

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Shannon Wenzke

Court of Appeals No. L-13-1059

Appellee

Trial Court No. CVG-12-15924

v.

Rylan Realty Group

Defendant

DECISION AND JUDGMENT

[Kathleen Baird—Appellant]

Decided: September 13, 2013

* * * * *

Douglas A. Wilkins, for appellee.

J. Edward Foley, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Housing Division of the Toledo Municipal Court, which affirmed the magistrate’s decision in favor of appellee, Shannon Wenzke. The magistrate’s decision granted a \$1,000 rent abatement, terminated the lease

agreement, ordered appellant, Kathleen Baird, not to re-rent the premises until the housing defect is repaired, and denied both parties' motions for attorney fees. Because the judgment of the Toledo Municipal Court is not a final appealable order, we dismiss this appeal for lack of jurisdiction.

A. Facts and Procedural Background

{¶ 2} Baird is the owner of the home at 2249 Wildwood Boulevard in Toledo, Ohio. Baird contracted with Rylan Realty Group ("Rylan") to lease the home. Rylan entered into a lease agreement with Wenzke, which provided for a monthly rent of \$1,200 due on the first of each month.

{¶ 3} On September 7, 2012, Wenzke initiated the present action by filing an application to escrow the rent with the Toledo Municipal Court. In his application, Wenzke alleged that there was no air conditioning in the master bedroom and that the windows in the living room were unable to be opened. On December 18, 2012, a housing specialist for the court conducted an inspection of the premises and found the following violation of Toledo Municipal Code 1745.02(f):

Six (6) living room windows were found to be inoperable. Three would not open at all. Two would open only slightly and the remaining window did not have a handle. The landlord is to render all six windows fully operational or install replacement windows.

{¶ 4} At the subsequent hearing on December 28, 2012, Baird argued (1) that the cited code section could not be retroactively applied to the premises, and (2) that the

violation did not materially affect health and safety. Therefore, Baird argued that Wenzke is not entitled to any of the remedies under the Landlord-Tenant Act. In addition, Baird argued that because Wenzke initiated the proceedings in bad faith, an award of attorney fees is appropriate.

{¶ 5} The magistrate took the parties' arguments under advisement, and on January 28, 2013, issued its decision granting Wenzke a \$1,000 rent abatement, releasing all other deposited escrow funds to Baird, terminating the lease agreement, ordering Baird not to rent the premises until the windows are repaired, and denying both parties' motions for attorney fees. Baird filed objections to the magistrate's decision. In a March 5, 2013 entry, the trial court found that the window defects are hazards that placed Wenzke's safety in jeopardy, and thus affirmed the magistrate's decision. Notably, though, the trial court failed to set forth the relief granted.

B. Assignments of Error

{¶ 6} Baird has appealed, and now raises five assignments of error:

1. The trial court erred when it ruled a violation of Toledo's Housing Code created a hazard placing Plaintiff's safety in jeopardy and applied the remedies in R.C. 5321.07.

2. The trial court erred when it retroactively applied a 2011 provision of the Toledo Housing Code to the landlord's property and ordered it not to be re-rented until it was in compliance.

3. The trial court erred when it permitted tenant to escrow rent when he was not current in his rent.

4. The trial court erred when it both abated the rent of plaintiff, and ordered the lease agreement terminated with no evidence the defect materially affected health and safety.

5. The trial court erred when it denied Defendant's motion for attorney fees.

II. Analysis

{¶ 7} As a threshold matter, we note that under Ohio law, an appellate court has no jurisdiction to review an order that is not final and appealable. *Duhart v. Lawson*, 186 Ohio App.3d 363, 2010-Ohio-937, 928 N.E.2d 459, ¶ 23 (6th Dist.). Where the parties themselves fail to raise the issue of whether or not a judgment constitutes a final appealable order, we must raise the issue sua sponte. *Id.*

{¶ 8} In *Sabrina J. v. Robbin C.*, 6th Dist. Lucas No. L-00-1374, 2001 WL 85157 (Jan. 26, 2001), we held,

[T]o be final, an entry of judgment by the trial court pursuant to [Civ.R. 53(D)(4)] must:

1. pursuant to subsection (b), “adopt, reject, or modify” the magistrate’s decision and should state, for identification purposes, the date the magistrate’s decision was signed by the magistrate,

2. *state the outcome* (for example, “defendant’s motion for change of custody is denied”) *and contain an order which states the relief granted so that the parties are able to determine their rights and obligations by referring solely to the judgment entry, and,*

3. be a document separate from the magistrate’s decision.

(Emphasis added.)

{¶ 9} Here, the trial court’s judgment entry is a separate document that affirms the decision and findings of the magistrate. However, it does not state the outcome, nor does it contain an order describing the relief granted. Therefore, the trial court’s judgment entry is not a final appealable order. *See In re Dortch*, 135 Ohio App.3d 430, 432, 734 N.E.2d 434 (9th Dist.1999) (entry that approves the magistrate’s decision but fails to set forth the orders of the court is not final and appealable).

{¶ 10} Accordingly, this appeal is dismissed for lack of jurisdiction. Costs are assessed to Baird pursuant to App.R. 24.

Appeal dismissed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.

CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
