

**THE SOUTH EUCLID MUNICIPAL COURT**  
**CUYAHOGA COUNTY, OHIO**  
1349 South Green Rd.  
South Euclid, OH 44121

NRS ODYSSEY, LLC

Plaintiff

V.

KELLY LANGAN

Defendant

CASE NO: 13 CVF 167

JUDGE GAYLE WILLIAMS-BYERS

JUDGMENT ENTRY AND OPINION

This case came before the court for trial on April 9, 2014, June 4, 2014, and August 6, 2014. Trial Briefs were submitted and filed by NRS Odyssey, LLC (hereinafter "Plaintiff") and Kelly Langan (hereinafter "Defendant") on April, 9 2014.

The main issue before the court is whether the Defendant owed the Plaintiff a 30 day notice to vacate the premises at 885 South Green Rd. Unit #7, South Euclid, OH 44121 and is therefore responsible for paying rent for March 2013 after being served with a three-day eviction notice on or about January 31, 2013 when a written lease agreement was never signed by the parties and executed.

On March 18, 2013, the Plaintiff filed a Complaint in this court against the defendant for money damages due to unpaid rent and late fees amounting to \$2500.00. The Complaint alleges that defendant owes two-hundred dollars (\$200) for rent owed prior to December 2012, three-hundred dollars (\$300) for December 2012, six-hundred dollars (\$600) for January 2013, six-hundred (\$600) for February 2013, and six- hundred dollars (\$600) for March 2013 as well as two hundred dollars (\$200) in cumulative late fees consistent with the terms of the lease agreement. Both parties stipulate that a written lease was never signed and executed but that an oral rental agreement was in place in which the Defendant was to pay six-hundred dollars (\$600) a month for rent at the beginning of each month. Plaintiff argues that the Defendant owes back rent for March 2013 because she did not provide adequate notice of her intent to vacate the premises citing Steiner v. Minkowski, 72 Ohio App. 3d 754 (1991).

Defendant's tenancy began in July 2011. A standard written lease was emailed to the Defendant, however, there is no evidence presented showing that the defendant ever signed the document. Nevertheless, the agreement does bear the signature of the plaintiff's property manager. This court finds said signature to be invalid. It was the testimony of the Plaintiff that the property manager had no authority to sign said lease or enter into any agreement on behalf of the company. Defendant's tenancy began with there being no valid lease and no evidence was presented by Plaintiff as to any agreement outside the contours of such regarding late fees. This court finds that late fees were never discussed or promised in the oral agreement and therefore shall not be granted. Further, there is no evidence provided by either party that a security deposit equal to the first month's rent was either paid or received. There is not sufficient evidence that late fees were ever discussed or promised in the oral agreement thus any late fees sought shall not be granted. There is also no evidence provided by either party that a security deposit was either paid or received.

An oral rental agreement is not enforceable by virtue of the Statute of Frauds. ORC 1335.04 states "No lease, estate, or interest, either of freehold or term of years, or any uncertain interest of, in, or out of lands, tenements, or hereditaments, shall be assigned or granted except by deed, or note in writing, signed by the party assigning or granting it, or his agent thereunto lawfully authorized, by writing, or by act and operation of law." However, where no written lease is executed, "a tenancy at will is created when possession of the premises is taken under an invalid lease." Manifold v. Schuster, 67 Ohio App. 3d 251 (1990). An at will tenancy converts to a periodic tenancy based on rent paid and accepted. Id citing Suzzi, Inc. v. Atlantic Dept. Stores, Inc., 359 N.E. 2d 721, 726 (1976). In this case, the periodic tenancy was on a month-to-month basis, specifically the 1<sup>st</sup> of each month. Plaintiff cited Steiner v. Minkowski, 72 Ohio App. 3d 784 (1991) in their trial brief stating that a periodic tenancy requires that advance notice to terminate the lease be given by either party to the lease and that the appropriate notice period is determined by statute, specifically ORC 5321. 17(B). This statute states that the "landlord or tenant may terminate or fail to renew a month-to-month tenancy by notice given the other at least 30 days prior to the periodic rental date" which is established here as the 1<sup>st</sup> of each month. See also Detweiler v. Galt, NO. 01-CA-34, 2001 WL 1682822. The Defendant did provide notice to the Plaintiff that she would vacate the premises on February 28, 2014 but did so only 15 days before actually vacating the premises on February

28, 2014 which would make her liable for the March 2013 rent as alleged by Plaintiff. Therefore this court finds that the Defendant does owe rent in the amount of six-hundred dollars (\$600) for March 2013 to Plaintiff.

The court hereby awards damages to the Plaintiff as against the Defendant for a total of \$2,300.00. The court finds that there is uncontested evidence that defendant owed past and unspecified rents prior to December 2012 in the amount of two-hundred dollars (\$200). This amount is hereby awarded. Further, evidence presented by the Plaintiffs proved the Defendant owed rents for December 2012 in the amount of three-hundred dollars (\$300), for January 2013 in the amount of six-hundred dollars (\$600), for February 2013 in the amount of six-hundred dollars (\$600), and March 2013 in the amount of six-hundred dollars (\$600).

The court further finds that there shall be no award of late fees in the amount of two-hundred (\$200) dollars as no lease agreement existed and no terms regulated. Finally, the court also finds that there is no recovery for a six-hundred dollar (\$600) security deposit, as no evidence was presented as to its presentation and escrow.

This court next addresses the Defendant's counterclaim. The defendant alleged that Plaintiff's eviction notice was unjustified pursuant to ORC 5321.02 which states in pertinent part:

A landlord may not retaliate against a tenant by...bringing or threatening to bring an action for possession of the tenant's premises because... (1) [T]he tenant has complained to the landlord of any violations of section 5321.04 of the Revised Code...

This court finds that on November 21, 2013, the Defendant filed a counterclaim alleging that retaliatory action taken by the Plaintiff in the form of an eviction, in violation of ORC 5321.02, forced her to leave the premises, incurring expenses and claiming other money damages amounting to \$5, 555.50. Damages were outlined as such: cleaning \$200, outside laundry due to no hot water \$100, missed work \$260, moving van and gas \$100, movers \$120, higher rent in new home \$400, attorney's fees \$3,200.00, attorney's fees at trial estimated \$1,175.00. Testimony taken and deduced at trial showed that the Defendant complained on several occasions of deteriorating living conditions including but not limited to bed bug infestation in the building and minimal hot water supply. The hot water complaint is the basis for Defendant's retaliation allegation. The defendant complained about the hot water supply

in December 2012 which was allegedly restored at the end of January 2013. Shortly following this complaint the Defendant was served with a three day notice on January 31, 2013.

The court finds the Defendant's claim to be meritorious. The minimal hot water supply is the type of material health and safety issue that a landlord may not violate per ORC 5321.04. Although Plaintiff claims a three day eviction notice was served on the Defendant for non-payment of rent, this court finds Defendant's claim that the three day notice was a retaliatory action to be more credible. The timing is the issue here; Defendant first complained about the hot water in December 2012 and was served with a three day notice in January 2013. The evidence shows that Defendant had been late in paying rent several times prior to January 2013 and partial payments were customarily accepted by Plaintiff thus impressing on the court that Plaintiff's actions were retaliatory in nature. The court hereby finds in favor of the Defendant.

Furthermore, ORC 5321.02 (B)(3) states that a tenant "may recover from the landlord any actual damages together with reasonable attorney's fees." This court finds it reasonable and just to award Defendant damages in the amount of three-hundred and sixty dollars (\$360.00) for outside laundry and missed work. The court further finds that the Defendant would have surrendered the premises even if Plaintiff never served her with a three day notice of eviction. Therefore, any expenses incurred as a result of the move and relocation shall not be awarded.

This court further orders counsel for the Defendant to submit under separate cover an itemization to this court for attorney and litigation fees consistent with time expended for this case.

**IT IS SO ORDERED.**



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JUDGE GAYLE WILLIAMS-BYERS  
ADMINISTRATIVE AND PRESIDING JUDGE