MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

SMALL CLAIMS COURT

S.G.
vs
A.S. and M.S.

CASE NO. 1122SC299 DIVISION 27 September 20, 2011

JUDGMENT

Cause called. Plaintiff appears pro se, representing himself. Defendants appear pro se, representing themselves. Cause heard, evidence offered and submitted to the court on September 7, 2011.

At trial, Plaintiff testified and submitted a series of correspondence exchanged between the parties. The correspondence was received and admitted in its entirety. Also, Defendant A.S. testified and, likewise, submitted additional physical evidence, including photographs, additional correspondence exchanged between the parties, other work estimates and a subsequent tenant's damage report, all of which were received and admitted into evidence.

Plaintiff S.G. is suing Defendants for $750.00, the full amount of Plaintiff's security deposit which was not returned to him. (At trial, Plaintiff withdrew his claim for additional damages in the amount of $1,188.03, the utility payments.) (See Petition and S.G. testimony.)

Conversely, Defendants filed a counterclaim and are suing Plaintiff in excess of $3,000.00, specifying $1,250.00 in unpaid rent for a portion of May, all of June and 15 days in July, $700.00 in combined late fees, $1,375.00 for physical damage to Defendants' hardwood

floors coupled with a door chain and lock that was installed on the front door, $143.16 attributed to changing the door locks and $412.34 for unpaid water and refuse service. (Following Plaintiff's waiver of the utility payment portion of his damages claim, Defendants similarly withdrew their claim for the $850.00 in water and refuse service at trial.) (See Counterclaim and A.S. testimony.)

Between October 1, 2007 and May 31, 2011, Plaintiff rented 4950 Bancroft Ave., second floor, from Defendants. At the beginning of the tenancy, Plaintiff provided Defendants with $3,000.00, which included the November 2007 rent of $750.00, the first and last month's rent totaling $1,500, and the security deposit of $750.00. (See July 21, 2007 correspondence.)

Pursuant to the lease, the most recent rental agreement between the parties began on October 1, 2010 and would terminate on September 30, 2011. (See Lease.) In, or around, March 2011, a disagreement surfaced between the parties regarding a non-smoking policy. Subsequently, the parties exchanged a flurry of correspondence and recriminations, ending with Plaintiff leaving the premises on, or about, May 31, 2011. (See March 10, March 17, March 23 and March 17, 2011 correspondence.)

On March 27, 2011, Defendants notified Plaintiff in writing that he should sign Defendants' enclosed non-smoking agreement or, in the alternative, Plaintiff could terminate the lease without any notice, thus extinguishing his future rental obligation. (See March 27, 2011 correspondence signed by A.S. and M.S. and attachment.)

On April 1, 2001, Plaintiff notified Defendants that that he intended to vacate the property by May 31, 2011, thus ending the rental relationship. (See April 1, 2011 correspondence signed by S.G.) Shortly thereafter, Plaintiff also submitted to the Defendants a proposed document memorializing the non-smoking policy for the remainder of his tenancy as

well as reiterating that the residential lease agreement ended on May 31, 2011. (See April 3, 2011 correspondence signed by S.G.)

After receiving both Plaintiff's April 1 and April 3 correspondence, Defendant A.S. informed Plaintiff that because of Plaintiff's "non-cooperation," specifically his failure to sign Defendants' proposed non-smoking policy, that the offer to rescind the lease was withdrawn. (See April 3, 2011 correspondence signed by A.S.) Since Plaintiff moved out, Defendants argue that Plaintiff unlawfully terminated his lease and Defendants suffered damages for unpaid rent, specifically attributable to a potion of May, all of June and the first 15 days in July 2011. (See A.S. testimony.)

Plaintiff claims that Defendants failed to return his $750.00 security deposit following his departure on May 31, 2011. (See Petition.) Defendants assert that they lawfully withheld Plaintiff's security deposit because of the physical damage to Defendants' hardwood floor and additional door damage caused by Plaintiff installing a door chain with lock that violated the terms of his lease. (See Counterclaim, lease, p.3, clause 12.)

The landlord may withhold from the security deposit only such amounts are reasonably necessary to restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted. (See §535.300.3(2) RSMo.)

Manifestation of acceptance of offer need not be made by spoken or written word; it may also come through offeree's conduct or failure to act. Moore v. Kuehn, 602 S.W.2d 713. (Mo.App.E.D. 1980). Although mere silence or inaction does not generally constitute acceptance of an offer, manifestation of acceptance of offer need not be made by spoken or written word; it may also come through offeree's conduct or failure to act. E.A.U., Inc. v. R. Webbe Corp., 794 S.W.2d 679 (Mo.App.E.D. 1990). Further, a contractual relationship maybe created without a

written agreement, where the circumstances, acts and the conduct of the individuals support a mutual understanding and an enforceable agreement. Follman Properties Company v. Henty Construction Co. Inc., 664 S.W.2d 248 (Mo.App.E.D. 1984), citing Freshour v. Schuererberg, 495 S.W.2d 116, 119 (Mo.App.1973). The agreement between the parties arises from their intention, presumed from their acts which show a mutual intent to contract. Marro v. Daniels, 914 S.W.2d 16 (Mo.App.E.D. 1995), citing Kosher Zion Sausage Co. of Chicago v. Rodman's Inc. 442 S.W.2d 543, 546 (Mo banc. 1969).

After reviewing the written and applicable evidence, hearing the testimony of the witnesses and having assessed their credibility, the court finds that Defendants withheld most of Plaintiff's security deposit contrary to Chapter 535 of the Missouri Revised Statutes.

Defendants argue that the floor photographs reveal damage caused by Plaintiff's furniture, thus justifying their decision to withhold the security deposit. The court disagrees. Admittedly, Defendants' photographs reveal a certain amount of scratch marks on the floor, but the court cannot conclude that these markings exceed the normal amount of wear and tear as alleged by Defendants. Also, Defendants point to a $900.00 estimate for floor work as further justifying their decision to withhold the security deposit. However, it is unclear to the court if this estimate accurately targets the alleged damage, as opposed to proposes a more broad, expansive and unnecessary labor effort. Based on the credible and available witness testimony, as well as the photographs, the court finds that the floor marks do not exceed normal wear and tear.

However, Defendants are justified in withholding a portion of Plaintiff's security deposit since he installed a door chain and lock without Defendants' permission and contrary to the lease. Pursuant to the lease signed by Plaintiff, "tenant will not, without Landlord's prior written

consent, alter, rekey or install any locks to the premises…" (See lease, p.3, clause 12b.) In his defense, Plaintiff purchased and installed the replacement door chain with lock after the previous door chain was disabled. Further, its unlikely that Defendants would have provided Plaintiff with the requisite written approval, even if requested, since this alteration occurred at, or around, the time of the parties' altercation and communication breakdown. Despite this, Plaintiff did not comply with the written terms of the lease.

While a partial withholding is justifiable, the court finds that withholding $125.00 for this specific alteration is excessive. Plaintiff purchased and replaced the key chain without requesting any reimbursement and, at least partially, with the intention of securing Defendants' property as well as his own. It is also unclear if any repair is necessary, as advocated by Defendants, since the credible evidence suggests that the existing chain with lock remains functional, with or without a key, for subsequent tenants. For these reasons, the court finds that withholding $30.00 of Plaintiff's security deposit is a more reasonable amount.

Finally, the court finds that Plaintiff lawfully terminated his lease with Defendants and Defendants' counterclaim is without merit. Defendants argue that they rescinded the offer to terminate the lease and Plaintiff remains liable for unpaid rent. The court disagrees. Defendants extend an offer to Plaintiff in the March 27 correspondence, where they allow him to end the lease, without notice. Plaintiff accepted the offer on April 1 and reiterated his acceptance in the April 3 communication, when he also submitted his proposed non-smoking policy. After receiving both pieces of correspondence, Defendants attempted to withdraw the offer, but it was too late.

The court finds in favor of Plaintiff S.G. and awards him $720.00, the full amount of his security deposit absent the $30.00 attributable to replacing the door chain with lock. Defendants'

counterclaim is denied. Judgment for Plaintiff S.G. against Defendants A.S. and M.S. in the amount of $720.00. The court costs are taxed against the Defendants.

DATED and entered this twentieth day of September 2011.

SO ORDERED:

_____
Thom C. Clark, 45996
Associate Circuit Court Judge
Twenty-Second Judicial Circuit

This judgment will be final unless an application for Trial De Novo is filed within ten calendar days from the date of this judgment. The application fee must be paid at the time of filing the application. Filing the application for the Trial De Novo will not stay execution unless the Trial De Novo bond is filed as set out in Section 482.365 RSMo.

CC: S.G., xxxxxx, St. Louis, MO 63116
A.S. and M.S., xxxxxx, St. Louis, MO 63109