[Cite as *Liggett v. Whitaker Properties*, 2010-Ohio-1610.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

DENNIS LIGGETT :

Plaintiff-Appellee :

C.A. CASE NO. 23425

v.

: T.C. NO. 08 CVR 9000

WHITAKER PROPERTIES : (Civil appeal from Municipal Court)

Defendant-Appellant :

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O P I N I O N

Rendered on the 9th day of April, 2010.

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DENNIS LIGGETT, 574 Wyoming Street, Dayton, Ohio 45410
Plaintiff-Appellee

DERRICK A. STRAHORN, Atty. Reg. No. 0034483 and JULIA C. KOLBER, Atty. Reg. No. 0078855, 6233 N. Main Street, Dayton, Ohio 45415
Attorney for Defendant-Appellant

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DONOVAN, P.J.

{¶ 1} Defendant-appellant Whitaker Properties appeals a judgment of the Dayton Municipal Court in which the court held that plaintiff-appellee Dennis Liggett was entitled to two months of rent money placed in escrow as a result of Whitaker's failure to maintain the

rental property in a habitable condition.[1]

I

{¶ 2} On November 6, 2008, Liggett deposited his monthly rent of $525.00 into escrow for an apartment located at 574 Wyoming Street in Dayton, Ohio. Liggett alleged that the apartment was infested by roaches and mice, and Whitaker had not done anything to correct the problem. On December 4, 2008, Liggett again deposited his monthly rent into escrow at the Dayton Municipal Court. On the same date, Liggett requested that a hearing be held regarding the rent money which had been placed in escrow. A hearing date was subsequently scheduled for December 22, 2008.

{¶ 3} The hearing was held before the magistrate on December 22, 2008. The magistrate heard testimony from both Liggett, as well as the owner of Whitaker Properties, Gary Whitaker. Gary Whitaker testified that his company was hired to manage the rental property in question on November 1, 2008. Whitaker also testified that on November 5, 2008, when Liggett expressed reluctance to pay rent, he suggested Liggett place his rent money in escrow until the repairs on his apartment could be completed and the infestation problem could be properly addressed. After Whitaker testified, Liggett informed the court that that he would be willing to stay in the apartment if the infestation problem was fixed.

{¶ 4} The magistrate issued a written decision and judgment entry on December 29, 2008, wherein she held "due to the severe infestation of roaches and mice, [Liggett was] entitled to a return of all escrow funds." On January 9, 2009, Whitaker filed a request for findings of fact and conclusions of law. The magistrate filed an order on January 20, 2009, in which she reiterated that Liggett was entitled to a refund of all escrow funds since the

[1]Liggett did not file a responsive brief in the instant appeal.

apartment was found to be infested with roaches and mice.

{¶ 5} Whitaker filed objections to the magistrate's decision on February 17, 2009. In a decision issued on April 22, 2009, the trial court overruled Whitaker's objections and adopted the magistrate's decision in its entirety. Whitaker filed a timely notice of appeal with this Court on May 12, 2009.

II

Standard of Review

{¶ 6} Pursuant to Civ. R. 53(E)(3), a party who disagrees with a magistrate's proposed decision must file objections to said decision. When reviewing objections to a magistrate's decision, the trial court is not required to follow or accept the findings or recommendations of its magistrate. *Breece v. Breece* (Nov. 5, 1999), Darke App. No. 99-CA-1491; *Seagraves v. Seagraves* (Aug. 25, 1995), Montgomery App. Nos. 15047 and 15069. In accordance with Civ. R. 53, the trial court must conduct an independent review of the facts and conclusions contained in the magistrate's report and enter its own judgment. *Dayton v. Whiting* (1996), 110 Ohio App.3d 115, 118, 673 N.E.2d 671. Thus, the trial court's standard of review of a magistrate's decision is de novo.

{¶ 7} An "abuse of discretion" standard, however, is the appellate standard of review when reviewing a trial court's adoption of a magistrate's decision. Claims of trial court error must be based on the actions taken by the trial court, itself, rather than the magistrate's findings or proposed decision. When an appellate court reviews a trial court's adoption of a magistrate's report for an abuse of discretion, such a determination will only be reversed where it appears that the trial court's actions were arbitrary or unreasonable. *Proctor v. Proctor* (1988), 48 Ohio App.3d 55, 60-61, 548 N.E.2d 287. Presumptions of validity and

deference to a trial court as an independent fact-finder are embodied in the abuse of discretion standard. *Whiting*, supra.

{¶ 8} "A decision is unreasonable if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue *de novo*, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result." *AAAA Enterprises, Inc. v. River Place Community Redevelopment* (1990), 50 Ohio St.3d 157, 161. When applying the abuse of discretion standard, an appellate court may not merely substitute its judgment for that of the trial court. *Berk v. Mathews* (1990), 53 Ohio St.3d 161, 169, 559 N.E.2d 1301.

III

{¶ 9} Because they are interrelated, Whitaker's first, second, and third assignments of error will be discussed together as follows:

{¶ 10} "THE TRIAL COURT ERRED WHEN IT FOUND APPELLEE ENTITLED TO THE ESCROW FUNDS BECAUSE APPELLEE FAILED TO GIVE APPELLANT WRITTEN NOTICE SPECIFYING NONCOMPLIANCE OF A RENTAL OBLIGATION, IN VIOLATION OF OHIO REVISED CODE § 5321.07(B), PRIOR TO ESCROWING HIS RENT."

{¶ 11} "THE TRIAL COURT ERRED WHEN IT FOUND APPELLEE ENTITLED TO THE ESCROW FUNDS BECAUSE APPELLEE FAILED TO DEPOSIT HIS RENT WITH THE COURT PRIOR TO ITS DUE DATE, IN VIOLATION OF R.C. § 5321.07(B)."

{¶ 12} "THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A FINDING THAT THE INFESTATION DECREASED THE QUIET USE AND ENJOYMENT OF THE

PREMISES AND AFFECTED THE HABITABILITY BY 100%."

{¶ 13} In its first assignment, Whitaker contends that the trial court committed error by adopting the magistrate's decision which held that Ligget was entitled to all of the rent monies placed in escrow despite the fact that Liggett failed to provide Whitaker with written notice of the infestation pursuant to R.C. § 5321.07(B). Whitaker also argues that the court erred when it found Liggett was entitled to the escrowed rent monies since Liggett failed to deposit his rent for the month of November, 2008, with the court prior to the date the rent was due.

{¶ 14} R.C. 5321.04 requires, in pertinent part, that a landlord "[m]ake all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition." R.C. 5321.04(A)(2). It also requires that a landlord maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances. R.C. 5321.04(A)(4). R.C. 5321.07 provides that, if a landlord fails to fulfill any obligation imposed by R.C. 5321.04, or if the conditions are such that the tenant reasonably believes that the landlord has failed to fulfill such obligations, then the tenant may give written notice to the landlord of the acts or omissions that constitute noncompliance. R.C. 5321.07(A).

{¶ 15} "Ohio's Landlord and Tenants Act imposes duties on landlords which were absent at common law. The General Assembly enacted R.C. 5321.07 to provide tenants with leverage to redress breaches of those duties.When a landlord fails to maintain rental property in accordance with statutory or contractual obligations, R.C. 5321.07 allows a tenant to: (1) deposit [escrow] rent with the court; (2) apply for a court order directing the landlord to remedy the condition, or (3) terminate the rental agreement. As a prerequisite to utilizing

these remedies, the tenant must be current in rent payments and must notify the landlord in writing of these violations." *Miller v. Ritchie* (1989), 45 Ohio St.3d 222.

{¶ 16} At the trial held on December 22, 2008, Liggett provided the following testimony in regards to his failure to give written notice pursuant to R.C. § 5321.07(A):

{¶ 17} "Liggett: What about the roaches and the mice?

{¶ 18} "The Court: If you want to testify regarding the other issues that affect habitability you can proceed with that.

{¶ 19} "Liggett: I just told you that, about the roaches and mices [sic]. They've been inspected twice. He was, had two fines already assessed. 11/18 he had a seventy-five dollar fine from the City for inspection. 11/25 he had another thing for inspection. The work was supposed to be done by 11/15 at twelve o' clock. I'm still killing thirty to forty roaches a day, two to three mice a day.

{¶ 20} "The Court: How long has this been going on?

{¶ 21} "Liggett: Since August when I moved in. I bailed water for two months there with a ceiling leak. And I got October rent free through the old property people, Frank and the guy, Mr. Kate, out of Michigan. November, December[,] my money's been in escrow.

{¶ 22} "The Court: Do yo have evidence to support your claim, sir, photographs?

{¶ 23} "Liggett: Yes, I've got everything right here.

{¶ 24} ***

{¶ 25} "The Court: Did the inspector tell you that the property was uninhabitable and you had to move or were they just giving Mr. Whitaker the opportunity to correct the problem?

{¶ 26} "Liggett: Give Mr. Whitaker time to fix the property. He didn't do it on time.

11/15, the work still ain't done. I got mices [sic] and roaches everywhere, so.....

{¶ 27} "The Court: Did you contact Mr. Whitaker about the problem?

{¶ 28} "Liggett: Yes, I have.

{¶ 29} "The Court: When did you do that?

{¶ 30} "Liggett: Several times.

{¶ 31} "The Court: When did you do that?

{¶ 32} "Liggett: I don't know, sometime in November, December. I talked to his man a couple [sic] at the house and called the offices.

{¶ 33} "The Court: Did you give him thirty days notice before you filed the rent in escrow that he needed to correct this problem or did you just come down here and put your money in escrow?

{¶ 34} "Liggett: I was told by the City Inspector to put my money in escrow in November. Michael [Weinkauf].

{¶ 35} "The Court: Okay. You posted your rent with the court on November 6th, but in October you would have been required to give Mr. Whitaker thirty days written notice that you were going to put your rent in escrow.

{¶ 36} "Liggett: I couldn't do that. He wouldn't, he wasn't even managing the property until November 1st.

{¶ 37} "The Court: Who was managing it before that?

{¶ 38} "Liggett: I don't know the name of the company, Best, Best Properties or sometime [sic]. It wasn't even Mr. Whitaker. It was different landlord, I mean different property people.

{¶ 39} "The Court: When did you tell Mr. Whitaker of the problem then?

{¶ 40} "Liggett: I really, probably October 30th when he got this thing from the City Inspector.

{¶ 41} "The Court: Okay.

{¶ 42} "Liggett: The Inspector give [sic] him until 11/15 to get the work done. And he's had two fines since and he's, I still got roaches and mice terrible."

{¶ 43} Although Whitaker is correct in his assertion that Liggett failed to provide written notice of the infestation pursuant to R.C. § 5321.07, the statute states only that "the tenant *may* give written notice to the landlord of the acts or omissions that constitute noncompliance." In the instant case, we find that Whitaker was put on notice that Liggett's apartment was infested by roaches and mice on November 1, 2008, when he became the manager of the property. In fact, the record contains a citation issued on October 30, 2008, from the City Inspector advising Whitaker that he had until November 15, 2008, to take steps in order to rectify the problem. Liggett's undisputed testimony establishes that Whitaker failed to take the necessary steps to address the infestation problem by the time of the hearing on December 22, 2008.

{¶ 44} We also note that Liggett deposited his November rent money in escrow on November 6, 2008, after a suggestion from Whitaker during a discussion between the two men on November 5, 2008. Thus, Whitaker consented to Liggett's escrowing the November rent money with the court and has waived his right to object.

{¶ 45} In light of the foregoing, we hold that the trial court did not abuse its discretion when it adopted that portion of the magistrate's decision which awarded Liggett the full amount of rent money placed in escrow for the month of November. Simply put, Whitaker was put on notice that Liggett's apartment was infested on November 1, 2008, when he took

possession of the rental property and received the citation from the City Inspector. Moreover, Liggett escrowed the November rent at the suggestion of Whitaker. Thus, Liggett is entitled to the full amount of the rent money ($525.00) placed in escrow for the month of November, 2008.

{¶ 46} With respect to the rent money placed in escrow for the month of December, 2008, we find that Whitaker was clearly on notice from the prior month of the infestation in Liggett's apartment. We note that Liggett placed the rent money for December in escrow with the court on December 4, 2008, one day before the rent was due pursuant to the lease agreement. Thus, Liggett complied with the express requirements of R.C. § 5321.07, and was clearly entitled to the return of the full amount of his rent money for the month of December since Whitaker again failed to correct the infestation problem within a reasonable amount of time.

{¶ 47} Finally, we find that the evidence adduced at the hearing was sufficient to establish that the infestation substantially decreased the use and enjoyment of the rental unit by 100%. Although no evidence was presented by Liggett that he was unable to use certain portions of the apartment, such conditions in the unit were intolerable and inexcusable. It is also apparent that the infestation problem in Liggett's apartment was not addressed in a timely fashion. In fact, Liggett testified that as of the date of the hearing on December 22, 2008, both roaches and mice were still present in his apartment. Despite a citation from the City Inspector and continuing complaints from Liggett, Whitaker testified that he still had not hired a professional exterminator to address the roach and mouse infestation as of the hearing date. Clearly, the record before us supports a finding that Liggett's quiet use and enjoyment of the apartment was substantially impaired to the extent that he was entitled to all of the rent money

placed in escrow for the months of November and December, 2008.

{¶ 48} Whitaker's first, second, and third assignments of error are overruled.

III

{¶ 49} In light of the foregoing analysis, the trial court's judgment adopting the decision of the magistrate is affirmed, and Liggett is entitled to the return of the rent money placed in escrow for the months of November and December, 2008.

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BROGAN, J. and FROELICH, J., concur.