

IN THE COURT OF COMMON PLEAS, LYCOMING COUNTY PENNSYLVANIA

FLOYD H. LINDSAY,	:	
Plaintiff	:	
v.	:	No. 06-02,440
	:	CIVIL ACTION
WANDA TURNER,	:	
Defendant	:	

OPINION AND ORDER

This matter is before the Court for non-jury trial disposition. Trial in this matter was held on November 1, 2007. Floyd H. Lindsay (Plaintiff) filed a Complaint on December 4, 2006 in response to Wanda Turner's (Defendant) Appeal of Notice to Quit, for repossession and for back rent in the amount of \$1,250.00. On June 14, 2007, Defendant filed counterclaims for Breach of Implied Warranty of Habitability, seeking abatement of rent, and for violation of Pennsylvania's Unfair Trade Practice and Consumer Protection Law, seeking treble damages, and attorneys' fees and costs.

Background

In 1985, the Parties entered into an oral residential lease for 61 Back Street, Montoursville, PA. Pursuant to the lease, the Defendant agreed to pay the Plaintiff monthly rent in the amount of \$250.00. On July 27, 2006, Plaintiff served a Notice to Quit upon the Defendant, notifying Defendant to deliver possession of said premises by August 26, 2006. Plaintiff alleged that as of July 2006, rent in arrears was \$3,735.00. On November 17, 2006, Magistrate District Judge Kenneth T. Schriener entered judgment against Defendant for \$1826.12. The Defendant filed a Notice of Appeal on November 20, 2006. Additionally, Defendant posted a \$1,000.00 bond, plus \$250 as payment for November 2006 rent.

In opposition, the Defendant alleged that Plaintiff breached the Implied Warranty of habitability and that Plaintiff violated the Unfair Trade Practice and Consumer Protection Law. Specifically the Defendant alleged that in January 2005, the roofs over the residence and the garage were leaking, there was standing water in the basement and mold was discovered throughout the residence. Further, Defendant alleged that she sustained diminished health. Defendant also alleged that she informed Plaintiff of these problems and Plaintiff failed to correct said problems.

At trial, Plaintiff testified that as of November 1, 2007, Defendant owes \$4826.00 in back rent. Plaintiff stated that Defendant refuses to pay rent and will not vacate the premises. Plaintiff also testified that Defendant did not tell him about the problems with the house until about six or eight months ago. Plaintiff testified further that one time in June 2007, he received a letter about sewage in the basement, and he had a maintenance man clean it up. Plaintiff also stated that if there is any mold, it was caused by the Defendant, because she removed the electric baseboard heating and cut holes in the floors for a wood burner installed in the basement. Moreover, Plaintiff agreed that the roof over the garage leaked. Plaintiff also admitted that he used Defendant's electric meter for a period of time to supply water to Plaintiff's mobile home park.

Also at trial, Defendant presented evidence on her Breach of Implied Warranty of Habitability claim and her Unfair Trade Practices and Consumer Protection Law claim. The Defendant testified that the roof of the residence leaked, and that there was mold and standing water in the basement. Defendant stated that the mold was tested and determined to be black mold, which is known to cause upper respiratory problems, Alzheimer's, and cancer. Defendant also testified that her son had four surgeries for infection and her daughter's lips have swollen because of the mold. Further, Defendant testified that a mushroom grew in the bathroom from

moisture around the toilet. Moreover, Defendant testified that “stuff” fell through the roof in the garage, causing damage to her car. Defendant also stated that Plaintiff used her electric meter to pump water to his mobile home park, which resulted in a \$10,000 electricity bill. Finally, Defendant testified that she informed Plaintiff of said problems with the residence, to which the Plaintiff failed to repair.

Discussion

After considering the testimony presented at the non-jury trial in this matter, the Court finds that the Defendant breached the Implied Warranty of Habitability and violated the Unfair Trade Practices and Consumer Protection Law. “It is within the province of the trial judge, sitting without a jury, to judge the credibility of the witnesses and to weigh their testimony.” Bold Corp. v. County of Lancaster, 569 Pa. 107, 122 (2002). The Court finds that the Defendant’s testimony and assertions were more credible than those of the Plaintiff’s testimony and assertions.

Plaintiff breached the Implied Warranty of Habitability

The Pennsylvania Superior Court has determined that “[i]n order to constitute a breach of the implied warranty of habitability, [‘]. . . the defect must be of a nature and kind which will render the premises unsafe, or unsanitary and thus unfit for living therein.” Pugh v. Holmes, 384 A.2d 1234, 1240 (Pa. Super. Ct. 1978) (quoting Kline v. Burns, 276 A.2d 248, 252 (1971); Mease v. Fox, Iowa, 200 N.W.2d 796 (1972)). The trier of fact must ascertain materiality on a case-by-case basis. Pugh, 384 A.2d at 1240. Some factors the Court looks at to determine whether a breach is material are: “1) whether the condition violates a housing law, regulation or ordinance; 2) the nature and seriousness of the defect; 3) the effect of the defect on safety and sanitation; 4) the length of time for which the condition has persisted; and 5) the age of the

structure.” Id. Additionally, “a tenant must prove that he or she gave notice to the landlord of the defect or condition, that the landlord had a reasonable opportunity to correct the condition, and that the landlord failed to do so.” Id. at 1241 (and cases cited therein).

Remedies for a breach of the Implied Warranty of Habitability differ depending on whether the landlord totally breached or partially breached. According to the Supreme Court of Pennsylvania, “[i]f there had been a partial breach of the warranty, the obligation to pay rent would be abated in part only.” Pugh v. Holmes, 405 A.2d. 897, 907 (Pa. 1979) (and cases cited therein). However, “[i]f the landlord totally breached the implied warranty of habitability, the tenant's obligation to pay rent would be abated in full -- the action for possession would fail because there would be no unpaid rent.” Id.

The Court finds that Plaintiff was informed approximately two years ago of leakage problems with the roof of the residence, the presence of mold, and standing water in the basement, and has failed to correct said problems. Additionally, the Court finds that Plaintiff was informed of leakage problems with the garage roof, and failed to repair said roof. The Court also finds that the Defendant’s personal property, such as a deep freezer, refrigerator and car, has sustained damage as a result of Plaintiff’s failure to repair. Further, the Court finds that Defendant’s children sustained medical problems as a result of the mold. Moreover, the Court finds the premises were unsanitary and unsafe as a result of the leaking roof and black mold. As such the Court finds that Plaintiff totally breached the Implied Warranty of habitability, thus abating Defendant’s obligation to pay rent in full.

Plaintiff’s actions violated the Unfair Trade Practices and Consumer Protection Law

Under Pennsylvania’s Unfair Trade Practices and Consumer Protection Law:

(a) Any person who . . . leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful . . . may bring a private action to recover actual damages or one hundred dollars (\$ 100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$ 100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.

73 P.S. § 201-9.2. According to the Pennsylvania Supreme Court, “the modern apartment dweller is a consumer of housing services.” *Commonwealth by Creamer v. Monumental Properties, Inc.*, 329 A.2d 812, 820 (1974).

The court finds that the Plaintiff violated the Unfair Trade Practices and Consumer Protection Law by hooking up the water pump to Defendant’s electric meter for Plaintiff’s mobile home park. Further, the Court finds that Plaintiff’s breach of the Implied Warranty of Habitability violated the Unfair Trade Practice and Consumer Protection Law.

VERDICT

AND NOW, this _____ day of December, 2007, the Court hereby finds in favor of the Defendant and against the Plaintiff with respect to the Plaintiff's claim and Defendant's counterclaims. It is ORDERED and DIRECTED that the bond and rental payments held in escrow should be returned to the Defendant. It is further ORDERED and DIRECTED that the Plaintiff be awarded \$650.00 under the Unfair Trade Practices and Consumer Protection Law, representing damages of \$250.00 for her car insurance deductible and \$400.00 in groceries. Defendants request under the Unfair Trade Practices law for reasonable Attorneys fees will be considered upon filing of itemized bills.

By the Court,

Nancy L. Butts, Judge

xc: Rebecca Reinhardt, Esq.
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Hon. Nancy L. Butts
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