[Cite as *Jackson v. Hamptons Apts., L.L.C.*, 2018-Ohio-4891.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106840

ZHENNI JACKSON

PLAINTIFF-APPELLANT

vs.

HAMPTONS APARTMENTS, L.L.C.

DEFENDANT-APPELLEE

JUDGMENT:
DISMISSED

Civil Appeal from the
Shaker Heights Municipal Court
Case No. 17 CVI 01256

BEFORE: S. Gallagher, J., McCormack, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: December 6, 2018

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SEAN C. GALLAGHER, J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Zhenni Jackson appeals the judgment entered in favor of Hamptons Apartments, L.L.C., upon the complaint and counterclaim stemming from the withholding of a $299 security deposit and the additional charged cost to replace carpet after Jackson surrendered her apartment at the end of the lease term. After filing the appeal, Jackson voluntarily satisfied the judgment of $265.25 plus costs that was in addition to the surrendering of the security deposit. Because there is no longer a live case or controversy, this appeal is dismissed.

{¶2} There is no transcript from the trial or an App.R. 9(C) statement. Jackson is not disputing the factual findings of the trial court; she is only appealing the interpretation of a statute. Accordingly, the facts as found by the magistrate and adopted by the trial court are as follow.

{¶3} Jackson rented an apartment from Hamptons Apartments ("landlord"). Before Jackson took possession of the apartment, an assessment revealed that the carpet was in rentable condition. Jackson was also permitted to inspect the premises and record any damage or other

problems with the unit. Upon terminating the month-to-month lease, Jackson was notified that her landlord would be applying the security deposit to the prorated cost of replacing the carpet that was only five years into its ten-year usable life. The landlord alleged that Jackson owed approximately $265 in addition to the $299 security deposit (representing approximately 50 percent of the $1,110.49 replacement cost). Jackson claimed that the landlord wrongly withheld the security deposit because the notice provided by Hampton Apartments, in compliance with R.C. 5321.16(B), itemized the security deposit deduction as "pro-rated carpet replacement," without any further description. The magistrate concluded that the notification complied with the statutory requirement. Following a judgment in the landlord's favor upon all claims, Jackson timely appealed, claiming the trial court erred as a matter of law.

{¶4} After filing the appeal, however, Jackson tendered a payment in the full amount of the final judgment. Attached to the appellate briefing is a copy of what was received by the landlord's attorney of record: Jackson's check and her letter stating that the payment is meant to be in full satisfaction of the judgment. Jackson has not contested the landlord's suggestion that this appeal is now moot in light of this development.

{¶5} Appellate courts cannot review questions that do not involve live controversies. *Bayview Loan Servicing v. Salem*, 9th Dist. Summit No. 27460, 2015-Ohio-2615, ¶ 7. "It is a well-established principle of law that a satisfaction of judgment renders an appeal from that judgment moot." *Blodgett v. Blodgett*, 49 Ohio St.3d 243, 245, 551 N.E.2d 1249 (1990). As has been recognized, absent fraud, a timely appeal should be dismissed if the final judgment is voluntarily paid and satisfied because such payment puts an end to the controversy and takes away from the defendant the right to appeal or prosecute error. *Id.*, citing *Rauch v. Noble*, 169 Ohio St. 314, 316, 159 N.E.2d 451 (1959), and *Lynch v. Lakewood City School Dist. Bd. of Edn.*,

116 Ohio St. 361, 156 N.E. 188 (1927), paragraph three of the syllabus. "Once the rights and obligations of the parties have been extinguished through satisfaction of the judgment, a judgment on appeal cannot have any practical effect upon the issues raised by the pleadings." *Akron Dev. Fund I, Ltd. v. Advanced Coatings Internatl., Inc.*, 9th Dist. Summit No. 25375, 2011-Ohio-3277, ¶ 21.

{¶6} Further, "'an event that causes a case to be moot may be proved by extrinsic evidence outside the record.'" *State ex rel. Nelson v. Russo*, 89 Ohio St.3d 227, 228, 2000-Ohio-141, 729 N.E.2d 1181, quoting *Pewitt v. Lorain Corr. Inst.*, 64 Ohio St.3d 470, 472, 597 N.E.2d 92 (1992); *Miner v. Witt*, 82 Ohio St. 237, 238, 92 N.E. 21 (1910); *State v. Hagwood*, 8th Dist. Cuyahoga No. 83701, 2004-Ohio-5967, ¶ 5; *see also Wizards of Plastic Recycling, L.L.C. v. R & M Plastic Recycling, L.L.C.*, 9th Dist. Summit No. 25951, 2012-Ohio-3672, ¶ 4, citing *Miner* and *Mills v. Green*, 159 U.S. 651, 653, 16 S.Ct. 132, 40 L.Ed. 293 (1895).

{¶7} Even if we considered the merits of Jackson's arguments, we are limited by the fact that Jackson failed to include a transcript of the proceedings or even an App.R. 9(C) statement. Several of her arguments address statements by the magistrate or evidentiary issues upon which we have no record to evaluate, and with respect to Jackson's arguments challenging the landlord's failure to provide a walk-through before she surrendered the rental unit, Jackson concedes that the landlord was not statutorily or contractually obligated to provide one. In the finding of facts and conclusions of law, the magistrate concluded that the itemization of deductions was sufficient under R.C. 5321.16(B) and the landlord was entitled to a judgment on the amount owed unsatisfied by the withheld security deposit.

{¶8} Jackson contends that two decisions are dispositive on the issue of the sufficiency of the deduction notice. In *Nolan v. Sutton*, 97 Ohio App.3d 616, 647 N.E.2d 218 (1st Dist.), it

was concluded that the itemization line item "$40-cleaning" was insufficient as a matter of law to meet the landlord's burden under R.C. 5321.16(B) to itemize the deduction. On the other end of the spectrum is *McNeill v. Wasserbauer*, 8th Dist. Cuyahoga No. 72846, 1998 Ohio App. LEXIS 2722, 8 (June 18, 1998), in which a more detailed itemization was deemed sufficient to comply with the statutory requirement. In that case, the itemization provided that the security deposit was withheld for the following:

> 1. The back bedroom wall had paint and plaster damage due to the storm window not being secured into the window track, thereby allowing water to accumulate in the sill. This was the window that was broken and repaired at our expense. It was found up on the attic floor.
>
> 2. The kitchen wall behind the refrigerator and the back sides of the cupboard doors required a second coat of paint to completely cover the old color, as you indicated you would repaint with proper preparation in your letter of July 1, 1994. Also the floor required a thorough scrubbing to remove all of the blue paint splatters from the work, which you had completed.
>
> 3. The appliances needed additional cleaning. This is referenced in section 10 of your lease.

Id. at 8. Jackson believes that only a description similar to the one in *McNeill* is sufficient as a matter of law.

{¶9} *Nolan* and *McNeill* are bookends, and what is sufficient under R.C. 5321.16(B) must be determined on a case-by-case inquiry. Although *McNeill* demonstrates what is sufficient under R.C. 5321.16(B), it does not interpret R.C. 5321.16(B) to require such detail. Although the more descriptive version of the itemization would be better in practice, the statute requires only that "any deduction from the security deposit shall be itemized and identified" in a written notice. The statutory language is broad. In this case, the written notification itemized the deduction, which was identified as the single line item, "pro-rated carpet replacement."

{¶10} Further, and unlike the factual situation in *Nolan* in which the itemized description "$40-cleaning" was insufficient to indicate whether the cleaning was for anything other than ordinary wear and tear, the description of the itemization indicated that the carpet replacement was "pro-rated." This indicated the carpet was being replaced earlier than expected, meaning for damage beyond ordinary wear and tear, and that Jackson was only responsible for the shortened useful life of the carpet. In light of the limited factual record, even if we addressed the merits of Jackson's claims, we could not conclude that the trial court erred as a matter of law.

{¶11} Nevertheless, in this case, the landlord suggested that Jackson tendered payment as final satisfaction of the outstanding judgment and presented materials demonstrating that fact of consequence. Jackson has not challenged this assertion and during oral argument conceded that the payment was made. Although an appellate court may not generally consider materials outside of the record, there is an exception in cases in which the appellate court must determine whether an appeal is mooted by a post-dispositive act. *Russo*, 89 Ohio St.3d at 228, 2000-Ohio-141, 729 N.E.2d 1181. In consideration of the evidence presented, the judgment has been satisfied. Jackson's payment has ended the controversy between the parties, and there is no relief that can be provided by this court.

{¶12} We are aware that this has been an exhaustive and emotional dispute for Jackson. She believes to have been wronged and sought redress. While those efforts have proved to be unsuccessful on a legal basis, we understand and are aware of those concerns and the sense of wrong believed to have been suffered.

{¶13} This appeal is dismissed.

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

It is ordered that a special mandate issue out of this court directing the municipal 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.

SEAN C. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR