IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ALAN COHICK, Plaintiff	:	NO. 17-693
vs.	:	CIVIL ACTION
ANTHONY E. MAZZA and JENNIFER R. WRIGHT, Defendants	:	

OPINION AND ORDER

On March 21, 2017, Alan Cohick ("Mr. Cohick" or "Plaintiff") filed a claim before the Magisterial District Judge Christian David Frey ("MDJ"), seeking repossession of property, rent in arrears, late fees, and filing fees against Anthony E. Mazza and Jennifer R. Mazza[1] ("Mr. Mazza" and "Ms. Mazza," collectively, "Defendants"). Following a hearing, on March 29, 2017, the MDJ awarded Plaintiff possession, $2,500 in rent in arrears, $720 in late fees, $75 in physical damages, and $224.75 in filing fees, for a sum total of $3,519.75. Defendants then filed a Notice of Appeal from the judgment of the MDJ on April 27, 2017 in this Court. The Prothonotary entered a rule upon Plaintiff to file a Complaint within twenty (20) days of service of the rule.[2] Plaintiff filed a Civil Complaint on June 2, 2017, alleging a breach of contract for unpaid rent and utilities bills, accrued late fees, and property damages, as well as attorneys' fees and costs.

Defendants filed Preliminary Objections to Plaintiff's Complaint on June 22, 2017. The Court sustained the Preliminary Objections by Order issued August 10, 2017. Plaintiff then filed an Amended Complaint on October 9, 2017, and Defendants filed Preliminary Objections to the Amended Complaint on October 17, 2017. In response to these objections, Plaintiff filed a Second Amended Complaint on

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[1] In the case caption Ms. Mazza is referred to by her pre-marital name, Jennifer R. Wright.
[2] Pa.R.C.P.M.D.J. 1004(B) ("If the appellant was the defendant in the action before the magisterial district judge, he shall file with his notice of appeal a praecipe requesting the prothonotary to enter a rule as of course upon the appellee to file a complaint within twenty (20) days after service of the rule or suffer entry of a judgment of non pros.").

November 6, 2017. Defendants filed Preliminary Objections to Plaintiff's Second Amended Complaint on November 21, 2017. The Court sustained these objections by Order issued February 1, 2018. Plaintiff then filed a Third Amended Complaint on February 20, 2018, to which Defendants filed an Answer, New Matter, and Counterclaim on March 29, 2018. The case was scheduled for an arbitration hearing on July 30, 2019 before an Arbitration Panel consisting of Chairman Jeffrey Dohrmann, Esquire, Tiffani Kase, Esquire, and Christian Kalaus, Esquire. Following the hearing, the Arbitration Panel held that neither party was entitled to recover damages or fees. Plaintiff filed an appeal from the Award of Board of Arbitrators on August 29, 2019. Defendants elected not to appeal the denial of their counterclaims. The case was then scheduled for a Civil Non-Jury Trial before the Honorable Judge Linhardt on June 16, 2020.

At opening argument, Plaintiff's counsel, James D. Smith, Esquire, first summarized the procedural history of the case, and provided that Plaintiff was seeking judgment in an amount totaling $4,026.04. This was broken down into $2,500.00 for rent in arrears, $720.00 for late fees, $224.75 for filing fees, $315.00 for damages to the residence caused by Defendants, $75.00 for expenses incurred by Plaintiff for removing trash left by Defendants at the residence, and $191.29 for attorneys' fees. Defendants' counsel, Lindsey Walker, Esquire, then presented Defendants' theories of defense, which included Plaintiff's breach of the implied warranty of habitability, Plaintiff's failure to mitigate damages, and Plaintiff's violation of the Fair Credit Extension and Uniformity Act ("FCEUA") and the Uniform Trade Practices and Consumer Protection Law ("UTPCPL").

After the close of opening argument, Attorney Smith called Mr. Cohick to testify. According to Mr. Cohick's testimony, on July 18, 2016, the parties entered into a lease agreement for a term of one-year at an apartment owned by Mr. Cohick located at 11052 Route 14, Ralston, Pennsylvania 17763. The lease covered the period of July 15, 2016 to July 15, 2017. Pursuant to this agreement, Defendants were to pay

$475 in monthly rent, and a $475 deposit. Rental payments were to be due on the fifteenth of each month. Mr. Cohick testified that Defendants paid $900 shortly upon moving in, $50 short of the $950 due for the first month's rent and deposit. Mr. Cohick claimed that Defendants thereafter failed to make timely and full payments on their rent, paying $200 on October 13, 2016, and another $200 on December 2, 2016. Mr. Cohick testified that he kept a log to track rental payments, although conceded that the document that he used to refresh his memory at trial was a reproduction. Mr. Cohick testified that he sent Defendants a warning letter regarding the nonpayment of rent on February 2, 2020, and then sent Defendants a Writ of Eviction, Notice to Quit for nonpayment of rent on February 3, 2020.

Mr. Cohick testified that Defendants moved out of the apartment at some point in March of 2017 without providing notice or a forwarding address. Mr. Cohick filed a claim for possession and damages with the Magisterial District Court on March 21, 2017. Following the proceeding before the Magisterial District Court, Mr. Cohick retook possession of the property on March 29, 2017.

Mr. Cohick testified that thereafter upon inspecting the apartment, he found Defendants had left bags of garbage on the front porch. He had assessed a $15 removal fee for each garbage bag left on the property, as consistent with the terms of the lease, or $75 in total.[3] He testified that Defendants had made additional unauthorized alterations to the property. Mr. Mazza had installed a railing by the back steps of the building, which Mr. Cohick stated he had removed as the railing stuck out and presented a potential hazard. Mr. Cohick further testified that Defendants had taped plastic over the storm windows with duct tape, which he speculated was to preserve heat within the unit. He stated that removing the tape damaged the 20s-era window frames, which needed to be sanded and repainted. Mr. Cohick averred that he spoke with an acquaintance in the home repair field and received an informal

[3] A copy of the lease agreement was entered as Plaintiff's Exhibit 1.

estimate that the cost of restoring the frames would be $400. Mr. Cohick instead paid another acquaintance $40 to assist him in repairing the windows, and otherwise performed the repair work himself. He provided a self-estimate of the total value of this work at $315.

When questioned regarding the condition of the apartment, Mr. Cohick testified that he had toured the unit with Defendants prior to their moving in. He stated that one diamond-shaped storm window in the unit had a crack in it, but averred that there were no other damages to the windows or fixtures in the apartment. He denied that he had made any representation that he would repair the window. When questioned whether he knew of any issues with the furnace within the unit, Mr. Cohick testified that not long prior to Defendants moving in there had been a flood. Following the flood, the furnace was serviced to certify that it was still in working condition. He stated that at the time Defendants moved in he gave them a repair report that they could return if they had any issues with the furnace, but stated that Defendants never contacted him to report a malfunction.

Mr. Cohick testified that some months after Defendants had left the apartment, a friend informed him of Defendants' new home address. He later drove to that address, parked, and exited the car so he could see the house number clearly. He testified that Ms. Mazza then exited the house and began cursing at him, after which he left. Mr. Cohick denied that he threatened or cursed at Ms. Mazza at that time, and denied having any further confrontations with Defendants, specifically denying that on a subsequent occasion he followed Ms. Mazza in his vehicle as was alleged in Defendants' New Matter.

Attorney Walker then called Jennifer R. Mazza to testify. Ms. Mazza confirmed that in July of 2016 she and Anthony Mazza signed a lease agreement and moved into an apartment at 11052 Route 14, along with their three young children. She stated that before moving in, Mr. Cohick had provided her and Mr. Mazza a tour of the apartment. She claimed at that time she and Mr. Mazza had noticed certain

deficiencies, including cracks in two of the storm windows and a bullet hole in a third window. She testified that Mr. Cohick had ensured them that he would repair the windows prior to, or soon after, the move-in date. However, Mr. Cohick never followed through on that promise.

Ms. Mazza stated that when she and Mr. Mazza first turned on the furnace in the apartment it functioned without issue. However, she stated that sometime around the end of October the furnace stopped functioning, would function only intermittently, or would blow cold air. She stated that she tried calling Mr. Cohick around this time to report the problems with the furnace but could not reach him. Her voicemail message went unreturned. Ms. Mazza testified that she and Mr. Mazza also sent a letter to Mr. Cohick around this time reporting the furnace malfunction and stating that she and Mr. Mazza would withhold rent if the furnace was not repaired. She stated that around the second or third week of November, she again called Mr. Cohick, this time successfully reaching him. She again informed Mr. Cohick that she and Mr. Mazza would withhold rent pending repair of the furnace. Ms. Mazza stated that she called Mr. Cohick twice more in December complaining about the malfunctioning furnace. She testified that during the second of these calls Mr. Cohick dismissively replied that the furnace was "fine" even though he had not come out to examine it.

Ms. Mazza testified that in December of 2016 Mr. Mazza began calling contractors to see if someone would come out to fix the furnace. However, of the approximately three contractors called, none was available to check the furnace. She testified that Mr. Mazza, who had some professional experience repairing furnaces, considered attempting to fix the furnace himself, but ultimately declined to do so, as he was concerned that he could face liability if the repair was not successful. Instead, she and Mr. Mazza purchased space heaters and kerosene heaters to heat the apartment.

Ms. Mazza testified that on February 17, 2017, she and Mr. Mazza left the apartment to move to their current home. She testified that at the time of moving out

Mr. Cohick had a P.O. Box number through which to contact them, along with a current phone number. She testified that she later returned the keys to the unit in early March.

Ms. Mazza testified that on August 17, 2017, on the date of her wedding rehearsal, she saw a car drive up to her new home. Thinking that a family member had arrived early, she went outside only to see Mr. Cohick exit the vehicle. Ms. Mazza testified that Mr. Cohick told her "your attorney is shit and can go to hell," and added "how does it feel to lose everything you have and will ever have?" Ms. Mazza stated that she then called for Mr. Mazza, who was in the house. This prompted Mr. Cohick to leave, although Ms. Mazza testified that before leaving Mr. Cohick threatened that he was going "to get" her and her family and made a "gun" sign at her with his fingers. She stated that following this incident, Defendants filed a report with the police. The officers said they would speak with Mr. Cohick. No criminal charges were filed.

Ms. Mazza testified that several weeks later, when she and her children were driving to Williamsport to visit her sister, she noticed Mr. Cohick had begun to follow her in his vehicle. She stated that he continued to follow her when she pulled over in a Weis' parking lot. He then drove up beside her and pointedly glared at her before driving away. Ms. Mazza testified that she did not report this incident.

Summarizing her and Mr. Mazza's payment history, Ms. Mazza testified that she and Mr. Mazza had paid Mr. Cohick $900 on August 15, 2016 to cover the first month's rent and deposit. She provided that Mr. Cohick had said this payment was "fine" even though $50 short of the combined first month's rent and deposit amount stipulated to in the parties' lease agreement. She testified that she and Mr. Mazza had timely paid the full $475 in rent for the months of September and October. However, she and Mr. Mazza had withheld additional rental payments starting in November due to Mr. Cohick's failure to address the issues with the furnace. She testified that these payments were made by money order, and confirmed that she had kept receipts. She also testified that she kept a copy of the letter to Mr. Cohick

notifying him that she and Mr. Mazza intended to withhold rent pending repair of the furnace. As Ms. Mazza testified that Mr. Mazza was unable to get off from work to appear for trial, following the close of Ms. Mazza's testimony no further witnesses were called and counsel made closing argument.

In light of the evidence and testimony presented at trial, the Court makes the following factual determinations. The Court credits the testimony provided both by Mr. Cohick and Ms. Mazza that Defendants paid $900 on or before August 15, 2016. The Court credits Mr. Cohick's testimony that Defendants thereafter made a payment of $200 on October 13, 2016, another payment of $200 on December 2, 2016, and made no subsequent payments.

The Court does not credit Ms. Mazza's testimony that she and Mr. Mazza paid the full rental amount of $475 for the months of September and October before beginning to withhold rent in November. Ms. Mazza testified that these payments were made via money order and acknowledged that she would have kept receipts of these money orders. However, Defendants did not enter these receipts into evidence. Similarly, Ms. Mazza testified that she kept a copy of the written letter to Mr. Cohick reporting the breakdown of the furnace and threatening the withholding of rent. Defendants also failed to enter this letter into evidence. Defendants additionally failed to enter into evidence any receipts for the space heaters and kerosene heaters allegedly purchased to address the heating situation within the apartment. Given that this action has been ongoing for over three years, the Court finds no reasonable explanation for why Defendants made no efforts to locate any corroborating physical evidence. Similarly, Mr. Mazza failed to provide his own corroborating testimony, even though Defendants were provided ample notice of the date of the hearing.[4] As the Court does not credit Ms. Mazza's testimony that she informed Plaintiff of the furnace's malfunction and threatened the withholding of rent pending its repair, the

[4] It should be noted that Mr. Mazza also failed to appear at the hearing before MDJ Frey on March 29,

Court finds that Defendants have failed to prove a breach of the implied warranty of habitability[5] and a failure to mitigate damages.[6]

The Court next addresses Defendants' defenses under the UTPCPL and FCEUA. The UTPCPL prohibits deceptive or unfair business practices.[7] The FCEUA regulates debt collection practices and is subject to enforcement under the UTPCPL.[8] However, while the UTPCPL enforcement provision creates a private cause of action supportive of a claim or counterclaim,[9] the statute does not provide an affirmative defense against a party seeking to collect a debt. Defendants have elected not to appeal their counterclaims. The Court therefore need not evaluate the competing testimony to determine whether Mr. Cohick made false representations that he would

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2017 and the arbitration hearing on July 30, 2019.

[5] "A warranty of habitability is implied in all residential leases in this Commonwealth, by the terms of which the landlord warrants 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 dwellers. To establish a breach of the implied warranty of habitability, the tenant must show that he or 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 failed to do so. The damages suffered as a result of the breach are to be measured by an abatement of rent equal to the percentage [of the rent] which reflects the diminution in use for the intended purpose." Kuriger v. Cramer, 498 A.2d 1331, 1336-37 (Pa. Super. 1985") (quoting Pugh v. Holmes, 405 A.2d 897, 906 (Pa. 1979)) (internal citations omitted) (emphasis added).

[6] The failure to mitigate damages defense relies upon Mr. Cohick's knowledge of the furnace's malfunction and his failure to have the furnace repaired in a timely manner.

[7] The UTPLC "is a remedial statute that aims to protect the consumers of the Commonwealth against fraud and unfair or deceptive business practices. *Corsale v. Sperian Energy Corp.*, 374 F. Supp. 3d 445, 459 (W.D. Pa. 2019) (citing *Com. by Shapiro v. Golden Gate Nat'l Senior Care LLC*, 194 A.3d 1010, 1023 (Pa. 2018)). To state a cognizable UTPCPL claim, a plaintiff must establish that the defendant engaged in an activity proscribed under the law, that the plaintiff ... justifiably relied on the defendant's wrongful conduct or representation[,] and that he suffered harm as a result of that reliance." *Hoffmann v. Wells Fargo Bank, N.A.*, 242 F. Supp. 3d 372, 394 (E.D. Pa. 2017) (quoting *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 438 (Pa. 2004)) (internal quotations omitted). Residential leases are covered by the UTPCPL. *See Com. v. Monumental Props., Inc.*, 329 A.2d 812 (Pa. 1974).

[8] The FCEUA, which regulates debt collection practices, prohibits a creditor from directly contacting a debtor that the creditor knows is represented by an attorney, absent unreasonable delay in response or express consent. 73 P.S. § 2270.4(b)(1)(vi). In addition, the FCEUA prohibits the use of harassment, profane or obscene language, oppression, or abuse as a means to collect a debt. 73 P.S. § 2270.4(b)(4)(i)-(ii).

[9] 73 P.S. § 201-9.2 (creating a private right of action for the recovery of actual damages, in addition to discretionary treble damages, court costs, attorney's fees, and equitable relief). Note that a violation of the FCEUA is a per se violation of the UTPCPL. 73 P.S. § 2270.5(a).

repair the windows prior in the apartment, a potential violation of the UTPCPL. Nor does the Court need to determine whether Mr. Cohick harassed Defendants in order to collect the unpaid rent, a potential violation of the FCEUA.

The Court therefore finds that Plaintiff is entitled to the $2,500.00 requested in rent in arrears, which equates to $475 monthly from August through March, subtracting the $900 paid on August 15, 2016, the $200 paid on October 13, 2016, and the $200 paid on December 13, 2020. The Court also finds Plaintiff's request for $720 in late fees, equating to a $3 daily fee for late payments or late fees spanning 240 days in total, to be reasonable and in accordance with the terms of the lease agreement. The Court will also grant $224.75 for filing fees, as Plaintiff's Exhibit 2 established those fees. The Court, however, denies Plaintiff's request for $191.29 for attorneys' fees, as Plaintiff failed to provide any evidence related to those fees at trial. The Court also denies Plaintiff's claim for $75.00 for trash removal, as Plaintiff failed to provide any evidence related to the actual cost of the garbage removal.[10] The Court similarly finds that Plaintiff's self-estimate of $315 as to the value of his work in renovating the apartment unsupported by the evidence. The Court therefore finds that Plaintiff is entitled to $40 compensation for what he expended in hiring an assistant to sand and repaint the damaged windowpanes.

The Court thereby enters a verdict in favor of Plaintiff and enter judgment against Defendants in the amount of $3,484.75.

It is so ORDERED this 7th day of July 2020.

BY THE COURT,

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Eric R. Linhardt, Judge

[10] While the lease agreement contained a $15 penalty for each bag of trash left on the property, the Court finds that enforcement of this term would be unconscionable absent evidence of actual damages. *See* 13 Pa.C.S.A. § 2302 (providing that it is within the court's authority to decline to enforce an unconscionable contract clause).

ERL/cp
cc: James D. Smith, Esquire
Lindsey Walker, Esquire
Gary Weber, Esq. / Lycoming Reporter