

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

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| JERRY D. YATES | : | |
| Plaintiff-Appellant | : | C.A. CASE NO. 23492 |
| v. | : | T.C. NO. 2008 CVI 1070 |
| PARVIZ KANANI | : | (Civil appeal from Municipal Court) |
| Defendant-Appellee | : | |

OPINION

Rendered on the 11th day of June, 2010.

JERRY D. YATES, 209 Clover Street, Fairborn, Ohio 45324
Plaintiff-Appellant

PARVIZ KANANI, 1900 Russet Avenue, Dayton, Ohio 45420
Defendant-Appellee

FROELICH, J.

{¶ 1} Jerry Yates, pro se, appeals from a judgment of the Dayton Municipal Court, Small Claims Division, which held that Yates was indebted to his former landlord, Parviz Kanani, for damage to Kanani’s rental property, but that Kanani had failed to return Yates’s security deposit within 30 days or to send him a letter explaining his retention of the security deposit, as required by 5321.16(B). After an offset for Yates’ statutory award for Kanani’s

violation of R.C. 5321.16(B), Kanani was awarded judgment in the amount of \$876.56.

{¶ 2} Yates appeals from the judgment, claiming that the trial court erred in finding that he had caused damage to the rental property and that the trial court should not have credited Kanani's repair estimates. For the following reasons, the trial court's judgment will be affirmed.

I

{¶ 3} In February 2008, Yates filed a complaint against his former landlord, Kanani, in the Dayton Municipal Court, Small Claims Division, seeking \$1,500 for the return of his security deposit and expenses. Kanani counterclaimed for damages to the rental property totaling \$2,500. A trial was held before a magistrate on March 12, 2008, during which Yates and Kanani both appeared without counsel and testified on their own behalfs. Both brought photographs of the rental property, and Kanani brought repair estimates that he had obtained. After a bench trial, the magistrate awarded judgment in favor of Kanani in the amount of \$876.56, plus statutory interest.

{¶ 4} Yates requested findings of facts and conclusions of law, pursuant to Civ.R. 53(D)(3)(a)(ii). The magistrate found the following facts:

{¶ 5} “*** Plaintiff [Yates] is now retired from the City of Dayton. During part of his employment with the City, he lived in the Defendant's [Kanani's] rental property located at 4589 Elliot Avenue in the City of Dayton. Plaintiff moved into the location in 1997 under a one year lease. After the expiration of that lease, Plaintiff became a monthly tenant until he vacated the unit on December 31, 2007. As required by the terms of his tenancy, Plaintiff paid Defendant a security deposit of \$530.00.

{¶ 6} “After vacating the unit, Plaintiff took up residence in Fairborn, Ohio. On or about February 9, 2008, Plaintiff received a letter from the Defendant indicating that, due to the damage to the property on Elliot Avenue, Plaintiff would not be receiving his security deposit back. Although the letter indicated that there was damage to the property, the letter failed to itemize or describe the nature of the damage.

{¶ 7} “During the trial, Defendant provided evidence of damages to the bathroom and utility room doors which required them to be replaced, since they could not be repaired. Additionally, Defendant provided evidence of damage done to an interior wall as a result of a broken washer hose, damage done to the overhead garage door and damage done to the door and door frame between the garage and living area. Due to the nature of the damages done to these doors, both required replacement as well. The damage done to the wall behind the washer would require the replacement of the drywall and other materials. In total, the costs to repair or replace the [sic] all of the damaged items was \$1,933.56.”

{¶ 8} In contrast to Kanani’s evidence, Yates had provided evidence that he had thoroughly cleaned the residence prior to vacating the rental property. He denied that there was damage to interior doors or the two-car garage door when he vacated the house. Yates also denied that he had left tape on the wall, which damaged the drywall, that his cat had scratched the insulation around a door, and that there was a water leak around the washer and dryer. He claimed that the tub was stained when he moved in and that he had cleaned the refrigerator. He testified that he had informed Kanani that various items needed to be fixed during his occupancy, but Kanani “never got around to it.”

{¶ 9} The magistrate found that “both parties have proven a majority of their claims

by a preponderance of the evident [sic].” As to Yates’s claim, the magistrate found that Kanani’s letter to Yates failed to satisfy the statutory requirements set forth in R.C. 5321.16(B), because the letter was sent more than 30 days after Yates vacated the residence and the letter did not itemize the alleged damage to the property. The magistrate found that, “[b]ased on the defects in the letter Plaintiff would be entitled to damages two times the amount of the security deposit, which totals \$1,060.00.”

{¶ 10} The magistrate further found, however, that there was damage to the garage door, three interior doors, and the wall behind the washer that exceeded ordinary wear and tear, and that Yates was responsible to Kanani for those repairs. The magistrate held: “Because the Defendant’s award exceeds that of the Plaintiff, the Defendant’s award is offset by the amount of the Plaintiff’s award and Defendant was awarded a judgment in his favor of \$876.56.”

{¶ 11} Yates and Kanani both objected to the magistrate’s decision. Yates argued that Kanani brought “falsified” photos of the rental unit; he claimed that they were either not current photos or photos of a different unit. Yates further stated that Kanani had not offered Yates a “customary final walk through inspection,” and Yates disputed all of Kanani’s claims of damage. Yates claimed that “[e]very aspect of the rental unit was thoroughly cleaned and sanitized,” that he paid his rent timely, that there were never any claims of damage during his occupancy, and that he left the unit in “move-in ready condition.”

{¶ 12} In his objections, which were filed by counsel that Kanani had apparently retained after the trial, Kanani argued that he did not wrongfully withhold Yates’s security deposit due to the damage to the rental property and, therefore, Yates was not entitled to the

return of his security deposit or double damages. Kanani asserted that he should have received judgment for the full amount of his damages, which totaled \$1,933.56.

{¶ 13} On May 26, 2009, the trial court overruled the parties' objections and adopted the magistrate's decision. The court's judgment entry read, in its entirety: "This court has reviewed the parties['] objections and hereby adopts as its final judgment the Magistrate's decision."

{¶ 14} Yates appeals from the trial court's judgment.

II

{¶ 15} Yates does not provide separate statements of his assignments of error presented for review and of the issues presented for review, as required by App.R. 16(A)(3) and (4). However, Yates has broken his brief into six sections, which raise the following issues:

{¶ 16} "I) Dayton Municipal Court erred in finding the Plaintiff responsible for accused damages to rental property by believing Defendant's photos over Plaintiff's photos.

{¶ 17} "II) Dayton Municipal Court erred in finding the Defendant provided reasonable damage repair estimates. ***

{¶ 18} "III) Defendant claims Plaintiff called at 6:30 am to notify Defendant a washer hose had burst. ***

{¶ 19} "IV) Defendant made several statements about damage due to Plaintiff's cat.

{¶ 20} "V) *** Defendant made *** inspections [under the rental agreement] on a

regular basis and never once mentioned any of the damages listed in his counterclaim to Plaintiff prior to filing counterclaim. ***

{¶ 21} “VI) Dayton Municipal Court erred in believing the testimony and evidence of the Defendant and therefore awarding judgment to the Defendant. Defendant did not provide enough evidence to prove his counterclaim was valid beyond a reasonable doubt.”

{¶ 22} Based on these arguments, we construe Yates’s assignment of error to be that the trial court’s judgment in favor of Kanani was against the manifest weight of the evidence.

{¶ 23} As an initial matter, Yates asserts that Kanani did not prove his claim “beyond a reasonable doubt.” The “beyond a reasonable doubt” standard applies in criminal prosecutions, not in civil litigation. In this case, both Yates and Kanani were required to prove their claims by a preponderance of the evidence. “Preponderance of the evidence simply means ‘evidence which is of a greater weight or more convincing than the evidence which is offered in opposition to it.’” *In re Starks*, Darke App. No. 1646, 2005-Ohio-1912, ¶15, quoting Black’s Law Dictionary (6th Ed. 1998) 1182.

{¶ 24} An appeal is not an opportunity to retry the case. An appellate court’s review in a direct appeal is limited to the materials in the record and the facts and evidence presented to the trial court. *State v. Ishmail* (1978), 54 Ohio St.2d 402; *Folck v. Henry*, Montgomery App. No. 19984, 2004-Ohio-3772, ¶11.

{¶ 25} A trial court’s factual findings will be reversed only if the findings are against the manifest weight of the evidence. *KeyBank Natl. Assn. v. Mazer Corp.*, Montgomery App. No. 23483, 2010-Ohio-1508, ¶36. In the civil context, a judgment will not be

reversed by a reviewing court as being against the manifest weight of the evidence if there is some competent, credible evidence going to all the essential elements of the case. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus.

{¶ 26} The court of appeals has an obligation to presume that the findings of the trier of fact are correct. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶24. “This presumption arises because the trial judge [or finder-of-fact] had an opportunity ‘to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.’ *** ‘A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.’” (Internal citations omitted.) *Id.*

{¶ 27} Here, the trial court had competent, credible evidence to support its finding that Yates had caused damage to Kanani’s rental property in the amount of \$1,933.56. As noted by the magistrate, Kanani testified that there were holes in two interior doors, which could not be repaired. Kanani also provided evidence that a broken washer hose had damaged the drywall by the washer, that damage had been done to the overhead garage door, and that Yates’s cat had damaged the door and door frame between the garage and living area. Moreover, Kanani provided the court with estimates to repair the damage.

{¶ 28} The magistrate and trial court apparently rejected Kanani’s claim that Yates was responsible for damaged insulation on the front door, the stained bathtub, and cleaning the outside of the refrigerator; Kanani had requested damages of \$100 for those items. The

trial court's award of \$1,933.56 reflected a deduction of \$100 from Kanani's alleged total maintenance and repair costs for the property, which he claimed totaled \$2,033.56.

{¶ 29} Although Yates offered testimony and supporting photographs to demonstrate that he had thoroughly cleaned the property before vacating the premises and had not caused damage beyond normal wear and tear, which the trial court could have reasonably credited, we cannot say that the trial court erred when it elected to believe Kanani's testimony and photographs that certain damage had been done to the property.

{¶ 30} Yates further claims that the trial court did not take into account a \$300 pet deposit that he had paid to Kanani. Although Yates testified that he paid an additional \$300 pet deposit – and Kanani's brief acknowledges that this deposit was paid – nothing in the record indicates that this deposit was refundable. Based on the record, the trial court did not err in failing to deduct an additional \$300 from Kanani's award.

{¶ 31} Yates's assignment of error is overruled.

III

{¶ 32} In his appellee's brief, Kanani, pro se, argues that the trial court should have offset his award by only \$530, the amount of Yates's security deposit, rather than award double damages to Yates. We understand Kanani's argument; however, in order for this Court to have jurisdiction over Kanani's claim of error, Kanani was required to file a notice of cross appeal. Under App.R. 3(C), a notice of cross appeal must be filed by a party "who intends to defend a judgment or order against an appeal taken by an appellant *and who also seeks to change the judgment or order ***.*" (Emphasis added.) Kanani did not file a notice of cross-appeal in this case. Accordingly, we lack jurisdiction to determine the error

that Kanani claims.

IV

{¶ 33} The judgment of the trial court will be affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

Jerry D. Yates
Parviz Kanani
Hon. Deirdre E. Logan