real Estate (Plaintiff's Exhibit 1) for a term that was to run from September 2, 2005 through September 2, 2006.
3. In June of 2005, defendants bought the property and became landlord in place of Buckeye Real Estate.
4. Plaintiffs paid a security deposit of \$990.00 at the beginning of the tenancy.
5. Plaintiffs occupied the premises for the duration of the lease term they had signed up for and vacated the unit as agreed in September 2006.

6. In September of 2006 plaintiff Brock Mealer had a telephone conversation with defendant Robert Schneider during which they discussed the security deposit. Mr. Mealer did not provide Mr. Schneider a forwarding address during the telephone conversation.

7. On or about October 10, 2006, Mr. Mealer sent Mr. Schneider a letter (Plaintiff's Exh. 4) with a forwarding address.

8. On or about November 21, 2006, Mr. Schneider returned \$150.00 of the security deposit to Mr. Mealer. Attached to the check was a letter written by Mr. Schneider (Plaintiff's Exh. 6).

9. On or about November 28, 2006, Mr. Mealer sent Mr. Schneider a letter (Plaintiff's Exh. 5) asking for the return of the balance of the security deposit.

10. The parties exchanged several further correspondences (Plaintiff's Exh. 8, 9, 10, and 14), but no further portion of the deposit was returned by defendant.

11. On June 4, 2007, plaintiffs filed their small claims action.

Conclusions of Law

The party who brings an action must prove the allegations in the complaint by a preponderance of the evidence. This is called the burden of proof. Plaintiffs argue the security deposit was wrongfully withheld and that they are entitled to a judgment in their favor. Defendants argue the deductions from the security deposit were proper and that the complaint should be dismissed.

Based on the evidence presented and after weighing the credibility and demeanor of the witnesses, the magistrate concludes that the preponderance of the evidence supports plaintiffs' position and that they are entitled to a judgment in the amount of the \$840.00 portion of the security deposit that was wrongfully withheld.

Plaintiffs testified credibly that they did not damage the property beyond reasonable wear and tear during the tenancy. Although defendants testified about the conditions they found at the end of the tenancy, they were unable to rebut the credible testimony of plaintiffs' witnesses that most if not all of the problems identified by defendant pre-dated the tenancy. In other words, the credible testimony of plaintiffs and their witnesses was unrebutted with respect to the condition of the unit when the tenancy

began. While defendants did testify credibly about the repairs they faced at the end of the tenancy, they did not prove that plaintiffs were the source of the problem. Because of that, the evidence supports the conclusion that the \$840.00 was wrongfully withheld in accord with R.C. 5321.16.

Plaintiffs' claim for double damages pursuant to R.C. 5321.16 is unfounded. R.C. 5321.16(C) authorizes recovery of double damages and reasonable attorney fees, but R.C. 5321.16(B) provides a limitation, as follows:

“Any deduction from the security deposit shall be itemized and identified by the landlord in a written notice delivered to the tenant together with the amount due, within thirty days after termination of the rental agreement and delivery of possession. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address as required, the tenant shall not be entitled to damages or attorneys fees under division (C) of this section.”

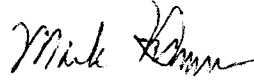
Brock Mealer's own testimony and his own written words (plaintiff's exhibit 4) show that he did not provide a forwarding address to defendants until October 10, 2006, some 38 days after the end of the tenancy. The words of the statute unambiguously prohibit the recovery of double damages or attorney fees unless the forwarding address has been provided so as to allow the landlord to account for the deposit within 30 days after the termination of the rental agreement. Although plaintiffs claim defendant was aware of a “permanent” address by virtue of the addresses for plaintiffs' parents that were contained in the rental application that preceded the signing of a lease, there is no indication in the record that the parties ever discussed the permanency of the addresses of the tenants' parents during or at the end of the lease term. The words of the statute require the landlord to be provided with a “forwarding address or new address to which the written notice and amount due from the landlord may be sent.” R.C. 5321.16(B). That forwarding address was not made known to the landlord until October 10 at the earliest. As a result, plaintiffs have no claim to double damages or attorney fees.

Decision

Judgment in favor of plaintiffs and against defendants in the amount of \$840.00 plus interest.

Costs to defendants.

1/22/08
Date



Magistrate Mark A. Hummer

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(D)(3).

cc:

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