

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

LEAH GOUGH, et al.,	:	
	:	CASE NO. CA2014-09-196
Plaintiffs-Appellees,	:	
	:	<u>OPINION</u>
	:	7/13/2015
- vs -	:	
	:	
1031 PROPERTIES, LLC,	:	
	:	
Defendant-Appellant.	:	

CIVIL APPEAL FROM MIDDLETOWN MUNICIPAL COURT
Case No. 14CVI00492

Leah Gough and James Gross, 7160 Trenton-Franklin Road, Middletown, Ohio 45042,
plaintiffs-appellees, pro se

Thomas G. Eagle Co., L.P.A., Thomas G. Eagle, 3386 North State Route 123, Lebanon,
Ohio 45036, for defendant-appellant

M. POWELL, P.J.

{¶ 1} Defendant-appellant, 1031 Properties, LLC, appeals the decision of the Middletown Municipal Court awarding \$800 in damages to plaintiffs-appellees, Leah Gough and James Gross.

{¶ 2} On March 19, 2013, appellees filled out a rental application for residential real estate in Middletown, Ohio for a time period beginning March 19, 2013 through the end of

May 2015.¹ The rental application asked appellees to provide certain biographical information, past residences, employment history, bank account information, and a list of four references. In addition, the rental application also required the payment of "\$900 to insure my/our performance of this agreement" and provided certain conditions:

[1] I/We hereby give 1031 Properties LLC the sum of \$900 to insure my/our performance of this agreement. This leaves a balance of \$1190 due on my security deposit and first months [sic] rent which shall be paid within 24 hours of acceptance of this contract by the company.

[2] If this contract is accepted, it will become and [sic] attachment to my rental agreement and the money paid to hold the rental while my contract is being processed may be converted to deposit and rent.

[3] I/We understand that the performance monies I/We have submitted will be returned should this contract be declined by the company, except for a \$50 per person application fee, if ANY questions are not answered honestly,. [sic]

[4] I/We agree that if this application is accepted and I/We decide not to rent the residence, all money submitted with this contract will be forfeited. No excuses are acceptable. Acceptance is subject to the availability of the unit, over which the landlord as [sic] no control. * * * The parties therefore agree that if the tenant/applicant does not take possession of the premises or does not sign the lease agreement prior to the date they are entitled to take possession of the premises, the total amount of money paid by the tenant/applicant to the landlord shall be retained as liquidated damages, there shall be no further liabilities between the parties.

{¶ 3} The rental application was signed by appellees and the four subsections listed above were separately initialed by Gough. Appellees also paid the \$900 security deposit. The rental application was signed by 1031 Properties on March 22, 2013.

{¶ 4} At some point after they had signed the rental application and paid the security deposit, appellees decided that they no longer wished to lease the property and informed

1. The document was titled as a "CONTRACT TO OCCUPY" and specified that it was "A LEGALLY BINDING CONTRACT" between 1031 Properties and appellees.

1031 Properties that they would not be moving in. Appellees found a different residence and requested a return of their security deposit, minus \$100 in application fees. 1031 Properties did not return the requested money and appellees ultimately filed a complaint in the Middletown Municipal Court. 1031 Properties denied liability and filed a counterclaim for damages related to the reletting of the property.

{¶ 5} The case proceeded to a bench trial where appellees presented their version of the dispute. In short, appellees claimed that after they had signed the rental application and submitted the \$900 security deposit, Duane Rossing, an agent for 1031 Properties, informed them that their background check was not approved and requested that they provide additional collateral, i.e., jewelry, a car title, or additional cash to secure the property. Because they could not afford to provide any additional resources, appellees stated that they decided to do business elsewhere and rented a different property. Rossing, testifying on behalf of 1031 Properties, denied that such a request had been made. Instead, Rossing claimed that appellees had informed him that they could not afford the rent and wanted to "back out of the contract."

{¶ 6} Following a bench trial, the trial court entered judgment in favor of appellees and ordered 1031 Properties to return the \$800 security deposit because the payment was "an application fee and must be refunded since no lease was signed, no possession was given and no damage suffered."² 1031 Properties now appeals, raising a single assignment of error for review.

{¶ 7} THE TRIAL COURT ERRED IN GRANTING JUDGMENT FOR THE TENANTS FINDING THERE WAS NO BINDING CONTRACT.

2. The \$800 figure relates to the \$900 security deposit less the \$50 per person application fee that appellees agreed was reasonable.

{¶ 8} In its sole assignment of error, 1031 Properties alleges the trial court erred in granting judgment in favor of appellees. Specifically, 1031 Properties argues that the trial court failed to consider the contractual relationship between the parties based on the plain language of the rental application. We agree.

{¶ 9} This court's review of written contracts and instruments is de novo. *Banks v. Heritage Prop. Grp., L.L.C.*, 12th Dist. Clermont No. CA2013-10-078, 2014-Ohio-991, ¶ 21; *Providence Manor Homeowners Assn., Inc. v. Rogers*, 12th Dist. Butler No. CA2011-10-189, 2012-Ohio-3532, ¶ 26 ("The construction of a written contract is a matter of law to be resolved by the court"). The primary role of the court in reviewing a contract is to ascertain and give effect to the intent of the parties. *Cooper v. Chateau Estate Homes, L.L.C.*, 12th Dist. Warren No. CA2010-07-061, 2010-Ohio-5186, ¶ 12. A contract that is, by its terms, clear and unambiguous requires no interpretation or construction and will be given the effect called for by the plain language of the contract. *Banks* at ¶ 21.

{¶ 10} "In its most basic form, a contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration." *Connor & Murphy, Ltd. v. Applewood Vill. Homeowners' Assn.*, 12th Dist. Butler No. CA2007-09-213, 2009-Ohio-1447, ¶ 51.

{¶ 11} Based on our review, we find the trial court erred in awarding judgment to appellees based upon its limited findings. Here, although the trial court determined that appellees were not liable under a residential lease agreement, the trial court was also required to consider the contractual obligations between the parties. The rental application set forth the parties, terms, and consideration necessary to create a valid contract. See, e.g., *id.* at ¶ 49-53 (finding an enforceable contract). In short, the rental application provided that,

upon 1031 Properties' acceptance, appellees agreed to execute a lease for the above-mentioned property. In addition, the rental application also required the payment of "\$900 to insure my/our performance of this agreement" and specified a number of conditions. Simply put, regardless of whether the rental application constitutes a lease under R.C. 5321.01(D), this agreement sets forth all the terms, and contains all elements, necessary to create a valid, binding contract.

{¶ 12} In a similar case, this court previously held that a prospective tenant may be liable for failure to perform his contractual obligations, despite the absence of a landlord-tenant relationship. In *Turetsky v. Miller*, 12th Dist. Fayette No. CA96-03-005, 1996 WL 468758 (Aug. 19, 1996), this court stated that "in circumstances where a prospective lessee has breached an agreement to execute a lease, the lessor is entitled to recover the reasonable expenses incurred in reletting the premises." *Id.* at *2; *see also Fernberg v. Balogh*, 8th Dist. Cuyahoga No. 82626, 2004-Ohio-148, ¶ 20 (citing *Turetsky* with approval, but denying damages to a prospective landlord); *Hartman v. Garden Woods Apartments*, 2d Dist. Montgomery No. 15228, 1995 WL 628021, *3 (Oct. 25, 1995) (awarding judgment to landlord where prospective tenant failed to enter into a lease agreement and contract called for forfeiture of earnest money).

{¶ 13} As a result, we find the trial court erred in its decision and remand this matter for the trial court to determine the unresolved and contested factual issues. We decline to express any opinion on those matters. For example, although we find that the rental application signed by appellees provides all of the conditions necessary to form a binding contract, we also acknowledge the conflicting testimony in the record as to whether 1031 Properties initially denied appellees' rental application or requested additional funds, which could constitute a rejection or anticipatory repudiation of the contract. *See, e.g., Miami Poplar Rentals, L.L.C. v. Hudoba*, 12th Dist. Butler No. CA2013-06-094, 2014-Ohio-1323

(landlord anticipatorily repudiated rental agreement). Furthermore, if the trial court is to find appellees liable, a remand is also necessary to determine the appropriate measure of damages. Those factual determinations are best left to the discretion of the trial court. Accordingly, 1031 Properties' assignment of error is sustained and this matter is remanded to the trial court for further proceedings consistent with this opinion.

{¶ 14} Judgment reversed and remanded.

S. POWELL and RINGLAND, JJ., concur.