**[Cite as *Thornhill v. Fossett*, 2010-Ohio-2091.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION
**No. 93261**

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## ALICE MARIE THORNHILL

PLAINTIFF-APPELLANT

vs.

## CEDRIC FOSSETT, ET AL.

DEFENDANTS-APPELLEES

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**JUDGMENT:**
**AFFIRMED**

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Civil Appeal from the
Berea Municipal Court
Case No. 08CVI04100

**BEFORE:** Rocco, P.J., Blackmon, J., and Jones, J.

**RELEASED:** May 13, 2010

**JOURNALIZED:**

**APPELLANT**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

KENNETH A. ROCCO, P.J.:

**{¶ 1}** Plaintiff-appellant, Alice Marie Thornhill, appeals from a municipal court order dismissing her small claims complaint. She asserts that the court erred by ruling in favor of the defendants-appellees, Cedric and Belinda Fossett. We find no error in the court's decision and affirm its judgment.

**{¶ 2}** On December 17, 2008, appellant filed her small claim in the Berea Municipal Court. She alleged that the appellees were tenants of her rental property in Brookpark, Ohio, from November 1, 2003 until August 23, 2007, and owed her a total of $1,389 for past due rent, a security deposit, appliance rental expense, destruction of appliances, and a garage door opener. The magistrate conducted a hearing on the matter on February 11, 2009. Following the hearing, the magistrate entered his recommendation that the court find that "[p]laintiff failed to prove by a preponderance of the evidence the allegations in the Complaint. Judgment for Defendant. Case dismissed. Costs assessed to Plaintiff."

**{¶ 3}** Ten days later, the court approved and confirmed the magistrate's report and recommendation and entered judgment for the appellees, dismissing the complaint and assessing costs to the appellant. However, the court subsequently vacated this entry and granted appellant an extension of time to file her objections to the magistrate's decision.

**{¶ 4}** On April 1, 2009, the municipal court overruled appellant's objections and "affirmed" the magistrate's decision. Appellant appealed from this ruling. Upon remand from this court "pursuant to App.R. 9(E)," the municipal court "reaffirm[ed] the finding of the Magistrate dated 2/11/09 and * * * dismissed [the case] at plaintiff's costs."

**{¶ 5}** Although the municipal court's April 1, 2009 decision did not dispose of the appellant's claims, the decision on remand did dispose of the case and was therefore a final appealable order. See, e.g., *In re Zinni*, Cuyahoga App. No. 89599, 2008-Ohio-581, ¶20 & 22. Consequently, we will treat the notice of appeal as having been filed prematurely. App.R. 4(C).

**{¶ 6}** The record includes a transcript of the hearing before the magistrate as well as several exhibits presented at the hearing. The exhibits included the parties' rental agreement dated September 28, 2003. Appellees agreed to rent the premises for a period of twelve months beginning November 1, 2003, for $600 per month. The agreement automatically renewed from year to year unless prior written notice was given. The agreement acknowledged that appellees "hereby mails, deliver[s] or deposits the sum of Six Hundred dollars ($600.00) as a guarantee for the faithful performance of all the terms of this agreement, which sum landlord agrees to refund to the tenant after vacation of the premises, the expiration of this agreement, or any renewal thereof, providing that all of the terms of this

agreement have been complied with less any deduction authorized herein, and without prejudice to any future claim of landlord for damages and/or rent in excess of said sum."

**{¶ 7}** At the hearing before the magistrate, appellant testified that the city of Cleveland purchased the premises from her in August 2007 and took over the lease with appellees. She complained that the city had deducted the $600 security deposit from the purchase price it paid her, even though she never actually received the security deposit from appellees. She also claimed that the appliances on the premises were not part of the sale to the city, but when she went to recover them, she discovered that appellees had damaged them. She estimated that she could have gotten $300 for the appliances if she had been able to sell them. She also testified that appellees retained her garage door opener, which she valued at $40. Finally, she claimed appellees owed her rent for the use of her appliances from August 2007 to July 2008, and rent for the premises for August 2007.

**{¶ 8}** In this appeal, appellant challenges only the court's failure to award her the security deposit and the value of the appliances. The municipal court could have reasonably found that appellant failed to demonstrate that appellees owed her $600 for the security deposit. The parties agreement acknowledged that appellees paid appellant the security deposit contemporaneous with the execution of the agreement. Appellees

testified that they paid it. The court could reasonably have disbelieved appellant's testimony that she never received the security deposit. Competent credible evidence supported the municipal court's decision on this issue. See *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 81, 461 N.E.2d 1273

**{¶ 9}** The municipal court also could reasonably have found that appellant failed to demonstrate the damages to her appliances. Even accepting appellant's assertion that appellees "destroyed" the refrigerator and the stove, there is no evidence to support the amount of damages she claims. There is no evidence to support either her statement at the hearing that "if I could have sold them for used, I'm sure I could have at least gotten $300 for them" or her statement in this appeal that the $300 represents "replacement cost." Therefore, the muncipal court did not err by denying appellant's claim for damage to the refrigerator and stove.

Affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
LARRY A. JONES, J., CONCUR