

IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO

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Shawn Clendenon,
Plaintiff,

Case No. 2020 CVI 005927

Magistrate Kirk A. Lindsey

Andy Rental, LLC,
Defendant.

Magistrate's Decision

This matter went on before the Magistrate for hearing on October 13, 2020. The Plaintiff appeared, representing himself, and the Defendant appeared, represented by attorney Andrew Ruzicho with Xionghua Wu, the owner, as a witness. At the outset of the hearing, the Defendant waived service of process in this case.

Based upon the evidence presented at the hearing, the magistrate finds as follows:

Findings of Fact

1. The Plaintiff rented, via a written lease, certain residential property from the Defendant with his fiancé, Hannah Lisa Rutherford, both being tenants on the lease.
2. Pursuant to the lease, the tenants were supposed to move into the property on February 15, 2020 and they had tendered a \$4,000.00 security deposit to the Defendant prior to moving in.
3. The tenants visited the property on February 14 and found the conditions at the property to be unacceptable because it was insufficiently cleaned, insufficiently painted, there were leaks in the upstairs and downstairs bathrooms and the tenants believe that they found evidence of bedbugs in the unit.

4. At that time, they expressed these concerns to the Defendant and, while the Defendant wanted the opportunity to address the concerns and complete preparation for the tenants to move in, the tenants decided that they preferred to terminate the lease at that time and the Defendant accepted that decision.

5. Ms. Rutherford handled negotiations on behalf of the tenants with the Defendant and she messaged the Defendant, directing him to "send me \$3,500.00 back and we can call it a day. No other action will be taken." The Defendant responded that he was not comfortable refunding \$3,500.00 to resolve the matter because of certain costs he would incur associated with finding new tenants, but offered \$3,000.00. Ms. Rutherford then responded, "Okay...please send me the 3,000.00. Thank you."

6. The Defendant then sent \$3,000.00 to the Plaintiff and Ms. Rutherford and thereafter Plaintiff filed this suit seeking the additional \$1,000.00 from the security deposit and additional damages for "pain and suffering."

Conclusions of Law

The party who brings an action must prove the allegations in the complaint and their entitlement to the relief sought by a preponderance of the evidence. *See, e.g., Cooke v. Strader's Garden Centers, Inc.*, 10th Dist. No. 95APG08-961, 1996 Ohio App. LEXIS 1317 (March 28, 1996). This is called the burden of proof.

The Plaintiff testified credibly in this case that there were conditions at the property that he and his fiancé found unacceptable when he arrived on February 14, the day before they were to take possession of the property. When these problems were reported to the landlord the landlord responded by indicating he wanted to address them, but he accepted the Plaintiff's decision not to take possession of the property and was willing to terminate the lease.

In the course of negotiating the termination of the lease, Mr. Wu held the reasonable belief that Ms. Rutherford was offering to resolve the matter amicably for the \$3,000.00 payment in settlement of all claims related to the lease. His belief in that regard was reasonable given the correspondence between he and Ms. Rutherford on behalf of the tenants. Based upon that correspondence, he also held the reasonable belief that she represented not only her own interests as a tenant but also those of her co-tenant the Plaintiff in this case.

Once the parties entered into an agreement to settle this dispute, an agreement under which the Defendant fully performed by refunding the agreed \$3,000.00, the Plaintiff breached that agreement by subsequently filing the present suit for the remainder of the deposit in spite of the representation that "no other action [would be] taken." Because of the settlement between the parties, the Plaintiff has failed to establish by a preponderance of the evidence the right to recover additional security deposit money in this case. In addition, Plaintiff has failed to prove by a preponderance the entitlement to recover any additional compensatory damages for pain and suffering. That is typically not a form of relief that is available in a breach of contract action, and there is insufficient evidence in this case supporting such an award here.

Conclusion

Judgment in favor of the Defendant on the Plaintiff's complaint. Costs assessed to the Plaintiff.

The Clerk is hereby directed to serve copies of this Magistrate's Decision upon all parties at the addresses set forth below.

October 27, 2020
Date

Kirk A. Lindsey
Magistrate Kirk A. Lindsey

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:

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Hilliard, Ohio 43026**

Plaintiff

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Attorney for Defendant