

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
ASSOCIATE CIRCUIT DIVISION
AT KANSAS CITY**

| | | |
|---|---|------------------------------|
| ELLIS REAL ESTATE SERVICES, LLC |) | |
| |) | |
| Plaintiff, |) | |
| vs., |) | |
| |) | |
| |) | Case No. 0916-CV34703 |
| STACY SCHNEIDER |) | |
| |) | |
| Defendant/Third Party Plaintiff, |) | |
| vs. |) | DIVISION 26 |
| |) | |
| JPS HOLDINGS, LLC, |) | |
| |) | |
| Third Party Defendant. |) | |

JUDGMENT

On October 19, 2010, this matter was called for trial. Plaintiff appeared through James Star and counsel, Holly L. Fisher. Defendant appeared through counsel Allan R. Culp. During the trial of this matter, testimony, evidence and exhibits were submitted. The Court heard, reviewed and duly considered the testimony and evidence submitted at trial, viewed the witness and carefully evaluated and weighed the credible evidence and testimony presented at trial. The Court took the matter under advisement. After reviewing all of the evidence presented during the course of the trial, the Court finds as follows:

Findings of Fact

1. Plaintiff, Ellis Real Estate is the management company employed by Third Party Defendant, JPS Holdings, LLC. (“Plaintiff”);

2. Plaintiff, is the owner of 4526 Pennsylvania, Apartment 7, Kansas City, Jackson County Missouri;
3. Plaintiff and Defendant/Third Party Plaintiff, Stacy Schneider, (“Defendant”) entered into a rental agreement on March 1, 2006 which created a Landlord-Tenant relationship between Plaintiff and Defendant;
4. Plaintiff rented to Defendant the premises at 4526 Pennsylvania, Apartment 7, Kansas City, Jackson County Missouri;
5. Defendant paid a security deposit in the amount of \$400.00 to Plaintiff;
6. Defendant agreed to pay rent on a monthly basis in the amount of \$550.00, due and payable on the first day of each month;
7. The rental agreement automatically renewed on a month to month basis;
8. The Plaintiff or the Defendant may terminate the rental agreement on the last day of any month by giving a one month written notice in advance to the other party;
9. The rental agreement provides for reasonable attorney’s fees if the Defendant defaulted in the performance of the rental agreement;
10. Defendant submitted to Plaintiff a notice of termination on October 12, 2009 with a termination date of October 31, 2009;
11. On December 10, 2009, Plaintiff sent Defendant a notice that the security deposit had been forfeited since Defendant’s notice was not turned in on time. Also in the notice, the Plaintiff charged the Defendant rent for November 2009 in the amount of \$550.00. Additionally, Plaintiff charged the Defendant for the following:
 - a. May, 2008 late fee \$25.00
 - b. May, 2009 late fee \$25.00

- c. July, 2009 late fee \$25.00
- d. October, 2009 late fee \$25.00
- e. November 2009 late fee \$25.00
- f. Window repair \$280.00
- g. Steam clean carpet/repair \$85.00
- h. Repair linen closet door \$65.00
- i. Linen closet door \$30.00

12. Plaintiff did not give Defendant notice in writing of the date and time that Plaintiff would inspect the premises;

13. Defendant has not paid the Plaintiff and therefore, Plaintiff filed suit against Defendant;

14. Defendant Answered the Plaintiff's Petition and also filed a Counterclaim and Third-Party Petition against Plaintiff;

Conclusions of Law

Plaintiff's Petition

As to Plaintiff's Petition, the Court finds that the Defendant failed to give thirty days written notice that she was moving. Failure to give this notice results in the Defendant being responsible for an additional month's rent, even though the Defendant did not live in the premises during that time period.

THEREFORE, as to Plaintiff's Petition, the Court finds that the Plaintiff is entitled to rent for November 2009 in the amount of \$550.00.

The Plaintiff is also entitled to the following:

- a. May, 2008 late fee \$25.00

- b. May, 2009 late fee \$25.00
- c. July, 2009 late fee \$25.00
- d. October, 2009 late fee \$25.00
- e. November 2009 late fee \$25.00
- f. Window repair \$280.00
- g. Steam clean carpet/repair \$85.00
- h. Repair linen closet door \$65.00
- i. Linen closet door \$30.00

The Court finds that the Plaintiff is entitled to damages and late fees in the amount of \$585.00.

Since the Plaintiff has pursued this cause of action due to the Defendant's dispute over having to pay rent for the month of November 2009, the Plaintiff is entitled to reasonable attorney's fees pursuant to the rental agreement.

THEREFORE, the Plaintiff is entitled to reasonable attorney's fees in the amount of \$250.00.

IT IS THEREFORE ORDERED that as to Plaintiff's Petition, judgment is entered in favor of the Plaintiff and against the Defendant in the amount of \$550.00 for rent, \$585.00 for damages and late fees and \$250.00 for reasonable attorney's fees, amounting to a total of \$1,385.00.

Defendant's Counterclaim

The Court finds that the Plaintiff has wrongfully withheld the security deposit of the Defendant pursuant to 535.300.3 RSMo. Pursuant to 535.300.3 RSMo., the landlord

may withhold from the security deposit only such amounts as are reasonably necessary for the following reasons:

- (1) To remedy a tenant's default in the payment of rent due to the landlord, pursuant to the rental agreement;
- (2) To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted; or
- (3) To compensate the landlord for actual damages sustained as a result of the tenant's failure to give adequate notice to terminate the tenancy pursuant to law or the rental agreement; provided that the landlord makes reasonable efforts to mitigate damages.

Here the Plaintiff not only forfeited the Defendant's security deposit solely because of the Defendant's failure to give the Plaintiff thirty days written notice of termination pursuant to the rental agreement, but the Plaintiff also charged the Defendant rent for the period of November 2009 when the defendant was not occupying the premises. The Court finds that by forfeiting the security deposit and charging rent during the period of unoccupancy by the Defendant, the Plaintiff imposes an unnecessary penalty on the Defendant that is unreasonably disproportionate to the amount of harm to the Plaintiff by the Defendant not giving thirty days written notice. *See Paragon Group, Inc. v. Ampleman*, 878 S.W.2d 878, 881 (Mo.App. E.D. 1994)

THEREFORE, the Court finds that the Defendant is entitled to recoup her security deposit in the amount of \$400.00.

Moreover, the Defendant requested damages of not more than twice the amount of the security deposit wrongfully withheld pursuant to 535.300.5. The term "wrongfully" describes the result and not the wrongdoer's conduct. *Battis v. Hoffman*, 832 S.W.2d 937, 940 (Mo.App. W.D. 1992). The Court has the discretion to impose a penalty within the statutory range, after consideration of the attendant circumstances. *Id.*

at 941. There is no mandatory penalty. *Id.* The Court finds that the Plaintiff violated section 535.300 RSMo., by both forfeiting the Defendant's security deposit solely for improper written thirty days notice and additionally charging rent for the unoccupancy in November 2009. In addition, the Plaintiff violated section 535.300 RSMo., by not giving the Defendant reasonable notice in writing of the date and time when the Plaintiff will inspect the dwelling unit following the termination of the rental agreement to determine the amount of the security deposit to be withheld and that inspection was not held at a reasonable time since notice was not given.

THEREFORE, the Court finds that the Defendant is entitled to damages in the amount of \$200.00.

IT IS THEREFORE ORDERED that as to the Defendant's Counterclaim, the Court finds in favor of the Defendant and against the Plaintiff in the amount of \$400.00 for the amount of the security deposit withheld from the Defendant and \$200.00 in damages for Plaintiff's wrongful withholding of Defendant's security deposit under 535.300 RSMo., totaling an amount of \$600.00.

IT IS THEREFORE ORDERED that judgment is entered in favor of the Plaintiff in the amount of \$1,385.00 and for the Defendant on her counterclaim in the amount of \$600.00, each party to bear its own costs.

IT IS SO ORDERED.

DATE

JUDGE KENNETH R. GARRETT III

Copies mailed on November 8, 2010 to:

Holly L. Fisher, Esq.
Swanson Midgley, LLC
4600 Madison Avenue, Suite 1100
Kansas City, Missouri 64112
Attorney for Plaintiff

Allan R. Culp
Culp Law Offices, P.C.
1102 Grand Avenue, Suite 1900
Kansas City, Missouri 64106
Attorney for Defendant