

6. After Plaintiff vacated the premises, there was damage which exceeded normal wear and tear to the premises as follows:

Screen:	\$36.00	(Defendants' Exhibit G)
Countertop:	\$87.54	(Defendants' Exhibit H)
Ceiling Tiles:	\$145.81	(Defendants' Exhibit I)
Water Bill (by agreement):	\$52.70	(Defendants' Exhibit J)
Screen & Window:	<u>\$54.05</u>	(Defendants' Exhibit K)
	\$376.10	

II. Law and Analysis

The issues pending before the Court are: (1) were Defendants, as landlords, entitled to set out Plaintiff's property on September 1, 2003 and (2) if Defendants were not entitled, what is the appropriate measure of damages?

A. Plaintiff's Claim

Plaintiff asserts Defendants orally agreed to extend Plaintiff's vacate date through September 1, 2003 and claims she paid rent up through and including August 31, 2003. Plaintiff alleges that while she was in the process of moving out of the premises, Defendants removed and disposed of her property prior to the termination of her tenancy. Plaintiff asserts that Defendants did not file a forcible entry and detainer action or obtain a writ of restitution, and thus unlawfully evicted her in violation of RC 5321.15. As a result of Defendants' unlawful removal, Plaintiff claims she lost personal property in the amount of \$14,482.

The Landlord Tenant Act, Ohio Revised Code Chapter 5321, governs the rental of residential premises. In particular, RC 5321.15(A) provides that "No landlord of residential premises shall initiate *any act*, including * * * exclusion from the premises * * * against a tenant, or a *tenant whose right to possession has terminated*, for the purpose of recovering possession of residential premises,

other than as provided in Chapters 1923., 5303., and 5321. * * *.” (Emphasis added.) This section makes any self-help eviction by the landlord illegal. Thus, a landlord who is entitled to possession of leased premises must pursue statutory proceedings prior to initiating any action or “self-help”.

In the instant action, the Court finds that Defendants failed to pursue any legal action prior to entering the premises and removing Plaintiff’s possessions. As provided for in RC 5321.15(A), Defendants were required to proceed under one of the Chapters listed prior to taking any action for the purpose of regaining possession of the leased premises.

Ohio courts have established that “a tenant’s continued possession after termination of a lease renders the tenant a holdover tenant.” *Bliss Properties v. Hughes-Peters, Inc.* (June 20, 1996), Franklin App. No. 95APE11-1448. Furthermore, “[t]he presence of equipment or possessions remaining on the property generally constitutes ‘possession’ for * * * holdover status.” *Id.* Once a tenant becomes a holdover tenant, “the landlord may elect to treat the tenant as a trespasser, or hold him to a new lease term.” *Garrido v. Empty Nester Homes, Ltd.*, Franklin App. No. 03AP-518, 2004-Ohio-108.

In the case sub judice, the parties agreed to terminate their landlord/tenant relationship effective August 31, 2003. However, after that date, Plaintiff continued to occupy the leased premises because some of her possessions remained in the rental unit. Since Plaintiff’s right to possession terminated on August 31, 2003, she became a holdover tenant on September 1, 2003.

As a holdover tenant, Plaintiff could have been subject to a forcible entry and detainer action. RC 1923.02(A)(1). However, this was not the route Defendants opted to pursue. Instead, Defendants made the decision that Plaintiff’s belongings in the rental unit were trash and elected to place those belongings on the curbside. By placing Plaintiff’s possessions on the curb and

consequently excluding her from the leased premises without first pursuing statutory remedies, Defendants violated RC 5321.15(A). “A landlord who violates [RC 5321.15] is liable in a civil action for all damages caused to a tenant, or to a tenant whose right to possession has terminated, together with reasonable attorneys fees.” RC 5321.15(c) . Therefore, the Court finds Plaintiff has established entitlement to recovery on its complaint.

Damages

1. Compensatory and Nominal Damages

“Compensatory damages are defined as those which measure the actual loss, and are allowed as amends therefor.” *Fantozzi v. Sandusky Cement Prod. Co.* (1992), 64 Ohio St.3d 601, 612, 597 N.E.2d 474. Nominal damages are damages “recoverable where a legal right is to be vindicated against an invasion thereof which has produced no actual loss of any kind, or where, from the nature of the case, some injury has been done, the extent of which the evidence fails to show.” *Lacey v. Laird* (1956), 166 Ohio St. 12, 1 O.O. 308, 71 N.E.2d 488, at paragraph two of the syllabus.

“A tenant may recover compensatory damages from a landlord when the landlord has injured the tenant and caused some loss to the tenant.” *Meacham v. Miller* (1992), 79 Ohio App.3d 35, 40, 606 N.E.2d 996. In the case sub judice, Plaintiff suffered loss of her personal possessions when Defendants unlawfully removed them from the leased premises. However, based upon the evidence adduced at trial, the Court finds that Plaintiff failed to adequately establish the value of the displaced possessions. Any award of compensatory damages, therefore, would be entirely speculative. However, “[t]he failure to prove the amount of damages does not preclude the recovery of nominal damages where the fact of damage has been proved.” *O’Neil v. Walburg* (1980), 70 Ohio App.2d 30, 32, 433 N.E.2d 1286.

It is well established that “[n]ominal damages are awarded, not as pure compensation for the injury sustained, but in recognition of the complaining party’s right, and the infraction or violation of such right by the defendant.” *Carpenter v. Sun TV & Appliances, Inc.* (Jan. 25, 1977), Franklin App. No. 76AP-784. The nominal amount should be based upon the facts of circumstances of each case. *Id.* In the instant case, even though Plaintiff was unable to prove compensatory damages, the Court finds Defendants violated Plaintiff’s right to her possessions by unlawfully placing them on the curbside. Accordingly, the Court awards Plaintiff nominal damages in the amount of \$100.

2. Attorneys Fees

Additionally, RC 5321.15(c) “permit[s] a tenant to recover attorney’s fees in addition to damages caused to such tenant by the landlord’s violation of R.C. 5321.15 * * *.” *O’Neil v. Walburg* (1980), 70 Ohio App.2d 30, 32, 33, 433 N.E.2d 1286. Thus, “a landlord is liable for the necessary legal fees incurred by a tenant who seeks legal redress for a landlord’s violation of R.C. Chapter 5321.” *Thomas v. Papadelis* (1984), 16 Ohio App.3d 359, 360, 476 N.E.2d 726. However, in interpreting RC 5321.15(c), Ohio case law has established that a party must first prove “actual damages” in order to be awarded attorneys fees. “Actual damages” has often been used in Ohio courts to represent *either* compensatory or nominal damages. *Quillet v. Johnson* (1947), 71 N.E.2d 488. In the instant case, because Plaintiff was entitled to an award of nominal damages, the Court finds that Plaintiff has simultaneously proven “actual damages.” Accordingly, the Court awards Plaintiff attorneys fees for the landlord’s violation of RC 5321.15(A).

B. Defendants’ Counterclaim

Defendants assert “the parties’ lease agreement required that the house be left in broom clean condition with all utilities paid by plaintiff.” Defendants claim that Plaintiff caused damage to the

house including "unpaid utilities; damages to ceilings, countertops, and carpet; broken windows; and severe water damage, plumbing issues, and broken pipe connections." As a result, Defendants claim they incurred expenses for the repair of such damages and thus, pursuant to the lease agreement, are entitled to repayment of these expenses. [Defendants' Answer to Plaintiff Margaret Johnson's Complaint and Counterclaim]

The Court finds Defendants have established damages to the premises in excess of normal wear and tear for the costs of repair to the window screens, window, countertops and ceiling tiles. Additionally, the parties agree that Plaintiff is responsible for the unpaid water bill. Defendants, however, have failed to prove that any damage to the carpet exceeded normal wear and tear. As such, the Court awards Defendants total damages in the amount of \$376.10.

SEP 29 2005

DATE


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