

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Duane J. Tillimon

Court of Appeals No. L-10-1166

Appellant

Trial Court No. CVG-09-12631

v.

Sonya K. McCadney

DECISION AND JUDGMENT

Appellee

Decided: September 16, 2011

* * * * *

Duane J. Tillimon, pro se.

Douglas A. Wilkins, for appellee.

* * * * *

OSOWIK, P.J.

{¶ 1} This is a pro se appeal by appellant from a judgment of the Toledo Municipal Court that granted judgment for appellant in his forcible entry and detainer action against appellee in the amount of \$1,208.69 plus interest and costs. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} Appellant Duane Tillimon sets forth the following sole assignment of error:

{¶ 3} "The trial court erred because its decision was against the manifest weight of the evidence, because its decision was not in compliance with state of Ohio statutes, and because its decision was not constant [sic] with state of Ohio case precedents."

{¶ 4} The following facts are relevant to the issues raised on appeal. On November 26, 2008, appellee signed a lease to rent a residential property in Toledo, Ohio, owned by appellant. The rental amount was \$975 per month. Appellee moved out on July 2, 2009, several months before the lease terminated. It is undisputed that appellee owed rent for May and June 2009. On June 23, 2009, appellant filed a landlord's complaint against appellee, seeking unpaid rent, other monetary damages and attorney's fees.

{¶ 5} The case was called for trial on April 19, 2010. Both parties testified and offered evidence. Appellant testified that appellee owed him money for unpaid rent in the amount of \$4,875; unpaid utility bills; expenses for advertising the property after she moved out; cleaning and repairs to the house; the cost to replace the washer and dryer which appellant claimed appellee removed from the basement, and legal fees. Appellant testified that appellee was liable for unpaid rent through September 2009 because the premises remained vacant during that time. He denied that appellee was constructively evicted from the premises due to a sewer backup in the basement. Appellant also asserted that appellee was liable for unpaid water and sewer charges, while appellee argued that the charges for which he sought payment occurred after she made a \$260

payment for the same. Appellant testified that appellee was liable for repainting the basement floor which was scratched when she removed the washer and dryer, for replacement of a storm window and for the cost of replacing the washer and dryer. He also sought attorney's fees and argued that he was not responsible for providing a security deposit accounting because the rental agreement would not terminate until November 2010.

{¶ 6} Appellee admitted that she owed appellant rent for May and June but asserted that she moved out July 2nd and that he was not entitled to recover rent for August and September because his efforts to rent the property were insufficient. She further testified that she was not liable for the washer and dryer because they were inoperable following the sewage backup and that the damage to the basement floor was due to having to remove items damaged by the sewage backup. She also testified that the window frame appellant claimed was missing was in the garage.

{¶ 7} Upon consideration of the parties' testimony and exhibits, the trial court found as follows: appellant was not entitled to reimbursement for the unpaid sewer and water bills because the documents submitted to the court did not indicate whether and what amount of the charges accrued before appellee vacated the premises; appellant was not entitled to damages for replacement of the storm window and the washer and dryer as appellee's testimony that the appliances were inoperable after the sewage backup was credible. The trial court awarded appellant \$68.98 for the cost of repainting the basement floor and unpaid rent for May and June at \$975 per month, as well as \$32.50 pro-rated

rent for two days in July. This resulted in a total of \$2,083.69. Further, because appellant had failed to return appellant's \$875 security deposit or provide appellee with an itemized list indicating how the deposit was used, the trial court reduced the above sum by the amount of the security deposit, resulting in judgment against appellee of \$1,208.69 plus interest and costs. The trial court denied appellant's request for attorney's fees.

{¶ 8} Appellant now asserts that he is entitled to additional damages, including: reimbursement for rent through the month of September, utility costs, the window frame, the washer and dryer, advertising the house, cleaning and various repairs. Appellant also appeals the trial court's denial of attorney's fees.

{¶ 9} The issue before this court appears to essentially be one involving the credibility of the two parties, whose testimony did conflict as to several matters. The determination of the disputed issues rested upon the credibility of the witnesses and is to be decided by the trier of fact who, in this instance, clearly found appellee more credible. This court has considered the full record of the trial court, including testimony at trial and the exhibits admitted into evidence. We will not second guess the trial court's decision, which relied heavily on its determination of witness credibility. As to appellant's request for attorney fees, appellant has not shown this court that the trial court was required to make such an award. R.C. 5321.05(C), cited by appellant in support of his demand for attorney's fees, states that "[i]f the tenant violates any provision of this section * * * the landlord *may* recover * * * reasonable attorney's fees." (Emphasis added.) We will not

disturb the trial court's decision as to that matter. Based on the foregoing, appellant's sole assignment of error is not well-taken.

{¶ 10} On consideration whereof, the judgment of the Toledo Municipal Court is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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