


IN THE MUNICIPAL COURT OF CLARK COUNTY, OHIO
CIVIL DIVISION

FILED
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GUY A. FERGUSON, CLERK
MUNICIPAL COURT
BY  DEPUTY

Eric and Theresa Crow
5335 Lehman Road
Springfield, Ohio 45502
Plaintiff's,

and

Andrew H. Elder,
Elder & Elder,
Attorney at Law
2233 N. Limestone Street
Springfield, Ohio 45503
Attorney for Plaintiffs,

Motion to dismiss 1 photo

T-45 Plaintiffs' Door

-v-

Margaret Baldino
1734 Yardley Circle
Centerville, Ohio 45459
Defendant,

In re: Case No. 15CVF02981

Margaret Baldino, Defendant in this case, state as follows:

Exhibit T-45

Attached herein is an exhibit comprised of one photo tendered originally by the Plaintiffs, and labeled by the Defendant as Defendant's **Exhibit T-45**.

1.) **Exhibit T-45** is the Plaintiffs' Photo of a door knob fixed to a door showing signs of previous coats of paint which has worn through.

The door is seen in the Closed position.

2.) The Plaintiffs' photo has computer-generated words placed into the photo which state,

“ Damage to Back Door/Unable to open or close door “

Was the door in the open position or the closed position, when the Plaintiffs arrived at their property?

It is patently impossible that a door can do both, refuse to open AND refuse to close.

The Defendant requests the Court to strike this photo. The Defendant requests that the allegation printed into the photo, also be stricken as an impossible allegation.

Exhibit DVD

3.) Shown in the Open position at the beginning of the video clip, herein attached as Exhibit DVD, comprised of six video formats, later in the video show the door in the Closed position.

The door is in the Open position at the beginning of the video, required to be in the Open position due the Plaintiff's need to access the basement which houses both rental's utilities.

The Plaintiffs had two rentals, the upstairs tenant was rented as residential, the lower unit was multi-purpose (which is contrary to the Plaintiffs' Lease which the Plaintiffs submitted to the Court).

The basement can only be accessed through the Plaintiffs' lower unit, the Defendant's rented space.

<https://youtu.be/Gj63ZVw8LQg>

*A DVD of this video in 6 different formats is also attached herein.

In the video is heard a mention of the fire caused by the Plaintiffs' other, upstairs tenant, that had occurred the day before, which establishes a time frame that the video was made the day after the disturbance caused by the Fire.

The door in question is the very door that Defendant, and Defendant's helpers, utilized to move the Defendant's personal property from the Plaintiffs' property at the time of vacating on September 9, 2014.

The Defendant asserts that Eric Crow, Theresa Crow, and the Plaintiffs' daughter Sarah Crow, had each passed through the very door in question when in their second "walk-through" prior to Defendant's having vacated the premises.

This second "walk-through" inspection came after the major flooding from the upstairs plumbing belonging to Plaintiffs' other tenant. There were other disasters such as the complete break-down of the electrical system, the Fire, the Rodents and stray animals. Other damaging factors were the intentional failure on the part of the Plaintiffs to disclose that there were problems with the ventilation system (as evidenced by the Plaintiffs' Disclosure which will be submitted in a forthcoming Motion to the Court.

Defendant has already produced one page of a Disclosure form showing information of defects in the Plaintiffs property that were withheld from the Defendant and may have been a deciding factor when seeking to rent said property.

The Plaintiffs ability to solve the failure of the ventilation system by sealing every window permanently shut. Defendant admits to unscrewing two of the more than 20 windows within the Plaintiffs' property as customers were beginning to show discontent to the non-working Heating & Cooling unit and lack of ventilation, as was the Defendant.

The Building emanated a certain odor that begged to be outside.

To be clear, the Defendant's tenancy was no vacation, it was work.

Shared electric, which was not stated at the time of any Lease Agreement, caused many issues with the

failing computer repair store. When a glass fuse blew, there was no fixing the problem, short of leaving to buy more glass fuses. There were times when customers and equipment were suddenly having to relocate to remote areas of the building in an effort to locate working outlets to effectuate repairs. There were extension cords strewn throughout the entire floor of the Defendant's paid space which was imperative and not desirable to the Defendant.

The Plaintiffs' Rental Property proved to be costly. The Plaintiffs never once bothered to inquire of the Defendant's damages, and of the damages that *were* related to the Plaintiffs, reached deaf ears.

In many of the videos presented to the Court thus far, the Defendant has shown ceiling tiles that have fallen due to water damage, flooded carpet, live leaks, at least one stray cat that demanded entrance whenever the Defendant or the Defendant's customers entered or exited the Rental's Door.

Shown in the videos, beyond the ceiling tiles, are shown POWER wires which are haphazardly running to and fro, placed precariously beneath PLUMBING. The "not as per codes" installation of power wires are the cause of Power outages due to meeting up with the leaky, Landlord installed, plumbing.

The Defendant felt an urgent need to vacate. The most damaging factor to a computer repair shop, next to water and fire, is faulty electric. The Plaintiffs' property had all three problems and more.

Whereas the first walk-through inspection came *before* the disasters (starting *through* the door that Plaintiffs allege neither opens nor closes). At the time of the first walk-through inspection the Plaintiffs expressed sentiments such as, "Well, we hate to see you leave", and "Oh you're the best tenant we've ever had here".

But this is a motion to request of the Court to strike the Plaintiffs photo of a door knob, and to strike the baseless claim written atop the photo, a claim that bothers the intelligence, that a door could conceivably refuse to open nor close.

Exhibit "F"

5.) To support the video submitted herein, namely the time-frame, the Defendant enters into evidence five pages from the **Fire Department's Investigation** results. The aforementioned documents will be brought to Trial for inspection by the Court should the scans prove to be less than clear.

The results from the Fire Department are critical in establishing a date (and time) of the Fire Department's presence upon the Plaintiffs' property, thereby giving support to the date of the attached video herein, and are entered into evidence as Defendant's **Exhibit "F"** (pages 1 through 5).

6.) Page One of the Fire Investigation states:

Date of Fire Incident: **"08 10 2014"**, exactly 30 days later Plaintiffs' building was vacated with a final walk-through by the Plaintiffs' family. The fire from the Plaintiffs' upstairs tenant is stated within the Fire Department Investigation as being located on the, **"Courtyard, Patio"** belonging to the upstairs tenant, and that the cause of ignition was, **"Unintentional"**.

Page three of the Fire Department Investigation states a synopsis:

“E7 was called to this address on a still alarm for a occupant that had a small fire on her porch that they extinguished but was concerned it was still smoldering. E7 arrived to this address to find nothing showing and occupants out back of structure. This was an upstairs apartment and occupant stated that she had been out on the porch smoking and put her cigarette out and placed it in a plant sitting on the porch. Occupant smelled something burning a short time later and came out to find plant was on fire. A neighbor Kenny Hendrick came up with a fire extinguisher and put the fire out and removed the planter. E7 found that the fire had charred and burned the porch top railing and the outside of the porch and eaves. E7 crew opened up the charred areas and found them unburned and clean underneath. No extension was found by E7 crew. Top railing was burned the most and was still smoldering. E7 crew soaked areas with water to cool several times. Occupant had contacted owner but he was unavailable to come to the scene. He was going to come by later this evening. Information was gathered and occupant told us she was going to be home for the day. E7 advised her to keep an eye on things and if she felt the need to call us back. E7 returned to service.”

Page four of the Fire Department Investigation states:

“Estimated Dollar Losses & Values = \$1,000.00” however Defendant’s photos, submitted herein as **Exhibit Q-t**, comprised of three photos of the fire-affected area show no more than \$200.00 of damage.

7.) Attached within the Defendant’s **Q-t Exhibit** are photos showing the location of the Defendant’s door in relation to the upstairs fire. The Fire Department Investigative Report states that repetitive applications of water dousing of the area was done to ensure no smoldering. There is no mention as to how much of this water found its way elsewhere, through the floor-boards, walls, etc.

The significance of the attached Q-t Exhibit and the photos shown also show that the fire required the Plaintiffs’ replacement of a half-dozen or so 2x4’s to be replaced. As is Plaintiffs’ form, the Plaintiffs “fix” is to secure the 2x4” with two wood screws and left unpainted.

The Matter heard formerly by the Clark County Municipal Court concerning the Fire issue, in which the Plaintiffs sued their upstairs Tenant in regard to the fire, issued out a Judgment for the Plaintiffs amounting to,

“.....\$4,863.48 plus interest thereafter on the principal balance at the rate of 3.00% per annum and Court Costs.”

Exhibit M-y

Attached herein is the Judgment from the Clark County Municipal Court, labeled by the Defendant as Exhibit “M-y”. The case number is 15cve01755

The Defendant asserts that had the aforementioned Court Case been addressed to completion, that an accounting for which damages were the almost \$5k Judgment to be allocated toward.

8.) The above-mentioned case is felt to be relevant in supporting the presumption that the award by the Court to the Plaintiffs in this case, were more than likely to include the damages that the Plaintiffs are now claiming in this present suit against the *wrong* Defendant.

Exhibit Q-T

9.) Defendant submits photos of the Plaintiffs’ property, labeled by the Defendant as “Q-T”

In the first photo: Photo shows location of fire and the few boards which were affected by the fire (supported by the attached Fire Department Investigation).

In the second photo: Image shows the top of the Defendant's door in relation to the location of the Fire. Also seen is rotting wood, in neglect.

The Plaintiffs' door is in the closed position within these photos.

In the third photo contained within the "Q-T" Exhibit": Rotting wood and an impossible-to-match paint, can be seen which is typical throughout Plaintiffs' property as the Plaintiffs' other photos show.

The Defendant asserts that the Plaintiffs have no just cause for claim against the Defendant, and the Defendant moves the Court for dismissal of the Plaintiffs' Door Knob Photo. Further, the Defendant motions the Court to dismiss the Plaintiffs' unsubstantiated Claim against the Defendant that the door could neither open nor close.

Respectfully,



Margaret Baldino
1734 Yardley Circle
Centerville, Ohio 45459
(727) 385-6007

CERTIFICATE OF SERVICE

A Copy of this Notice was mailed to the Plaintiff
and their Attorney on the 28 day of November 2016

Attached herein are:

- One Exhibit T-45 exhibit comprised of a photo of door knob submitted by Plaintiffs
- Five pages of Fire Investigation, Exhibits F (1-5)
- One Exhibit showing Judgment of the Court, labeled M-y
- One Exhibit Q-t comprised of three photos of Plaintiffs' property
- One DVD with six formats of video