

[Cite as *Bynum v. Cotterman*, 2015-Ohio-617.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

KRISTEN BYNUM

Plaintiff-Appellee

v.

RANDY COTTERMAN

Defendant-Appellant

:
:
:
:
:
:
:
:
:
:
:
:

C.A. CASE NO. 26222

T.C. NO. 13CVR949

(Civil Appeal from
Municipal Court)

.....

OPINION

Rendered on the 20th day of February, 2015.

.....

KRISTEN BYNUM, 6651 Stonehurst Drive, Huber Heights, Ohio 45424
Plaintiff-Appellee

P. J. CONBOY II, Atty. Reg. No. 0070073, 5613 Brandt Pike, Huber Heights, Ohio 45424
Attorney for Defendant-Appellant

.....

FROELICH, P.J.

{¶ 1} Randy Cotterman appeals from a judgment of the Municipal Court of Montgomery County, which ordered \$2,600 in escrowed rent to be returned to Cotterman's tenant, Kristen Bynum, and the remainder to be returned to Cotterman. Cotterman claims that the trial court erred in its division of the money held in escrow. For the following reasons, the trial court's judgment will be affirmed.

{¶ 2} In April 2013, Bynum entered into a one-year lease to rent the residence located at 6801 Pablo Drive in Huber Heights from Cotterman for \$800 per month. Bynum, Christopher Bosma, and their four children moved into the house on April 1, 2013.

{¶ 3} On October 28, 2013, Bynum filed an application to deposit her rent with the trial court. The application included a notice letter that she had sent to Cotterman on September 9, 2013, complaining of a bedbug infestation, clogged bathtub, leaking toilet, missing transition strips/exposed carpet tack strips on the floor, and missing baseboards. On December 3, 2013, Cotterman filed a response, denying that the bedbug infestation was a preexisting condition, stating that he had advised Bynum to try a drain cleaner on the bathtub, that he had fixed the toilet, that he was unaware of missing transition strips, and that he did not want baseboards in his house.

{¶ 4} Bynum deposited her November, December, January, February, March, and April rent with the trial court. On April 2, 2014, she asked that the full balance of the escrowed rent (\$4,800) be returned to her, reiterating the problems with the property and stating that Cotterman had failed to make any repairs. On April 10, 2014, Cotterman filed a motion for release of the funds to him, and he requested a hearing.

{¶ 5} The trial court conducted a hearing on April 24, 2014. (At this point, the lease had ended, and Bynum had or was in the process of moving out of the property.) The court heard testimony from Bynum and Cotterman. In addition, Christopher Bosma testified for Bynum, and Cotterman called Josephine Zavacky and Jason Lanning to testify on his behalf. Neither party provided any exhibits. After considering the testimony, the trial court ruled that \$2,600 would be returned to Bynum for inhabitability of

the residence and the balance would be returned to Cotterman. Upon Cotterman's motion, the trial court stayed the release of the funds pending appeal.

{¶ 6} Cotterman appeals from the trial court's judgment, claiming that the trial court "erred in its division of the rent money the trial court held in escrow." In essence, Cotterman argues that the trial court's judgment is against the manifest weight of the evidence.

{¶ 7} "Weight of the evidence concerns 'the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury [or other fact finder] that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.'" *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

{¶ 8} An appellate court applies the same manifest-weight-of-the-evidence standard in criminal and civil cases. *Eastley* at ¶ 17. The appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. A court of appeals "must always be mindful of the presumption in favor of the finder of fact." *Eastley* at ¶ 19, ¶ 21. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the judgment. *State v. Martin*, 20 Ohio

App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983), cited with approval in *Thompkins* at 387.

{¶ 9} R.C. 5321.04 requires that a landlord who is a party to a rental agreement “[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 further requires the landlord to “[m]aintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by the landlord.” R.C. 5321.04(A)(4).

{¶ 10} According to the testimony of Bynum and Bosma, Bynum rented the residence located at 6801 Pablo Drive from Cotterman, and her family moved into the residence in April 2013. At that time, they noticed holes in the wall and exposed carpet tack strips on the floor between the kitchen and living room. Bynum and Bosma stated that their young son was learning to crawl, and he was scratching and cutting his legs on the exposed tack strips. They complained about the tack strips, but Cotterman did not respond. Cotterman was supposed to repair the walls, but he did not. Bynum agreed that the holes in the wall did not interfere with her family’s ability to live in the residence. The house was also missing baseboards; Bosma testified that Cotterman had agreed to install them, but Bosma acknowledged that this was only a matter of aesthetics.

{¶ 11} Bynum and Bosma further testified that the toilet leaked. Bosma explained that “[s]imply fixing the levers in the toilet wasn’t enough” and that “the water leaking around the toilet was causing black mold to form on the walls.” He stated that he sprayed bleach on the walls to try to keep the mold under control. Bynum testified that Cotterman repaired the toilet about a month after she moved in. She indicated that

Cotterman had said he would replace the toilet, but he did not.

{¶ 12} In June 2013, Bynum and Bosma discovered bed bugs. Bosma stated that Cotterman had an exterminator come to the residence and do a free consultation, but the house was never treated for bed bugs. On cross-examination, Bynum stated that she did not see bedbugs when she first moved in, and she stated that they moved their furniture into the house about a week later. Bynum indicated that she did not notice bedbugs until one month and three weeks (approximately seven weeks) later.

{¶ 13} Bynum and Bosma also testified that they had problems with the bathtub in November 2013. Bynum stated that they were unable to give the children a bath for two weeks, because the tub would not drain; the children had to stand up and take a shower. After two weeks, Bynum and Bosma paid \$200 to a plumber to repair the bathtub. Bosma stated that the lever that activated the stopper for the tub broke and the chain attached to the lever had fallen into the drain pipes, which caused the blockage. The plumber replaced the metal pipes, which were rusty, with PVC pipes and brought the plumbing up to code.

{¶ 14} Josephine Zavacky, Cotterman's niece, testified that she, her husband, and her two children lived at 6801 Pablo Drive for three or four weeks around March 2013. Zavacky stated that she had brought her own furniture and did not see any bedbugs while she lived there; she also has not had problems with bedbugs since leaving the residence. She also testified that she did not have any problems with the toilet and bathtub; her children bathed every other day and had no issues with the tub's drainage. Zavacky said there was a small hole in the living room wall from a doorknob, but it was not a big problem. Her family never had a problem with the carpet tack strip.

{¶ 15} Jason Lanning, who had been friends with Cotterman for six years, also testified on Cotterman's behalf. He stated that he went to 6801 Pablo Drive with Cotterman in May 2013, about a month after Bynum and her family moved in, and helped Cotterman repair the toilet. Lanning stated that he did not see black mold, problems with the bathtub, or bedbugs. Lanning stated that the toilet had problems for a couple of days and that they repaired it "very quickly."

{¶ 16} Cotterman testified that he has owned 6801 Pablo Drive for six years, that he lived there for five years, and that Zavacky lived there for one month before Bynum rented it. Cotterman denied having problems with bedbugs or the toilet, and he denied that he had promised to install a new toilet. Cotterman stated that the toilet was leaking in May 2013, but Bynum was never unable to use it. He stated that he repaired it with Lanning the same day that Bynum complained about it. Cotterman stated that there were no further complaints about the toilet.

{¶ 17} Cotterman further testified that Bynum complained about the bathtub in the fall of 2013. He stated that he told Bynum that the main drain to the house had been snaked out earlier in the year and to try putting liquid Drano down the drain. Cotterman testified that he told Bynum to get back to him if Drano did not work, but she never responded after that. Cotterman did not know that Bynum and Bosma had paid someone to fix the bathtub until after the litigation began; Bynum did not provide Cotterman a receipt for the plumber.

{¶ 18} With regard to other issues with the house, Cotterman stated that he was aware of a tear in the carpet from the family room to the kitchen, but the tear was "small" (12 inches) and he did not know if the tack strip was exposed. Cotterman did not have

issues with bedbugs when he lived in the house, and he did not hear about complaints until September 2013. Cotterman indicated that Bynum stayed in the house until the end of her lease in April 2014.

{¶ 19} Neither party presented photographs or documentary evidence to support their claims.

{¶ 20} At the end of the hearing, the trial court orally found that bedbugs had inhibited Bynum's use of the house for eleven months, and it awarded \$200 per month (a total of \$2,200) for the bedbug infestation. The court also awarded \$200 for the lack of use of the bathtub for two weeks and \$200 for the plumber to repair the tub.

{¶ 21} On appeal, Cotterman argues that the residence was not uninhabitable and that he satisfied his obligation under R.C. 5321.04 to maintain the property in a fit and habitable condition. He emphasizes that the toilet never stopped working, that Bynum and her family could still take showers despite the drainage issue in the tub, that Bynum had not complained further about the bathtub after he recommended using Drano, and that there was no substantiation that there was a bedbug infestation. Cotterman states that, if there were bedbugs, they were caused by Bynum's bringing furniture into the residence. Cotterman noted that Bynum stayed in the residence for the duration of her lease.

{¶ 22} "The manifest weight of the evidence analysis rests on the strong presumption that the trial court, as the trier of fact, is in the best position to weigh the evidence presented, to assess the credibility of the witnesses, and to make an informed factual determination therefrom." *Buckingham v. Buckingham*, 2d Dist. Greene No. 2013 CA 77, 2014-Ohio-5798, ¶ 25. After hearing the witnesses, the trial court

apparently credited Bynum's and Bosma's testimony that bedbugs were present in the residence for eleven months of the lease, that their use of the bathtub was limited for two weeks due to the broken lever, which caused a severe drainage problem, and that they paid \$200 to repair the bathtub. The trial court's findings were not against the manifest weight of the evidence simply because it chose to credit Bynum and Bosma's testimony, rather than the testimony of Cotterman and his witnesses, regarding the bedbug and bathtub issues.

{¶ 23} Although the trial court could have found otherwise, the trial court reasonably concluded that there were bedbugs in the residence for eleven months, justifying the return of \$200 per month for those months. In addition, the trial court reasonably concluded that the bathtub's poor drainage significantly affected Bynum's family's use of the bathtub, justifying the return of \$200 of rent. Finally, the trial court reasonably compensated Bynum for the \$200 that was paid to a plumber to repair the bathtub. Upon review of the entire record, we cannot say that the trial court lost its way when it found that Bynum was entitled to the return of \$2,600 in escrowed rent.

{¶ 24} The assignment of error is overruled.

{¶ 25} The trial court's judgment will be affirmed.

.....

FAIN, J. and DONOVAN, J., concur.

Copies mailed to:

Kristen Bynum
P. J. Conboy II
Hon. James A. Hensley, Jr.