[Cite as *Arnold v. Urban Rental Corp.*, 2004-Ohio-954.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

RICHARD ARNOLD

Appellee

v.

URBAN RENTAL CORP.

Appellant
C.A. No. 21638

APPEAL FROM JUDGMENT
ENTERED IN THE
MUNICIPAL COURT OF AKRON
COUNTY OF SUMMIT, OHIO
CASE No. 03 CVF 00081

DECISION AND JOURNAL ENTRY

Dated: March 3, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BAIRD, Judge.

{¶1} Appellant, Urban Rental Corp., appeals from an adverse default judgment rendered by a magistrate and entered into judgment by the Akron Municipal Court. We affirm.

I.

{¶2} On May 30, 2002, Appellant, as lessor, and Richard Arnold, as lessee, executed a lease agreement effective from June 9th, 2002 through December 31, 2003. According to the lease, the rent was $415.00 monthly; the security deposit was also $415.00. The pre-printed lease stated that Appellant would not be responsible for providing a working refrigerator or stove; however, that portion of the lease was struck and a handwritten change states that "Urban Rental guarantees stove and refrigerator to be in working order."

{¶3} On October 22, 2003, Arnold sent a letter to Appellant complaining that the heat in the apartment didn't work, the freezer in the refrigerator and the stove were malfunctioning, the bathtub drain was clogged, and the hot water supply was inadequate. The letter was sent by certified mail and was returned unclaimed. On November 27, 2002, Arnold sent another certified letter stating that he was terminating the lease and demanding the return of his security deposit due to Appellant's lack of response to his first letter. This letter was also returned unclaimed. On January 3, 2003, Arnold filed a complaint to recover double the amount of his security deposit. The court mailed notice of the complaint via certified mail stating that a hearing would take place on April 26, 2003 at 10:00 AM in the Akron Municipal Court; this notice was also returned unclaimed. On

March 12, a new notice of hearing was sent via regular mail. There is nothing in the record to indicate that this second notice was returned undelivered.

{¶4} Appellant failed to show for the hearing. A magistrate listened to Arnold's case and entered his evidence into the record. According to the transcript of the hearing, Arnold testified that he called Appellant numerous times and no one answered the phone or returned the messages that he left. Further, Arnold stated that he drove to Appellant's address numerous times and, although he could observe people inside, the door was locked and no one would answer the door when he knocked. The magistrate found that Appellant was justified in seeking a termination of the lease based upon the problems with the apartment, and that Appellant "wrongfully withheld [Arnold's] security deposit." Consequently, the magistrate permitted a double recovery of the security deposit, $830.00, pursuant to R.C. 5321.16(C), plus court costs and 10% interest from the date of judgment.

{¶5} Appellant raised objections to the magistrate's decision in the Akron Municipal Court, which overruled the objections, adopted the magistrate's decision, and entered judgment for Arnold. Appellant timely appealed, raising two assignments of error.

II.

Assignment of Error No. 1

> "[ARNOLD] FAILED TO COMPLY WITH THE REQUIREMENTS OF R.C. 5321.07, AND THEREFORE, HAD NOT (SIC) RIGHT TO TERMINATE THE LEASE, AND THE MAGISTRATE'S FINDING AND DECISION SHOULD BE OVERRULED."

{¶6} In the first assignment of error, Appellant argues that Arnold did not comply with R.C. 5321.07 because the certified mail sent to Appellant was not claimed; therefore, Appellant did not have the notice required by R.C. 5321.07. Appellant argues that Arnold "had no direct communication with the landlord regarding the condition of the apartment, did not testify that he left message (sic) on the office voicemail of the landlord's, sent letters by regular mail, etc." Therefore, Appellant states that Arnold cannot assert his rights afforded by R.C. 5321.07 and the magistrate's decision was in error. These arguments attempt to reach the merits of the case presented to the magistrate below, and they are inapposite to the standard of review.

{¶7} When appealing the trial court's adoption of a magistrate's decision, any claim of trial court error must be based on the actions of the trial court, not on the magistrate's findings or proposed decision. *Lewis v. Savoia* (Aug. 28, 1996), 9th Dist. No. 17614 at 3, quoting *Mealey v. Mealey* (May 8, 1996), 9th Dist. No 95CA0093, at 5. An appellate court determines whether a trial court abused its discretion by adopting a magistrate's report in light of the evidence before the trial court. *Atco Med. Prod., Inc. v. Stringer* (Apr. 8, 1998), 9th Dist. No. 18571, at 4. An abuse of discretion connotes more than an error in law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *State ex rel. Edwards v. Toledo City School Dist. Bd. of Edn.* (1995), 72 Ohio St.3d 106, 107. When applying the abuse of discretion standard, a reviewing court may not

substitute its judgment for that of the trial court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶8} R.C. 5321.07 states in pertinent part:

> "(A) If a landlord fails to fulfill any obligation imposed upon him by section 5321.04 of the Revised Code, *** or any obligation imposed upon him by the rental agreement, if the conditions of the residential premises are such that the tenant reasonably believes that a landlord has failed to fulfill any such obligations, *** the tenant may give notice in writing to the landlord, specifying the acts, omissions, or code violations that constitute noncompliance. The notice shall be sent to the person or place where rent is normally paid.
>
> "(B) If a landlord receives the notice described in division (A) of this section and after receipt of the notice fails to remedy the condition within a reasonable time considering the severity of the condition and the time necessary to remedy it, or within thirty days, whichever is sooner, and if the tenant is current in rent payments due under the rental agreement, the tenant may do one of the following:"
>
> "***.
>
> "(3) Terminate the rental agreement."

{¶9} The trial court reviewed the transcript of the magistrate's hearing; the transcript demonstrated that Arnold related numerous problems with the apartment and his attempts to assert his rights under the Revised Code. The trial court stated that:

> "[Arnold] attempted service by certified mail on October 22, 2002[,] regarding [Appellant's] violations *** and on November 27, 2002[,] regarding his constructive eviction and termination of the lease ***. The transcript also indicates that [Arnold] drove to [Appellant's] place of business, and no one would answer the door. According to the transcript, [Arnold] made numerous phone calls and left messages on [Appellant's] answering machine. The calls were not returned."

{¶10} In light of the evidence before the trial court, there is nothing to indicate that the trial court's decision was arbitrary, unreasonable, or unconscionable. We find no abuse of discretion in the trial court's action. Appellant's first assignment of error is overruled.

Assignment of Error No. 2

> "THE TENANT FAILED TO FULFILL THE REQUIREMENTS OF R.C. 5321.16, THEREFORE, THE AWARD OF DAMAGES BY THE MAGISTRATE WAS IN ERROR."

{¶11} In this assignment of error, Appellant argues that the lease had not been terminated and Arnold was not entitled to the return of his security deposit. Furthermore, in order to receive his security deposit, Arnold was required to provide Appellant with a current address; Arnold did not comply with this requirement because his certified letters to Appellant went unclaimed. Therefore, Appellant states, "[t]he Trial Court's Judgment grating (sic) the tenant damages pursuant to R.C. 5321.16 was not in accordance to Ohio law, and therefore, must be reversed."

{¶12} As stated above, an appeals court reviews a trial court's disposition of objections to a magistrate's decisions for an abuse of discretion.

{¶13} R.C. 5321.16(B) states that a tenant "shall provide the landlord in writing with a forwarding address or new address to which the *** amount due from the landlord may be sent." Pursuant to R.C. 5321.16(C), when a landlord fails to comply with division (B), the tenant may recover "the *** money due him,

together with damages in an amount equal to the amount wrongfully withheld, and reasonable attorneys fees."

{¶14} The trial court's order, supported by testimony in the transcript, found that Arnold "provided a forwarding address where the security deposit could be returned. The letter mailed out by [Arnold] on November 27, 2002[,] contained the following return address: 804 Blanding Ave.[,] Akron, OH." The trial court thus found that Arnold was entitled to receive his security deposit, plus an equal amount in damages, because Appellant failed to comply with R.C. 5321.16(C).

{¶15} The trial court's findings are supported by the record and we find no abuse of discretion in the trial court's decision, and the decision is not contrary to law. Appellant's second assignment of error is overruled.

III.

{¶16} Appellant's two assignments of error are overruled. The judgment of the Akron Municipal Court is affirmed.

Judgment affirmed.

WILLIAM R. BAIRD
FOR THE COURT

SLABY, P.J.
BATCHELDER, J.
CONCUR

APPEARANCES:

MARTHA HOM, Attorney at Law, 106 S. Main St., Suite 2300, Akron, OH 44308, for Appellant.

RICHARD ARNOLD, Pro Se, 804 Blanding Ave., Akron, OH 44310, for Appellee.