

[Cite as *Bailey v. Fairchild*, 2010-Ohio-5750.]

IN THE COURT OF APPEALS OF CHAMPAIGN COUNTY, OHIO

CAROLYN SUE BAILEY	:	
Plaintiff-Appellee	:	C.A. CASE NO. 10CA10
vs.	:	T.C. CASE NO. 09CVG930
STEVE FAIRCHILD, et al.	:	(Civil Appeal from Municipal Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 24th day of November, 2010.

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GRADY, J.:

{¶ 1} This is an appeal from a judgment in favor of a landlord and against a tenant for damages arising from the cost of repairs to a residential rental property at the conclusion of a five-year tenancy.

{¶ 2} On September 24, 2009, Plaintiff, Carolyn Bailey, commenced an action in forcible entry and detainer against her tenants, Defendants Steven and Vonda Fairchild, in the Champaign County Municipal Court.

Bailey alleged that the Fairchilds owed seven hundred dollars for unpaid rent. Bailey asked for restitution of the premises, a judgment for the unpaid rent, "plus unknown damages."

{¶3} The Fairchilds vacated the premises voluntarily in late September of 2009. On March 19, 2010, the court held an evidentiary hearing on Bailey's claims for unpaid rent and money damages for repairs to the premises Bailey made and/or expected to make.

{¶4} The tenancy was founded on a written lease agreement. Section 7 of the agreements prohibits the tenant from keeping animals on the premises without the landlord's consent. Section 12 provides that the tenant "agrees to keep the premises and all items provided by (the landlord) in good order and good condition" and to immediately pay for costs to repair and/or replace "any portion of the premises damaged by the tenant," except as provided by law, and to return the premises to the landlord "in clean and good condition except for reasonable wear and tear." Section 7 further provides that "stains of any size or amount in the carpets . . . do not constitute reasonable wear and tear." Section 14 requires the resident to place garbage and waste in receptacles.

{¶5} R.C. 5321.05(A) provides, in pertinent part:

{¶6} "A tenant who is a party to a rental agreement shall do all of the following:

{¶7} "(1) Keep that part of the premises that he occupies and

uses safe and sanitary;

{¶ 8} "(2) Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;

{¶ 9} "(3) Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits;

{¶ 10} "(4) Use and operate all electrical and plumbing fixtures properly;

{¶ 11} "(5) Comply with the requirements imposed on tenants by all applicable state and local housing, health, and safety codes;

{¶ 12} "(6) Personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises;

{¶ 13} "(7) Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliances supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement."

{¶ 14} R.C. 5321.05 (C) provides that the landlord may recover actual damages that result from the tenant's violation of R.C. 5321.05.

{¶ 15} At the evidentiary hearing, Bailey, the landlord, testified that the premises were damaged in several respects: by water leaking from a bathroom shower that produced mold and water damage in that location and in a basement area below; by water that had entered the

basement through a sewer, damaging the carpet there and contributing to the mold problem; by the tenants' not using the furnace in the basement for two years, contributing to the mold problem and requiring repairs to the furnace; by damage to the basement carpet, baseboard and walls caused by a cat; and by the tenants' removing shower doors and light fixtures. Bailey claimed that she would have repaired these conditions and defects had the Fairchilds reported them, and alleged that the Fairchilds were negligent in failing to do so and/or causing the defects to occur.

{¶ 16} Vonda Fairchild testified and did not deny the existence of these conditions or defects, but she denied any responsibility for them. She contended that the shower leaks occurred when wall tiles fell off, and that the storm sewer damage to the basement happened on one occasion. She denied having a cat or other animal. Fairchild claimed that she had reported these conditions or defects to Bailey.

{¶ 17} The trial court awarded damages to Bailey totaling \$3,921.00. The Fairchilds filed a timely notice of appeal.

FIRST ASSIGNMENT OF ERROR

{¶ 18} "THE TRIAL COURT ERRED IN AWARDING ANY DAMAGES TO PLAINTIFF."

{¶ 19} Defendant's argument presents a manifest weight of the evidence claim. Where there exists competent and credible evidence supporting the findings and conclusions of the trial court, deferences as to such findings and conclusions must be given by the reviewing

court. *Jenkins v. Eagle Twp. Trustees*, Vinton App. No.01CA557, 2002-Ohio-2154. Even "some" evidence is sufficient to sustain the judgment and prevent a reversal. *Lipnick v. Reisinger*, 168 Ohio App.3d 253, 2006-Ohio-3878.

{¶ 20} There was no real dispute concerning the existence of the conditions and defects that form the basis of the damages the court awarded to Bailey. Fairchild argues that it was Bailey's duty as the landlord, to discover and cure the defects. However, the lease requires the tenant to keep the premises "in good order and good condition," and R.C. 5321.05(A)(6) prohibits a tenant from negligently damaging the leased premises. Bailey testified that had certain of the defective conditions been reported to her, when they occurred, she could have acted to avoid further injury to the premises.

{¶ 21} On this record, the trial court could, as it apparently did, find that the Fairchilds were negligent in failing to report certain of these conditions when they occurred, which would have allowed Bailey to make the repairs necessary to cure them and avoid further damage.

{¶ 22} The first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶ 23} "THE TRIAL COURT ERRED IN AWARDING DAMAGES TO PLAINTIFF FOR REPLACEMENT OF CARPET."

{¶ 24} The court awarded Bailey \$115 for the costs of cleaning the basement carpet and \$2,000 for its replacement, on Bailey's claim that

cleaning did not remove the stains and odors to the carpet from what Bailey believed was cat urine. The court apparently accepted Bailey's testimony concerning the cause of those conditions.

{¶ 25} Where damage to property is temporary and susceptible to repair, the court may award the landlord the cost of restoration. *Maier v. Shields*, Miami App. No. 07-CA-21, 2008-Ohio-3874. The court could reasonably award Bailey the cost of having the carpet cleaned.

{¶ 26} Bailey requested \$2,000 for the cost of replacing the carpet (T. 10). However, Bailey had not replaced the carpet. (T. 12). Defendant's exhibit B (Dkt. 16) contains a number of repair estimates.

One of those is a handwritten document which indicates that the cost from Home Depot to take up and replace the carpet would be \$2,126.44, and from Lowe's \$2,000. The source of that information is wholly unidentified.

{¶ 27} In order to be credible, evidence must be elicited from a competent source. Bailey's testimony, standing alone, is not competent, credible evidence of the cost of replacing the carpet. The award to Bailey of \$2,000 on that claim is against the manifest weight of the evidence.

{¶ 28} The second assignment of error is sustained, in part, and overruled, in part.

THIRD ASSIGNMENT OF ERROR

{¶ 29} "THE TRIAL COURT ERRED IN AWARDING DAMAGES TO PLAINTIFF FOR

REPLACEMENT OF BATHROOM TILES.”

{¶ 30} Vonda Fairchild testified that tiles fell from the wall of the bathroom shower while she was taking a shower and were never replaced. Carolyn Bailey contended that this was the cause of water damage and mold. The trial court awarded Bailey \$200 for the loss of the bathroom tiles, stating: “I think there’s a little bit of shared responsibility there. You (Fairchild) were five years there. You should have sent her (Bailey) a letter or something.” (T. 46). The court could reasonably find that Fairchild’s omission was negligence pursuant to R.C. 5321.05(A)(6), which permitted an award of damages pursuant to R.C. 5321.05(C)(1).

{¶ 31} The third assignment of error is overruled.

FOURTH ASSIGNMENT OF ERROR

{¶ 32} “THE TRIAL COURT ERRED IN AWARDING DAMAGES TO PLAINTIFF FOR REPLACEMENT OF VENTS.”

{¶ 33} The court awarded Bailey \$144 for her costs in having furnace vents cleaned. Bailey testified that the Fairchilds had turned off the gas and not used the furnace for two years, (T. 8), and that the “cleaning of the furnace vents (was) because the furnace had been turned off and there was mold in the basement.” (T. 16). That is competent, credible evidence permitting the award the court made.

{¶ 34} The fourth assignment of error is overruled.

FIFTH ASSIGNMENT OF ERROR

{¶ 35} "THE TRIAL COURT ERRED IN AWARDING DAMAGES TO PLAINTIFF FOR REPLACEMENT OF THE BATHROOM SINK."

{¶ 36} The court awarded Bailey \$200 for damage to the bathroom sink. There was no claim by Bailey that the bathroom sink was damaged, and no evidence was offered showing damage to the sink.

{¶ 37} The fifth assignment of error is sustained.

SIXTH ASSIGNMENT OF ERROR

{¶ 38} "THE TRIAL COURT ERRED IN AWARDING DAMAGES TO PLAINTIFF FOR REPLACEMENT FOR GENERAL CLEANING EXPENSES, FOR EXPENSES OF CLEANING CARPET AND FOR HAULING TRASH AND WASHING WALLS."

{¶ 39} We previously found that the award for carpet cleaning was not against the manifest weight of the evidence.

{¶ 40} Bailey testified that "I needed a dumpster because they left some trash laying out front that the people would not pick up." (T. 10). Bailey submitted a list of damages that included a claim, "Dumpster \$85," (Dkt. 16), Defendant's Exhibit G. That was competent, credible evidence for the award of \$85 for "trash hauling."

{¶ 41} Fairchild denied that she or her husband had kept an animal on the premises. (T. 39). Bailey testified that there were marks "where the cat has scratched woodwork and urinated all over the walls, the carpet . . . and the smell is still in the walls." (T. 9). Bailey asked for \$125 for the cost of cleaning the walls. (*Id.*) Bailey's testimony was competent, credible evidence for the court's award of

\$125 for washing and cleaning the walls.

{¶ 42} The sixth assignment of error is overruled.

SEVENTH ASSIGNMENT OF ERROR

{¶ 43} "THE TRIAL COURT ERRED IN COMPUTATION OF ITS JUDGMENT."

{¶ 44} The court awarded damages for Bailey and against the Fairchilds in the amount of \$3,921, that being the total of rent owed and the individual damage awards. The court also credited the Fairchilds with a set-off of \$700 for the amount of their security deposit that Bailey retained. However, the court failed to apply the set-off, which should have reduced its judgment by \$700.

{¶ 45} The seventh assignment of error is sustained.

Conclusion

{¶ 46} Having sustained the fifth and seventh assignments of error, and the second assignment of error, in part, we will reverse the judgment from which the appeal was taken and remand the case to the trial court to enter a new award of damages consistent with this opinion.

BROGAN, J. And MCFARLAND, J., concur.

(Hon. Matthew W. McFarland, Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

Copies mailed to:

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