

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ALAN COHICK and PATRICIA COHICK,	:	
Plaintiffs	:	DOCKET NO. 10-01,156
	:	CIVIL ACTION – LAW
vs.	:	
	:	
CLARA A. SMITH and CHRISTOPHER L. SMITH,	:	
Defendants	:	

VERDICT

This matter arises out of a landlord-tenant dispute over a rental property located at 1912 Walters Road, Loyalsock Township, Lycoming County, Pennsylvania. Generally, the parties disagree as to whether or not rental payments were due during a period of time in 2010. Plaintiffs aver that payments are due; however, Defendants allege that these payments are not due because Plaintiffs breached the implied warranty of habitability. Specifically, Defendants allege that the property was inhabitable because the rental unit had a malfunctioning hot water heater. Defendants counterclaimed for payments that they made to Plaintiffs in 2010 while this warranty was breached.

The Court held a non-jury trial held on July 11, 2012, October 29, 2012, and December 11, 2012. After non-jury trial, the Court hereby enters a verdict in favor of Defendants Clara A. and Christopher L. Smith and against Plaintiffs Alan and Patricia Cohick, on both Plaintiffs' claims and Defendants' counterclaim. As it pertains to Defendants' counterclaim, judgment is entered against the Cohicks in the amount of \$3,612.90.

I. Findings of Fact

A. Procedural History

1. Plaintiff Mr. Cohick initiated this action by filing a suit for possession before District Magistrate Kenneth T. Schriener. On June 4, 2010, the District Magistrate entered judgment in favor of Ms. Smith and refused to grant possession to Mr. Cohick.
2. On June 7, 2010, Mr. Cohick appealed this judgment.

3. On July 27, 2010, Defendants filed an answer to complaint, new matter, and counterclaim.¹ On September 3, 2010, the initial set of pleadings was closed in this matter. *See* Dfs. Counter-Reply to New Matter and Counterclaim.
4. By order dated June 9, 2011, Defendants were ordered to vacate the premises on or before July 1, 2011. Ms. Smith testified that she and her family moved out of the home on June 30, 2011.
5. On July 22, 2011, an arbitration hearing was held in this matter. On July 22, 2012, an award was entered in favor of Defendants on Plaintiffs' complaint and on Defendant's counterclaim in the amount of \$3,500.00.
6. On August 15, 2011, Plaintiffs appealed the arbitration award.
7. On February 7, 2012, Plaintiff Mr. Cohick filed a motion to amend his complaint. The Court granted this motion on February 13, 2012. Mr. Cohick filed an amended complaint on February 17, 2012. Mr. Cohick alleged one cause of action in his amended complaint: breach of contract. Mr. Cohick requested damages in the amount of \$11,191.28.²
8. On March 13, 2012, Defendants filed an answer, new matter, and counterclaim. Defendants' July 27, 2010 counterclaim was incorporated by reference into its March 13, 2012 counterclaim. In their counterclaim, Defendants requested reimbursement of all rental payments due to Mr. Cohick's breach of the warranty of habitability, in addition to damages incurred by Defendants based upon this breach (specifically repairs and loss of property); Defendants also requested damages for Mr. Cohick's alleged breach of the Pennsylvania Fair Credit Extension Uniformity Act. Defendants requested a total judgment of \$26,090.21, plus statutory damages, costs, and attorney fees.
9. On March 30, 2012, the second set of pleadings was closed. *See* Pl.'s Reply to New Matter and Answer to Counterclaim.

¹ The Court notes that no initial complaint was filed of record. The initial complaint is not in the Court's file and is not on the Court's docket. The Court believes this is why an amended complaint was permitted to be filed in 2012.

² The Court notes that Plaintiffs submitted a list of damages in this matter totaling only \$10,798.45. *See* Pls. Ex. 8.

10. A non-jury trial was held before this Court on July 11, 2012, October 29, 2012, and December 11, 2012.³

B. Factual History

11. The Court held the first portion of this non-jury trial on July 11, 2012. On this date, Mr. Hugo (hot water heater repairs), Mr. Heim (carpet and upholstery cleaning), Mr. Nicklaus (Mr. Cohick's property manager/maintenance man), Mr. Carson (building official for Loyalsock Township), Mr. Noviello (hot water heater replacement), Mr. Armes (cabinet repair), and Mr. Cohick testified.
12. On October 29, 2012, Ms. Hill (Ms. Smith's friend) and Ms. Smith testified.
13. On December 11, 2012, Ms. Smith continued her testimony. Additionally, Mr. Griswold (a HVAC technician) and Mr. Garcia (Ms. Smith's friend) testified. Mr. Cohick provided rebuttal testimony. The parties also stipulated to Ms. Schuler's testimony; particularly that it would corroborate Ms. Smith's testimony.

i. Prior to Ms. Smith's Tenancy

14. Mr. Nicklaus testified that he prepared the property prior to Ms. Smith's tenancy. Mr. Nicklaus testified that he drank the cold water and washed his hands with the warm water; he testified that there was nothing wrong with either the hot or cold water.
15. Mr. Armes testified that he repaired some of the cabinets in the home on approximately April 16, 2009. *See* Pls. Ex. 4. Mr. Armes testified that he drank the cold water and washed his hands with it as well.
16. Mr. Heim cleaned carpet and upholstery in property in November 2009. Mr. Heim testified that he drank the cold water out of the kitchen faucet and that it tasted fine.

³ On July 11, 2012, upon oral request of Defendants, the Court amended the caption of the complaint and counterclaim to add Mr. Cohick's wife, Patricia M. Cohick, as a co-Plaintiff.

17. Mr. Griswald testified that he worked on the home's hot water broiler, i.e. furnace, prior to Ms. Smith's occupancy. Mr. Griswald testified that he did not work on the hot water heater on the property.

ii. During Ms. Smith's Tenancy

18. Ms. Smith testified that she provided notices to Mr. Cohick that the hot water heater was not working in November 2009, January 2010, and April 2010. The Court finds Ms. Smith's testimony credible.⁴

19. Ms. Hill, a friend of Ms. Smith, testified that she used the hot water in the home to clean her hands and to do dishes when Ms. Smith was moving into the home. Mrs. Hill testified that the hot water was rusty and brown. Mrs. Hill also testified that there was always water in the basement.

20. Mr. Garcia testified that he was in the house on a weekly basis during Ms. Smtih's tenancy. Mr. Garcia testified that he experienced Ms. Smith's problems with her hot water. In particular, Mr. Garcia testified that dark-brown colored water came out of the old water heater; Mr. Garcia also testified that the hot water coming out of Ms. Smith's faucets was discolored. When asked to describe the color of the faucet hot water, Mr. Garcia testified that it was a light brown color. Mr. Garcia said that Ms. Smith could shower in the water if it was her only option. Mr. Griswold also testified that the basement of the home would flood with water when it rained; he testified that he brought in his portable sub-pump to get water out of the basement approximately five (5) times. The Court finds Mr. Garcia's testimony to be credible.

iii. Inspection of Property

21. Mr. Carson, the Building Code Official of Loyalsock Township, testified about his dealings with Mr. Cohick concerning the property on Walters Road. In April 2010, Mr. Carson

⁴ The Court received into evidence a letter from Ms. Smith to Mr. Cohick dated April 10, 2010, stating that the hot water heater was not working. *See* Dfs. Ex. 4. The letter provides that the parties had talked about the hot water heater malfunctioning prior to April 10, 2010.

received a complaint about the property. Mr. Carson testified that when he received this call, the property was not listed as a rental unit within the township. According to the township ordinance, the property had to undergo an inspection because it was a rental unit; Mr. Carson sent an initial letter to Mr. Cohick regarding this rental inspection on April 12, 2010.⁵ On April 29, 2010, Mr. Carson sent a *second* letter to Mr. Cohick about inspecting the property. *See id.* Mr. Cohick did not respond to either of Mr. Carson's letters.

22. On May 14, 2010, Ms. Smith invited Mr. Carson into the rental property so that Mr. Carson could perform a rental inspection. *See Dfs. Ex. 2.* During his inspection, Mr. Carson testified that he observed rusty water in two containers filled by Ms. Smith; Ms. Smith told Mr. Carson that the rusty water came from the hot water faucets in the home. *See Dfs. Exs. 20-21.* Mr. Carson testified that during his inspection he viewed rusty water on the floor around the property's hot water heater; additionally, Mr. Carson noted that there were no smoke alarms on the property. Most importantly, Mr. Carson testified that there was *no hot water on the property.* *See Dfs. Ex. 2.*
23. On May 17, 2010, Mr. Carson wrote a letter to Mr. Cohick regarding the two ordinance violations that he found on the property: no hot water and no smoke alarms. Mr. Cohick responded to Mr. Carson on May 18, 2010, and May 19, 2010. On May 19, 2010, Mr. Cohick told Mr. Carson that he placed smoke alarms in the home and that there was no hot water in the home because there was no fuel in the fuel tank.
24. On May 19, 2010, Mr. Carson told Mr. Cohick that the hot water heater would need *replaced.* Mr. Carson had no other contact with the parties after May 19, 2010.

iv. Hot Water Heater Repair and Replacement

25. Mr. Hugo from Hugo's Plumbing and Heating testified about a service call that he made to the property on May 16, 2010. *See Pls. Ex. 1.* Mr. Hugo testified that he fixed the hot water

⁵ The Court notes that the initial letter was not produced by either party; Mr. Carson testified to its existence and further stated that it is referenced in his second letter. *See Dfs. Ex. 3.*

heater on that date. Mr. Hugo also testified that there was a small leak next to the hot water heater from a water pipe.

26. Mr. Hugo testified that if there was no oil, the hot water heater would not fire up and, therefore, there would be no water at all coming out of the faucets. The Court finds Mr. Hugo's testimony to be credible.
27. Ms. Smith confirmed that from May-August 2010, that water came out of the hot water faucets; however, Ms. Smith testified that this water was not hot, even after Mr. Hugo's visit in May 2010.
28. Mr. Noviello from Noviello's Plumbing and Heating testified that he replaced the oil burning hot water heater on the property with an electric hot water heater on approximately August 19, 2010. *See* Pls. Ex. 3. Mr. Noviello also testified that the oil-fired hot water heater was leaking.
29. Both Ms. Smith and Mr. Garcia testified that once Mr. Cohick installed a new water heater, the problems with the availability of hot water ceased. The Court finds these witnesses to be credible.

vi. Rental Payments for January – August 2010

30. Ms. Smith paid rent for January, February, March, April, and August 2010.
31. Ms. Smith did not pay rent for May, June, and July of 2010 because the hot water heater on the property did not work.
32. Ms. Smith's monthly rent amount from January-August 2010 was \$1,000.00/month. *See* Pls. Ex. 6.

II. Conclusions of Law

1. An implied warranty of habitability exists in residential leases. *Pugh v. Holmes*, 405 A.2d 897, 905 (Pa. 1979); *Kuriger v. Cramer*, 498 A.2d 1331, 1336 (Pa. Super. Ct. 1985). The warranty of habitability provides that "the leased premises will be free of defects of a nature and kind which will prevent the use of the dwelling for its intended purpose to provide

premises fit for habitation by its dweller.” *Kuriger*, 498 A.2d at 1336 (citing *Pugh*, 405 A.2d at 905).

2. When a landlord sues a tenant for possession of a rental property or for past rent due, a tenant may assert the landlord’s breach of the implied warranty of habitability as a defense or counterclaim. *Kuriger*, 489 A.2d at 1336; *Fair v. Negley*, 390 A.2d 240, 242 (Pa. Super. Ct. 1978).
3. To establish that a landlord breached the implied warranty of habitability, a tenant must prove that “she gave notice to the landlord of the defect or condition, that he (the landlord) had a reasonable opportunity to make the necessary repairs, and that he [the landlord] failed to do so.” *Kruiger*, 489 A.2d at 1336-37 (citing *Pugh*, 405 A.2d at 906).
4. The extent of the breach must be decided by the trier of fact on a case-by-case basis. *Pugh*, 405 A.2d at 905. Factors that may be considered include “the existence of housing code violations and the nature, seriousness and duration of the defect.” *Id.* at 905-06.
5. A tenant may recover damages or a landlord’s breach of the implied warranty of habitability; these damages are in the form of an abatement of rent equal to the diminution of the property caused by the warranty’s breach. *Kruiger*, 489 A.2d at 1337. If a landlord fully breached the implied warranty of habitability, the obligation of a tenant to pay rent would be fully abated. *Pugh*, 405 A.2d at 907.
6. The Court finds that the property on Walters Road did not have a properly functioning hot water heater from January 1, 2010, through August 19, 2010.
7. The Court finds that Mr. Cohick was put on notice of this malfunctioning hot water heater before January 2010.
8. The Court finds Mr. Cohick was given a second notice of this malfunctioning water heater in January 2010.

9. The Court finds that Mr. Cohick's reasonable opportunity to fix the heating system ended on January 30, 2010. Mr. Cohick did not repair the heating system until approximately August 19, 2010.
10. Defendants were not required to pay rent for May, June, and July 2010 because Plaintiffs *fully* breached the warranty of habitability for their rental unit on Walters Road because property did not have a properly functioning hot water heater until approximately August 19, 2010.
11. A tenant may recover damages if rent is paid during a time that a landlord is in breach of the warranty of habitability; these damages shall be calculated as the difference between the rental payments made and the reasonable rental value of the premises. *Fair*, 390 A.2d at 242.
12. With no hot water in the home, the Court finds that the property had *no* reasonable rental value.
13. The Court finds that Defendants are entitled to reimbursement of rental payments made to Mr. Cohick while the rental unit was uninhabitable. *Fair*, 390 A.2d at 242. This amount shall be equal to rent paid for February, March, April, and August 1-19, 2010, totaling \$3,612.90.
14. The Court finds Plaintiffs' claims regarding the unpaid sewer bills, the property left in the basement, the conversion of pool equipment, the payment due for the initial fuel bill, and the claim for attorney fees to be unsupported. The Court finds that the only evidence provided by Plaintiffs to support these claims was Mr. Cohick's testimony. The Court does not find Mr. Cohick credible.
15. The Court finds that Plaintiffs' claim that Defendants failed to cut the grass is unsupported. Mr. Garcia testified that both he and Ms. Smith's daughter cut the grass on the property. The only evidence provided by Plaintiffs that supports this claim is Mr. Cohick's testimony. The Court does not find Mr. Cohick's testimony credible.

16. The Court finds that Plaintiffs' claim that the water system was damaged due to a lack of fuel is unsupported. Plaintiffs did not provide *any* testimony to support this claim, let alone any evidence that the repair cost. Additionally, this Court notes Mr. Hugo's invoice that states "cop[p]er water pipes are paper thi[n]. [S]hould think about starting to replace them[.]" *See* Pls. Ex. 1.
17. The Court finds that Plaintiffs' claim for damages to the furnace based upon fuel depletion is unsupported. *See* Dfs. Exs. 22-28. Ms. Smith testified that at all relevant times fuel was available; she also provided the Court with numerous fuel oil receipts ranging from November 24, 2009, through January 10, 2011, to support her claim that she adequately filled the oil tank during her tenancy.
18. The Court finds that Plaintiffs' claim for seeding and fertilizing the yard damaged by Defendants is unsupported. Mr. Cohick did not provide any receipts regarding the materials that he allegedly purchased to fill in the ruts. On the other hand, Ms. Smith testified that she and her family filled in the ruts. The Court finds Ms. Smith's testimony to be more credible in this regard. Also, the Court received into testimony pictures of allegedly destroyed yard. These pictures do not support Mr. Cohick's statements. *See* Dfs. Ex. 17 HH-JJ.
19. Although not raised in pleadings, Plaintiffs made issue at trial that Defendants failed to provide 60-days notice prior to leaving the property. *See* Pls. Ex. 20. The Court finds that any notice that Defendants were required to give before leaving the property was nullified by the Court's June 9, 2011 order. Therefore, Defendants do not owe July 2011 rent to Plaintiffs.
20. The Court finds that Defendants are not entitled to damages for the property that was destroyed due to the flooding basement. *See* Dfs. Ex. 9. Ms. Smith admits that Mr. Cohick told her that the property had a wet basement. Therefore, the Court finds that Ms. Smith was put on notice that the basement retained water.

21. The Court finds that Defendants are not entitled to any refund for any work that they performed on the premises. *See* Dfs. Exs. 8, 10.
22. While Mr. Cohick inappropriately communicated with Ms. Smith during the pendency of their dispute, the Court does not believe that Defendants met their burden of proof as to their consumer protection claims, specifically the Fair Credit Extension Uniformity Act, 73 P.S. §§ 2270.1-2270.6, and the Unfair trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1-201-9.3.
23. While the Court agrees that tenants are protected under the consumer protection laws, the Court does not believe that this is a consumer protection case; the Court believes that this is a classic landlord-tenant dispute. *See generally Commonwealth v. Monumental Properties, Inc.*, 329 A.2d 812, (Pa. 1974) (addressing the consumer protection laws application when a landlord uses form leases that hide material facts).

III. Discussion

Ultimately, this case boils down to whether Ms. Smith could rightfully withhold three months of rent because the hot water in her rental property did not work properly. Ms. Smith admits that she did not pay rent for May, June, and July 2010; yet, Ms. Smith asserts that she did not have to pay rent for these three months because her landlord breached the implied warranty of habitability that is found in every residential lease. Therefore, the issue for this Court to decide is whether her landlord, Mr. Cohick, did in fact breach this warranty. This Court believes that he did.

The Court received into evidence a letter, dated April 10, 2010, that Ms. Smith wrote, to her landlord, telling him that the hot water heater in the home did not work. In the letter, Ms. Smith relays that she had discussed this problem with her landlord previously. Ms. Smith testified that she told her landlord the issues that she was having with the hot water heater in November 2009 and January 2010. However, her landlord did not fully remedy the hot water issue in the rental unit until mid-August 2010; her landlord's failure to remedy the lack of hot water in the rental unit caused him to breach of the implied warranty of habitability.

This Court finds that Mr. Cohick should have had the hot water situation remedied by, at least, January 30, 2010. Therefore, as of February 1, 2010, Mr. Cohick breached the implied warranty of habitability and Ms. Smith was not required to pay rent from February 1, 2010, through August 19, 2010.

Even though her rental unit did not have a properly functioning hot water heater, Ms. Smith paid rent to her landlord in February, March, and April 2010. The Court finds that Ms. Smith is entitled to a refund of these rental payments based upon Mr. Cohick's breach of the implied warranty of habitability.

Additionally, Ms. Smith paid Mr. Cohick rent in August 2010. The Court finds Ms. Smith is entitled to an abatement of her rent from August 1-19, 2010, because Mr. Cohick did not replace the hot water heater until approximately August 19, 2010.

Plaintiffs take issue with Defendants because they did not place their repair requests on a "Service or Repair Request" form. *See* Pls. Ex. 7. Mr. Cohick said that he provided this form to Ms. Smith when she signed the lease; Ms. Smith said that she never received a form. This Court believes Ms. Smith on this issue. Regardless, Ms. Smith's failure to fill out Mr. Cohick's form does not justify Plaintiffs' breach of the warranty of habitability.

The Court enters the following Order.

ORDER

AND NOW, this 20th day of December, 2012, following a non-jury trial in the above-captioned matter, in regard to Plaintiffs' claim, a verdict is hereby entered in favor of Defendants Clara A. and Christopher Smith and against Plaintiffs Alan and Patricia Cohick; in regard to Defendants' counterclaim, verdict is hereby entered in favor of Defendants and against Plaintiffs in the amount of \$3,612.90. The Court hereby enters a judgment in favor of Defendants and against Plaintiffs in the amount of \$3,612.90.

BY THE COURT,

Date

Richard A. Gray, J.

cc: Scott A. Williams, Esq. – Counsel for Plaintiffs
John Person, III, Esq. – Counsel for Defendants
Gary L. Weber, Esq. – Lycoming County Reporter