[Cite as *Warner v. Evans*, 2015-Ohio-2022.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

DIANE L. WARNER Appellee v. DIANE EVANS Appellant	C.A. No. 27536 APPEAL FROM JUDGMENT ENTERED IN THE AKRON MUNICIPAL COURT COUNTY OF SUMMIT, OHIO CASE No. 13-CVI-08624

DECISION AND JOURNAL ENTRY

Dated: May 27, 2015

WHITMORE, Judge.

{¶1} Appellant, Diane Evans, appeals a judgment of the Akron Municipal Court. This Court affirms.

I

{¶2} On July 1, 2010, Diane Warner entered into a residential lease agreement with Ms. Evans' ex-husband for a twinplex that the couple owned. Ms. Warner paid $1,565 upon execution of the lease, which represented her first month's rent and a security deposit of $940. The security deposit consisted of one month's rent ($625) and an additional fifty percent of one month's rent as a pet deposit. The lease expired one year later, and Ms. Warner continued to rent the premises without a written lease. Because the Evanses had divorced, Mr. Evans forwarded Ms. Warner's security deposit to Ms. Evans and instructed Ms. Warner that all of her future dealings regarding the property should be with Ms. Evans. In July 2013, Ms. Warner told Ms. Evans that she planned to terminate the lease on or about September 1, 2013. They agreed that

Ms. Evans would return $625 of the security deposit and that Ms. Warner would pay $317 rent for the month of August and that $315 of her security deposit would be applied toward that month's rent.

{¶3} Ms. Warner moved out of the property on August 21, 2013. On September 9, 2013, she wrote to Ms. Evans to demand the return of her security deposit. Ms. Evans refused, maintaining that she incurred $620.87 in expenses related to cleaning and repair after Ms. Warner vacated the premises. Ms. Warner brought an action in the Akron Municipal Court to recover the security deposit, and the trial court referred the matter to a magistrate for trial. The magistrate recommended judgment in favor of Ms. Warner, concluding that although Ms. Evans itemized her expenses, those costs were not lawfully withheld from the security deposit. Accordingly, the magistrate decided that Ms. Evans should return the security deposit and pay $625 in damages. The magistrate also determined that Ms. Evans should pay $250 in attorney fees, for a total award of $1,500.

{¶4} Ms. Evans filed timely objections to the magistrate's decision. The trial court overruled her objections and entered judgment awarding $1,500 to Ms. Warner. Ms. Evans filed this appeal.

II

Assignment of Error Number One

> IN DENYING [MS. EVANS'] OBJECTION, THE MUNICIPAL COURT HELD [HER] TO R.C. OHIO REVISED CODE 5321.05, DESPITE THE FACT THAT OHIO REVISED CODE 5321.06 STATES "A LANDLORD AND A TENANT MAY INCLUDE IN A RENTAL AGREEMENT ANY TERMS AND CONDITIONS, INCLUDING ANY TERM RELATING TO RENT, THE DURATION OF AN AGREEMENT, AND ANY OTHER PROVISIONS GOVERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES THAT ARE NOT INCONSISTENT WITH OR PROHIBITED BY CHAPTER 5321 OF THE REVISED CODE OR ANY OTHER RULE OF LAW.

{¶5} Although it is difficult to discern exactly what errors Ms. Evans has argued in her first assignment of error, it appears that their substance is that the trial court's determination that she was not entitled to deduct expenses for cleaning and repair of the rental unit is not supported by the evidence. We disagree.

{¶6} "Generally, absent an error of law, 'the decision to adopt, reject, or modify a magistrate's decision lies within the discretion of the trial court and should not be reversed on appeal absent an abuse of discretion.'" *Dietrich v. Dietrich*, 9th Dist. Summit No. 26919, 2014–Ohio–4782, ¶ 10, quoting *Barlow v. Barlow*, 9th Dist. Wayne No. 08CA0055, 2009–Ohio–3788, ¶ 5. In conducting our review, however, "we consider the trial court's action with reference to the nature of the underlying matter." *Tabatabai v. Tabatabai*, 9th Dist. Medina No. 08CA0049–M, 2009–Ohio–3139, ¶ 18. When, as in this case, a party argues that the trial court's conclusions are against the manifest weight of the evidence, this Court:

> weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.

(Internal citations omitted.) *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115 (9th Dist.2001).

{¶7} Under R.C. 5321.16(B), a landlord is obligated to return funds held as a security deposit unless those funds are applied toward the payment of past due rent or reduced by damages suffered by the landlord because of the tenant's failure to maintain the premises. "Any deduction from the security deposit shall be itemized and identified by the landlord in a written notice delivered to the tenant together with the amount due, within thirty days after termination of the rental agreement and delivery of possession." *Id.* "If the landlord fails to comply with [R.C. 5321.16(B)], the tenant may recover the property and money due him, together with

damages in an amount equal to the amount wrongfully withheld, and reasonable attorneys fees." R.C. 5321.16(C).

{¶8} The "amount wrongfully withheld," for purposes of R.C. 5321.16(C), "means the amount found owing from the landlord to the tenant over and above any deduction that the landlord may lawfully make." *Vardeman v. Llewellyn*, 17 Ohio St.3d 24, 29 (1985). Consequently, a landlord who wrongfully withholds a security deposit cannot escape the obligations imposed by R.C. 5321.16(B) simply by articulating "a list of facially justifiable reasons for the deductions." *Smith v. Padgett*, 32 Ohio St.3d 344, 349 (1987). Courts look to R.C. 5321.05, which identifies the obligations owed by tenants to landlords, to determine whether such deductions are lawful. R.C. 5321.16(B); *Snyder v. Waldron*, 4th Dist. Athens No. 12CA9, 2013-Ohio-3416, ¶ 28. That statute provides, in relevant part, that "[a] tenant who is a party to a rental agreement shall * * * [k]eep that part of the premises that he occupies and uses safe and sanitary[.]" R.C. 5321.05(A)(1). In that respect, however, the ability of a landlord to assess damages against a tenant is not unlimited:

> [T]enants are liable for waste; however, they are generally not liable to landlords for damages attributed to ordinary wear and tear. If damage is not of the type specified in R.C. 5321.05 or the lease, it will normally be considered wear and tear. Furthermore, even in the instance of waste, *the landlord bears the burden of submitting sufficient evidence to link the damages to the tenant*.

(Emphasis added and citations omitted.) *Snyder* at ¶ 28. *See also Westerfeld v. Gaulke*, 9th Dist. Wayne No. 09CA0043, 2010-Ohio-2806, ¶ 10-11.

{¶9} In this case, the trial court adhered to the magistrate's conclusion that most of the damage that Ms. Evans identified could be attributed to normal wear and tear. To the extent that Ms. Evans challenges that conclusion, we observe that it is supported by the testimony of Ms.

Warner and Michael Russo, who helped with her move. Significantly, this conclusion is also supported by Ms. Evans' own photographic exhibits.

{¶10} With respect to the condition of certain windows in the property that appeared to contain black mold and to the presence of mouse droppings on a shelf, the trial court concluded that Ms. Evans had failed to establish that the conditions could be linked to Ms. Warner. Ms. Evans has argued that this conclusion is not supported by the evidence and that the trial court abused its discretion for that reason. We disagree. Ms. Warner testified that she thoroughly cleaned the rental unit upon vacating. She also acknowledged that she discovered black mold on some windows and mouse droppings on a shelf, but testified that she notified Ms. Evans about both conditions during her tenancy. Ms. Evans did not make arrangements to have the windows cleaned once Ms. Warner contacted her, nor were the mouse droppings removed. The trial court did not abuse its discretion by determining that these conditions had not been connected to Ms. Warner and that, for that reason, the cost of remedying them was wrongfully withheld from the security deposit.

{¶11} Finally, Ms. Evans has argued that the trial court abused its discretion by determining that she wrongfully withheld the cost of retaining a locksmith to change all of the locks on the day that Ms. Warner vacated the rental. It is true that the original lease that Ms. Warner signed permitted the "making of new keys" to be deducted from the security deposit, but the lease does not specify either the number of keys that were originally provided to Ms. Warner or the conditions under which new keys could be charged against the deposit. Ms. Evans testified that she did not receive keys to the door that connected the rental unit to the garage or to the back door. Because Mr. Evans managed the property when Ms. Warner took possession, however, Ms. Evans could not verify that the missing keys had actually been given to Ms.

Warner, nor did she introduce other testimony or documentary evidence to that effect. Ms. Warner testified that she left all of the keys that she had been given on the kitchen counter when she vacated the premises, and she recalled that she had never been given keys to either the garage door or the back door. Under these circumstances, the trial court did not abuse its discretion by concluding that the locksmith's fees were wrongfully deducted from the security deposit.

{¶12} The trial court did not abuse its discretion by adhering to the magistrate's determination that conditions in the rental unit resulted from ordinary wear and tear or by concluding that the presence of black mold and mouse droppings had not been connected to Ms. Warner. In addition, the trial court did not abuse its discretion by concluding that the locksmith's fees were wrongfully deducted. Ms. Evans' first assignment of error is overruled.

Assignment of Error Number Two

> DUE TO PERSISTENT FACTUAL ERROR AND BIAS IN FAVOR OF TENANT, TO THE EGREGIOUS EXTENT OF THE MAGISTRATE FABRICATING TENANT TESTIMONY, THE MAGISTRATE'S DECISION MEETS THE STRINGENT TEST OF SERIOUSLY AFFECTING BASIC FAIRNESS. *GOLDFUSS V. DAVIDSON* (1997), 79 OHIO ST.3D 116, 679 N.E.2D 1099.
>
> THE DECISION FURTHER MEETS THE TEST OF "ABUSE OF DISCRETION." *HARAJLI MGT. & INVEST., INC. V. A&M INVEST. STRATEGIES, INC.*, 167 OHIO APP.3D 546, 2006-OHIO-3052, 855 N.E.2D 1262, 64 (6TH DIST.)

{¶13} Ms. Evans' second assignment of error is that the magistrate's resolution of factual issues reflects an abuse of discretion because it is characterized by bias and unfairness. When a trial court's adoption of a magistrate's decision is appealed, however, a magistrate's findings or proposed decision cannot be the basis for assigned error. *Knouff v. Walsh-Stewart*, 9th Dist. Wayne No. 09CA0075, 2010-Ohio-4063, ¶ 6. Ms. Evans' second assignment of error is overruled on that basis.

III

{¶14} Ms. Evans' assignments of error are overruled. The judgment of the Akron Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

HENSAL, P. J.
SCHAFER, J.
CONCUR.

APPEARANCES:

DIANE EVANS, pro so, Appellant.

JOANN SAHL, Appellate Review Office, School of Law, The University of Akron, for Appellee.