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**IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO  
SMALL CLAIMS DIVISION**

**Richard L. Moore,  
Plaintiff**

vs.

**Gloria Leeper  
Defendant**

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**Case No. 2007 CVG 029203  
Case No. 2007 CVG 037362  
Case No. 2007 CVR 040597  
  
Magistrate David S. Jump**

**MAGISTRATE'S DECISION**

These consolidated cases came on for trial before Magistrate David S. Jump on the Order of Reference from Judge Michael T. Brandt. Attorney Andrew J. Ruzicho II represented the landlord Richard Moore (hereinafter referred to as "the plaintiff"). The tenant Gloria Leeper (hereinafter referred to as "the defendant") appeared without counsel. Based on the evidence and arguments presented, after weighing the credibility of the witnesses, the magistrate issues the following decision.

The defendant rented from the plaintiff residential property located at 3070 Pine Valley Road in Columbus, Franklin County, Ohio, pursuant to a written lease (Plaintiff's Exhibit 17). This residential property is a three bedroom home with a garage (Plaintiff's Exhibit 1). The defendant rented the property for two years from September 2005 until September 2007. The property is Section 8 property for which the sanctioned rent was \$588.00. The defendant's share of the rent was \$226.00. At the outset of the lease term, the defendant paid a security deposit to the plaintiff in the amount of \$588.00, the same amount as the monthly rent.

Pursuant to paragraph 18 of the written lease, the plaintiff was responsible for paying all utilities. However, the plaintiff was not satisfied with the amount of rent authorized by Section 8. He was only willing to rent the property to the defendant if the defendant paid him more money than was approved by Section 8. In order to increase his revenues, the plaintiff entered

into an oral agreement with the defendant for the defendant to pay the utilities. The defendant paid all utilities throughout her two year tenancy. Defendant's Exhibits F, O and U are partial itemizations of the amounts the defendant paid during her tenancy for gas, water and electric services, respectively.

When the defendant moved into the property, the plaintiff asked her if he could leave some of his things, including a vehicle, in the garage for a few days. The defendant agreed. However, the plaintiff did not remove his personal property after a few days as promised. He left the vehicle in the garage for approximately one year. When he removed the vehicle from the garage, he left it in the driveway for more than a month before finally removing it from the property. The plaintiff left other items of personal property in the garage throughout the defendant's tenancy. Because the plaintiff continued to occupy part of the garage with his personal property, the defendant was denied full use of the garage. Defendant's Exhibits G and R are pictures of the plaintiff's personal property that he left inside the garage.

At move-in, the defendant discovered that the plaintiff had left the property in a filthy condition. Defendant's Exhibit H and I are pictures of the trash and other items the plaintiff had left in the basement when the defendant moved into the house. Defendant's Exhibit J is a picture of an old chair the plaintiff left at the property. The defendant and her family and friends had to clean the property thoroughly.

The plaintiff did not give the defendant a key to the security locks. The defendant called the plaintiff in an effort to get a key, but the plaintiff did not respond. The defendant changed the locks so she would have a key. She gave the plaintiff a copy of the key that fit both the house and garage doors.

The home had roof leaks, plumbing leaks and other serious problems during the defendant's tenancy. The plaintiff was not willing to make the repairs himself. The defendant met with the plaintiff several times during her tenancy to talk about the need for repairs. The plaintiff told the defendant to make the repairs or hire someone to make the repairs and he would reimburse her. The defendant made the repairs at her expense. She paid \$600.00 for roof repairs and other interior repairs and \$250.00 to repair peeling wallpaper required to maintain CMHA approval (Defendant's Exhibit N). The plaintiff has not reimbursed the defendant for the cost of her repairs.

In addition, when it was time to turn on the furnace, the defendant discovered that the furnace did not work. The gas company red tagged the furnace because of the defect (Defendant's Exhibit D). The plaintiff told the defendant to call Midwest Heating & Cooling to make the repairs (Defendant's Exhibit E). The defendant paid for the furnace repairs herself. The defendant also had to make furnace repairs several other times during her tenancy. On one occasion, she withheld a portion of her rent to offset the cost of the repairs. The plaintiff accepted the defendant's reduced rent payment without objection.

In May of 2007, a Section 8 housing inspector found that the house did not pass HUD housing quality standards because of numerous deficiencies (Defendant's Exhibit CC). Because the plaintiff did not make the required repairs, CMHA cancelled the housing assistance payment contract effective August 31, 2007 (Defendant's Exhibit DD).

On August 31, 2007, the defendant paid \$588.00 into escrow with the Clerk of Court as rent for September, 2007, because the defendant was not going to be able to completely vacate the property by the end of August. The defendant completed her move from the property on September 3, 2007.

After the defendant vacated the property, the plaintiff assessed damages to the defendant. The plaintiff withheld the defendant's entire security deposit. The plaintiff did not send the defendant an itemized statement of the security deposit disposition. The defendant did not give the plaintiff her forwarding address.

In these consolidated actions, the plaintiff is seeking an award of damages in excess of the defendant's security deposit. The plaintiff alleges that the defendant owes rent for the entire month of September, 2007. The plaintiff also alleges that the defendant is liable for damage to the property beyond ordinary wear and tear. The defendant has filed a Counterclaim seeking the return of her security deposit and other damages. In addition, the defendant seeks the return of the money she paid into escrow.

It is a fundamental principle of law that the party alleging facts has the burden of proving those allegations. *Ohio Fuel Supply Co. v. Shilling* (1920), 101 Ohio St. 106. That proof must be by a preponderance of the evidence. *Re Walker's Estate* (1954), 161 Ohio St. 564. In a case involving the withholding of a security deposit, it is the landlord's burden to prove that he was justified in withholding the security deposit. *Zeallear v. F & W Properties* (July 25, 2000), Franklin App. No. 99AP-1215, unreported.

The plaintiff alleges that the defendant caused significant damage to the property beyond ordinary wear and tear, including damage to a window frame, the garage door, a security door and to the landscaping (Plaintiff's Exhibits 10 through 14). The plaintiff has not proved by the preponderance of the evidence that the defendant is liable for any of these items. The defendant and her witnesses testified credibly that the defendant did not cause the alleged damage to the property. One of the defendant's witnesses testified that he saw the plaintiff damage the garage

door himself by trying to pry the door open. The defendant and her witnesses are far more credible than the plaintiff.

The plaintiff also claims that the defendant took a microwave oven and thermostat that belong to the plaintiff. The plaintiff has not proved by the preponderance of the evidence that the defendant took those items. The defendant replaced the thermostat as part of the repairs to the heating system during the tenancy. Those are repairs that the plaintiff should have made in compliance with his statutory duties as a landlord pursuant to ORC §5321.04.

The plaintiff also alleges that the defendant owes for a water bill that accrued at the end of the defendant's tenancy (Plaintiff's Exhibit 2). The defendant is not liable for that bill. Pursuant to the terms of the parties' written lease, the plaintiff is responsible for all utilities (Plaintiff's Exhibit 17, paragraph 18).

The plaintiff has proved by the preponderance of the evidence that the defendant remained in the home until September 3, 2007. The plaintiff has proved by the preponderance of the evidence that he was justified in withholding from the defendant's security deposit an amount equal to three days of rent. Because the monthly rent was \$588.00, rent accrued at a daily rate of \$19.60 per day. The plaintiff was justified in withholding \$58.80 from the defendant's security deposit to cover those three days.

The plaintiff argues that he should be entitled to retain the entire security deposit to cover rent for the entire month of September because the defendant did not give him notice that she was going to vacate the property. The plaintiff's argument is not persuasive. The plaintiff had notice that the defendant would be vacating the property. Section 8 canceled the contract because of the plaintiff's failure to maintain the property in a suitable manner. The notices of

cancellation from Section 8 (Defendant's Exhibits BB, CC and DD) were sufficient notices that the defendant would be vacating the property.

The plaintiff has not proved by the preponderance of the evidence that he was justified in withholding anything more than \$58.80 from the defendant's security deposit. He also has not proved that he is entitled to recover any other sums from the defendant on his Complaint. As a result, the defendant has proved by the preponderance of the evidence that the plaintiff wrongfully withheld the remaining \$529.20 of the defendant's security deposit. The plaintiff is liable to the defendant for that amount.

The defendant has not proved by the preponderance of the evidence that she gave her forwarding address to the plaintiff, as required by ORC §5321.16. As a result, the defendant is not entitled to an award of statutory damages, commonly referred to as "double damages."

The defendant has also proved by the preponderance of the evidence that the plaintiff breached the terms of the parties' lease agreement and violated federal regulations (24 C.F.R. §982.515) by charging the defendant excess amounts, when the written lease clearly places on the plaintiff the responsibility for paying all utilities (Plaintiff's Exhibit 17, paragraph 18). The defendant paid gas bills in the amount of \$1,278.00 between March 13, 2006 and May 10, 2007 (Defendant's Exhibit F). She paid \$457.31<sup>1</sup> in water bills between March 8, 2006 and May 22, 2007 (Defendant's Exhibit O). She also paid electric bills in the amount of \$1,309.16 between November 18, 2005 and September 5, 2007 (Defendant's Exhibit U). The defendant probably paid other utility bills not itemized on Defendant's Exhibits F, O and U. However, the defendant has not proved those payments or the amount of those payments. The defendant has proved by

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<sup>1</sup> Defendant's Exhibit O lists a payment of \$156.00 on September 25, 2007. The defendant did not make that payment and that amount is not included in the defendant's award of \$457.31. The plaintiff paid that amount when he paid the last water bill that had accrued during the defendant's tenancy (Plaintiff's Exhibit 2).

the preponderance of the evidence that she paid at least \$3,044.47 in utility bills during her tenancy. The plaintiff is liable to the defendant for that sum.

The defendant has also proved by the preponderance of the evidence that she had to make repairs to the home because of the plaintiff's failure to meet his statutory obligations as a landlord, pursuant to ORC §1923.04. The defendant paid \$600.00 for repairs to the roof and ceiling and \$250.00 to repair peeling wallpaper (Defendant's Exhibit N). The defendant also paid a \$40.00 service call for the furnace (receipt attached to Defendant's Exhibit Y).

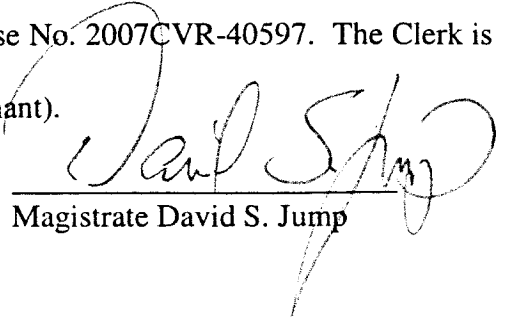
The defendant has proved by the preponderance of the evidence that she is entitled to recover from the plaintiff the sums listed above, totaling \$4,463.67. The plaintiff is liable to the defendant on her Counterclaim for that amount.

In addition, the defendant has proved by the preponderance of the evidence that the value of the property to her was reduced because the plaintiff's storage of his personal property in the garage denied the defendant full access to the garage during her tenancy. The defendant has proved that the diminution in value was at least \$588.00. As a result, the defendant is entitled to the return of the money she paid into escrow.

#### DECISION

Judgment for the defendant on the plaintiff's Complaint. The plaintiff's Complaint is dismissed at the plaintiff's cost. Judgment for the defendant against the plaintiff on her Counterclaim in the amount of \$4,463.67 plus court costs and interest. Judgment for the defendant for the return of the funds held in Escrow in Case No. 2007CVR-40597. The Clerk is directed to release the escrowed funds to the defendant (tenant).

June 30, 2008

  
Magistrate David S. Jump

*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).*

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