

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

FILED

2010 JUL 29 PM 4:26

FRANKLIN COUNTY
MUNICIPAL COURT
COLUMBUS, OHIO

Letrese N. Sauls, :
Tenant :
vs. :
Property Management Concepts. :
Landlord :

Case No. 2010 CVR 000154

Magistrate David S. Jump

MAGISTRATE'S DECISION

This matter came on for trial before Magistrate David S. Jump. The tenant appeared without counsel. Attorney Andrew J. Ruzicho II represented the landlord. Based on the evidence and arguments presented, after weighing the credibility of the witnesses, the magistrate issues the following decision.

The tenant leased from the landlord residential property located at 1654 South Third Street in Columbus, Franklin County, Ohio, pursuant to a written lease (Landlord's Exhibit A, Tab 1). According to the terms of the lease, the tenancy ended January 31, 2010.

On November 9, 2009, the tenant called the landlord's office to report mice in her home. The landlord's office made a written record of the tenant's call regarding the mice (Landlord's Exhibit A, Tab 6, page 9 of 10). The landlord provided the tenant with mouse traps on November 11, 2009.

On December 31, 2009, the tenant gave the landlord her written notice that she would not extend her lease beyond the original lease term (Landlord's Exhibit A, Tab 2). The tenant indicated that she would vacate the property by January 31, 2010. The notice also indicated that the tenant would pay her rent into escrow in January because of the landlord's failure to remedy the mouse problem in her property. The tenant paid her rent into escrow with this Court on January 4, 2010, pursuant to ORC §5321.07.

Both parties have filed motions seeking the release of the escrowed rent. The tenant argues that the property was uninhabitable because of the mouse infestation. The landlord argues that the escrow was improperly initiated because the tenant failed to provide written notice of the problem before placing her rent in escrow. The landlord also argues that it took reasonable steps to remedy the problem.

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.

The landlord first argues that the escrow action is inappropriate because the tenant failed to give the landlord written notice of a mouse problem. The landlord's argument is without merit.

The landlord had actual notice of the tenant's complaint of a mouse problem (Landlord's Exhibit A, Tab 6, page 9 of 10). Written notice from the tenant, although preferable, is not required when the landlord has actual notice of the problem. To require a tenant to put the notice in writing when a landlord already has actual notice of the problem would be hyper-technical. **McGowan v. DM Group IX** (1982), 7 Ohio App.3d 349.

Under Ohio law, the purpose of placing rent in escrow is to force the landlord to make necessary repairs. The escrowed funds are to be released to the landlord after the repairs are made or used to complete the repairs. **Weibling v. Rine** (August 30, 1977), Franklin App. No. 77AP-355, 1977 WL 200385, unreported. Absent a showing that the property was uninhabitable, the tenant is not entitled to the release of the escrowed funds. The issues to be decided in rendering a decision on the merits of this case are whether the mouse problem rose to

the level of an infestation making the property uninhabitable and whether the landlord failed to make reasonable attempts to remedy the problem.

In support of her claim, the tenant presented pictures of mice and mouse droppings in the property (Tenant's Exhibits A and B). It is clear that the tenant had mice in the property. However, the tenant has not proved by the preponderance of the evidence that the mouse activity rose to the level of an infestation or that the property was uninhabitable. Many of the pictures appear to be of the same mice from many different angles. This finding is supported by the credible testimony of the landlord's maintenance worker who stated that he and a Varment Guard employee inspected the property after the tenant had moved out and they could not find a mouse problem (Landlord's Exhibit A, Tab 4).

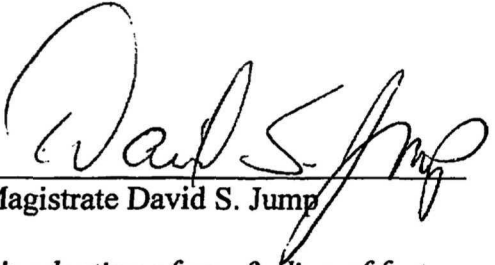
The landlord has proved by the preponderance of the evidence that it took reasonable steps to remedy the problem after the tenant gave notice in early November, 2009. The landlord immediately provided the tenant with mouse traps. The landlord reasonably believed the problem had been remedied because the tenant did not make any further complaints until December 31, 2009, when she provided her notice of placing her rent in escrow. If the problem continued after the landlord provided the traps, the tenant should have given the landlord additional notice. The tenant has not proved that she gave the landlord any more notice of the problem until December 31, 2009.

The Landlord has proved that it remedied the issue of mouse activity in the property. Pursuant to ORC §5321.09, the landlord is entitled to the release of the escrowed rent.

DECISION

The tenant's motion for release of escrowed rent is overruled. The landlord's motion for release of escrowed rent is sustained. The Clerk is to release the escrowed rent to the landlord and terminate the escrow account in this case.

July 29, 2010


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).

Copies to:

LETRESE SAULS
1190-F STONE RIDGE DR
COLUMBUS OH 43213
TENANT

ANDREW J RUZICHO
118 GRACELAND BLVD #307
COLUMBUS OH 43214
ATTORNEY FOR LANDLORD

DSJ/law