

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-02-44
DHM-KEN-4/11/0003

ANN MARIA WESTEMEYER-CROCKER,

Plaintiff

v.

ORDER

DONALD L. GARBRECHT
LAW LIBRARY

MAY 28 2003

LLEWELLYN C. MANTER,

Defendant

This matter is before the court on appeal from a small claims judgment in the District Court. Plaintiff, a former tenant of defendant, filed a statement of claim on November 19, 2001, alleging that the defendant had not returned her security deposit after having been served notice. She requested judgment in the amount of \$325 as a return of her security deposit. The District Court held a hearing and found that the defendant has not met her burden, pursuant to 14 M.R.S.A. § 6034(3), of proving that the withholding of the security deposit, or any portion of it, was not wrongful. The court found that the defendant had received a sufficient 30-day notice of termination of the tenancy-at-will, that the retention of late rent fees was wrongful, nor that there was sufficient basis to charge the plaintiff \$45 to remove a rug. In essence, the court found that the defendant failed to account to the plaintiff for the withholding of the security deposit for purposes authorized at law. As a consequence, pursuant to 14 M.R.S.A. § 6034, the court granted judgment for the plaintiff in the amount of \$325 for the security deposit, plus double damages for the wrongful retention in the amount of \$650, plus court costs in the amount of \$40.

The defendant complains, among other things, that she was entitled to a 30-day notice of termination of tenancy, which termination would occur on a rent day. In the


instant case, rent was due on the first of the month. Notice of termination was sent on the 8th of a month and the plaintiff vacated on the 8th of the following month paying therefore a prorated rent for the eight days. This court finds that it was an error of law for the District Court to fail to conclude that the defendant was entitled to the full month's rent to the next rent day. It apparently is agreed that the amount in difference in this case is \$238. Therefore, the District Court is in error in failing to find defendant's entitlement to that amount.

In all other respects, the judgment of the District Court is in accordance with law, there is sufficient evidence to support the findings of fact made by the court, and the judgment must be affirmed.

The entry will be:

The appeal of the defendant is SUSTAINED and the judgment is REVERSED as to the \$238 rent due to the operable rent date; in all other respects the judgment of the District Court is AFFIRMED; this matter is REMANDED to the District Court to enter judgment in accordance with this decision.

Dated: April 11, 2003



Donald H. Marden
Justice, Superior Court

Date Filed 7/22/02 Kennebec County Docket No. AP02-44

Action Appeal from District Court
Small Claims

J. MARDEN

~~Ann Maria Westemyer-Crocha~~ Crocker vs. Louanne M. Manter

Plaintiff's Attorney

Ann Maria Westemyer-Crocha
11 Boothby Street
Augusta, Maine 04330

Defendant's Attorney

Louanne M. Manter, Pro Se
~~FIVE CROSS STREET~~
~~AUGUSTA MAINE 04330~~
58 Howard Street
Augusta, Maine 04330

Date of
Entry

7/22/02	Appeal from Southern Kennebec District Court with all papers, filed.
7/31/02	ORDER ON JURY TRIAL REQUEST, Marden, J. (dated 7/29/02) The Defendant's shall file memoranda on the following issues within 30 days and shall appear at court as directed. *Defendant's basis for appeal. Copies mailed to parties.
8/14/02	Letter from Deft. regarding case, filed. s/Manter, Pro Se (Request for Extension)
8/20/02	ORDER ON REQUEST FOR EXTENSION, Marden, J. (dated 8/15/02) GRANTED: time to file memoranda enlarged to September 15, 2002; clerk to notify Manter in writing of obligation to assure court has correct address <u>at all times</u> . Copies mailed to parties. Letter from Court to Defendant, filed.
8/23/02	Letter from Pltf. indicating that her name is spelled incorrectly and statement of case, filed.
9/16/02	Brief, filed. s/L.M. Manter, Pro Se
	Notice of setting for <u>4/1/03</u>
	sent to attorneys of record.
4/1/03	Hearing had on oral arguments with Hon. Justice Donald Marden, presiding. Tape 641 Index 4862-5356 Ann Maria Westemyer, Pro Se plaintiff and Louanne Manter, Pro Se, Deft. Oral arguments made to the court. Court to take matter <u>under advisement</u> .
4/14/03	ORDER, Marden, J. (Dated 4/11/03) The appeal of the defendant is SUSTAINED and the judgment is REVERSED as to the \$238 rent due to the operable rent date; in all other respects