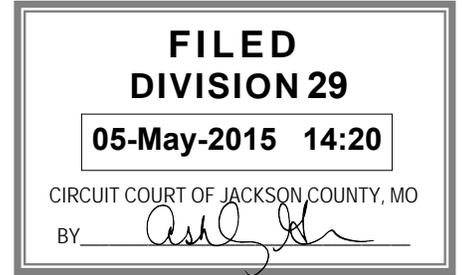


**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
ASSOCIATE COURT DIVISION
AT KANSAS CITY**



GERALD M. CHAITMAN)
and)
DIANE E. CHAITMAN,)
Plaintiffs,)
))
))
v.)
))
CHRISTOPHER P. ZACH)
and)
TRISHA S. PETERSEN,)
Defendants.)

**Case No. 1416-CV20865
Division 29**

JUDGMENT

This cause came before the Court for a bench trial on April 22, 2015, on Plaintiffs’ claim against the Defendants for breach of a residential lease agreement. At trial, Plaintiffs were represented by counsel Amy Elliott, and Defendants were represented by counsel Wyatt Roberts. After presentation of all of the evidence, the Court took the matter under advisement. The Court now makes the following findings and rulings:

Plaintiffs rented a home located at 9001 Washington St., Kansas City, Jackson County, Missouri, to Defendants for a lease period of February 1, 2013, until April 30, 2014. (*See* Plaintiffs’ Exhibit 2). The lease agreement provided, in relevant part, that “Tenant shall notify Landlord immediately of any repairs needed that, if left unattended, would result in damage to the Premises, such as water leakage, roof damage, wall cracks and/or holes, termite or insect damage, *etc.* . . . any repairs required to be made by reason of the negligence, willful misconduct or neglect of Tenant . . . shall be Tenant’s sole responsibility.” (*See* Plaintiffs’ Exhibit 2, Page 3, Paragraph 8). Plaintiffs’ petition alleges that the Defendants failed to report significant water

damage and mold in the kitchen to the Plaintiffs in direct violation of the lease agreement. Defendants' answer claims that they were under no duty to notify their landlords because the Defendants did not see any leaks or damage and they were unaware of any problems.

After considering all of the testimony and evidence, the Court does not find the Defendants' explanation for their failure to report to be credible. The Defendants testified that they failed to report any water damage to the Plaintiffs because they did not see any leaks or water damage. However, Defendant Petersen testified that she noticed a dark spot in the cabinet below the kitchen sink prior to the move-out date. She explained that it seemed "a little scummy and damp" in the corners under the sink when she took out the cleaning supplies to clean for move-out. Yet Defendants did not notify the Plaintiffs in accordance with the lease agreement. Defendant Petersen was also present at the move-out inspection with the Plaintiffs and their listing agent, Paula White. Plaintiff Gerald Chaitman and Ms. White both testified that the kitchen floor was noticeably damp during the walk-through, but Defendant Peterson told them that the floor was wet because she had just mopped it. However, the Court finds that this explanation is not credible given Defendant Petersen's admission that she was aware of a change in the condition of the sink cabinet but failed to report it.

The Defendants' testimony showed a repeated practice of failing to report problems with the property to the Plaintiffs. Both Defendants testified about the poor condition of the premises upon move-in, including fleas and mouse droppings, items left behind by the previous tenants, and overall uncleanliness. However, the Defendants never notified Plaintiffs directly of these issues despite being provided with Plaintiffs' contact information. The Defendants acknowledged that the lease required them to report any issues with the home to the Plaintiffs. Defendant Zach testified that his failure to report the problems at move-in would not have

prevented him from reporting water damage to the Plaintiffs, but the Court does not find such testimony to be credible. Additionally, Defendant Petersen admitted that the lease required the Defendants to notify the Plaintiffs when they got a new dog during the lease, but they did not do so. The Court finds that the Defendants had a motive for their failure to notify the Plaintiffs of the water damage, because they wanted to prevent the Plaintiffs from discovering that they had a dog living in the home.

The Defendants called Chad Hahn, the plumber who located and fixed the leak in the dishwasher supply line, as a witness. Mr. Hahn testified that the dishwasher leaked into the crawl space and subflooring, and the leak would not have been visible to someone standing in the kitchen. However, he also testified that the leak had completely soaked the subfloor and had been going on a long time, and that he could smell a “musty smell” in the kitchen. Plaintiffs’ evidence included testimony from John Krasson, owner of ServiceMaster Restoration. Mr. Krasson’s Inspection and Findings report for the home after the May 7, 2014 inspection stated that “there was visible mold growth in the sink cabinet and on the base of several other cabinets.” (Plaintiffs’ Exhibit 10). Mr. Krasson testified at trial that mold growth will not be visible for at least 72 hours, and it would take many days and maybe months for the mold and wood rot to occur to the extent that was present in the rental house. The Court finds that Mr. Krasson’s testimony, in combination with Defendant Petersen’s admission of noticing a dark spot in the sink cabinet, is sufficient evidence that the water leak had been ongoing for a period of time, and that the damage was visible prior to the Defendants’ move-out date.

The Court finds that the lease agreement imposed a duty on the Defendants to report water damage to the Plaintiffs. The Defendants failed to report such water damage to the Plaintiffs despite testimony that Defendant Peterson was aware of a problem in the sink cabinet.

Therefore, the Court finds that the Defendants breached their duty to report the water damage to Plaintiffs, resulting in substantial damage to Plaintiffs' rental home.

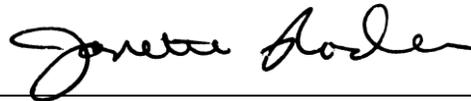
THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of **PLAINTIFFS** and against **DEFENDANTS** in the amount of \$14,986.74, plus interest at the rate of 6.25%, and court costs.

IT IS FURTHER ORDERED that Attorney for the Plaintiffs, Amy Elliott, shall have ten (10) days from the date of this order to file a motion for attorney's fees and any accompanying documentation.

IT IS SO ORDERED.

May 5, 2015

Date



HONORABLE JANETTE KAY RODECAP

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was duly delivered on the 5th day of May, 2015 to:

AMY ELIZABETH ELLIOTT, Attorney for Plaintiff, P.O. BOX 4784, OVERLAND PARK,
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Law Clerk, Division 29