

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

PAIGE SHOEMAKER

Plaintiff

V.

OHIO UNIVERSITY

Defendant

Case No. 2014-00349-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

- {¶1} Plaintiff, Paige Shoemaker, a student, filed this complaint against defendant, Ohio University (“OU”), in which she asserted due to defendant’s negligence she became ill while residing in defendant’s Wray House dormitory. She asserted, on or about January 30, 2014, “[f]or approximately a two week time frame my dormitory lacked sufficient heat.” She contended, during this time the temperature was between thirty-five (35) and forty-five (45) degrees. She informed defendant of the heating issue on several occasions. However, the problem was not resolved. As a result, plaintiff alleged she developed bronchitis, which required a trip to the emergency room, medication, and several doctor visits.
- {¶2} Plaintiff seeks \$962.20 in damages for reimbursement of medical bills. She paid the \$25.00 filing fee.
- {¶3} Defendant filed an investigation report in which it denied liability based on the contention the temperature of plaintiff’s room was not the cause of her infection. Defendant asserted the lowest temperature reading in plaintiff’s dorm room during the time in question was fifty-five (55) degrees. Defendant “took steps to address

the chilly room temperatures,” including providing a space heater and arranging for plaintiff to temporarily move to another dorm room. Further, defendant “acknowledged the Plaintiff’s inconvenience and offered her a \$100.00 goodwill credit. The credit was accepted by Plaintiff.” Even so, defendant argued, “it is common knowledge that cold weather/cold air does not cause an individual to catch a viral or bacterial upper respiratory infection.” Therefore, defendant’s conduct was not the proximate cause of plaintiff’s illness.

{¶4} Plaintiff filed a response to defendant’s investigation report in which she disagreed with several of defendant’s contentions. Plaintiff asserted she requested a space heater multiple times, and was only offered one after she had become ill. She contended the temporary room was only slightly warmer than her original room. Plaintiff refuted defendant’s contention that her infection was not caused by the temperature of her room. She provided discharge paperwork from her hospital visit which she asserted “explained that bronchitis is not only caused by complications with a common cold but can also be caused by bacteria. Even though strictly being exposed to cold conditions does not cause the common cold it does increase the chances of a bronchitis attack.”¹ Plaintiff continued, “[i]f a space heater was provided during one of the original requests this scenario could have been prevented all together.” Plaintiff contended, she was not diagnosed with either the common cold or an upper-respiratory infection. Therefore, defendant’s argument that her illness could not have been caused by the temperature is irrelevant.

¹ Contrary to plaintiff’s assertion, this court finds nothing in plaintiff’s discharge instructions which indicate cold temperatures can increase chances of a bronchitis diagnosis. The paperwork does coincide with plaintiff’s contention that she was diagnosed with bronchitis and not the common cold or upper respiratory infection. However, it does not specifically explain how plaintiff developed bronchitis. In fact, it does state: “[b]ronchitis is usually caused by a virus. It usually occurs as a complication from the common cold or flu. . . . In spite of common belief, colds *are not* caused by cold weather. Colds occur more often in cold weather due to: . . . drier weather.”

CONCLUSIONS OF LAW

- {¶5} Plaintiff has essentially contended defendant was negligent in failing to provide adequate heating in her dormitory room for a period of approximately two (2) weeks. In order to prevail on her claim of negligence, plaintiff must establish a duty owed by defendant and a breach of that duty which proximately results in an injury. *Jeffers v. Olexo*, 43 Ohio St. 3d 140, 539 N.E.2d 614 (1989).
- {¶6} Defendant, as landlord of university dormitories, has “a duty to take those steps which are within [its] power to minimize the predictable risk to [its] tenants.” *Doe v. Flair Corp.*, 129 Ohio App. 3d 739, 750, 719 N.E.2d 34 (8th Dist. 1998), quoting, *Kline v. 1500 Massachusetts Avenue Apartment Corp.*, 439 F. 2d 477 (C.A., D.C. 1970).
- {¶7} In the alternative, plaintiff has raised a statutory claim based on this landlord-tenant relationship. A tenant need not specifically reference R.C. 5321.04 in her complaint in order to raise a claim when the allegations clearly assert such a claim under the statute. *Mounts v. Ravotti*, No. 7th Dist. No. 07 MA 182, 2008-Ohio-5045.
- {¶8} R.C. 5321.04(A)(6) states:
“(A) A landlord who is a party to a rental agreement shall do all of the following:
“(6) Supply running water, reasonable amounts of hot water and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.”
- {¶9} Further, the Supreme Court of Ohio has held that a landlord’s violation of R.C. 5321.04(A) constitutes negligence per se. *Sikora v. Wensel*, 88 Ohio St.3d 493, 2000-Ohio-406, 727 N.E. 2d 1277. Even if a plaintiff proves her landlord was negligent per se in violation of one of the specific statutory duties found in R.C.

5321.04(A) she must still establish proximate cause and damages for the landlord to be held liable. *Harris v. Richmond Park Apts.*, 8th Dist. No. 84067, 2004-Ohio-4081; *Thatcher v. Ravines*, 10th Dist. No. 11AP-851, 2013-Ohio-765.

{¶10} This court finds plaintiff has failed to prove her illness, bronchitis, was proximately caused by defendant's acts or inaction. As previously mentioned, the causal relationship between bronchitis and cold temperatures is in dispute. Although strict rules of evidence do not apply in administrative determinations, plaintiff must prove her case by a preponderance of the evidence. *Underwood v. Dept. of Rehabilitation and Correction*, 84-04053-AD (1985). Under the facts of the instant claim, plaintiff has failed to provide sufficient evidence from which this court can infer defendant proximately caused her claimed injuries. Consequently, judgment is rendered in favor of defendant.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Paige Shoemaker

Ohio University

Case No. 2014-00349-AD

- 6 -

MEMORANDUM DECISION

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Grove City, Ohio 43123

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DJM/tad
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