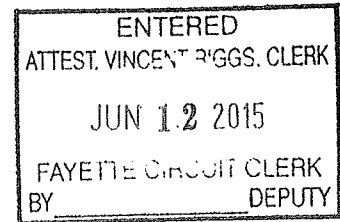


COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
THIRD DIVISION
CASE NO: 13-C-1073



LEXINGTON RENTAL HOMES, LLC

PLAINTIFF

V.

OPINION AND ORDER

CHARLES AARON ADAMS,
JENNIFER C. FRALEY-ADAMS and
JUDY H. ADAMS

DEFENDANTS

This matter having come before the Court for hearing on the issue of disputed property damage in the amount of \$975, as well as attorneys fees, the Court having heard testimony, studied the record of this case, and being otherwise sufficiently advised it is the Opinion and Order of the Court as follows:

UNDISPUTED DAMAGES

There is no dispute between the parties that the Plaintiff is entitled to the following damages:

\$1,850.45	Rent per the Lease Agreement; and
<u>\$1,650.00</u>	Liquidated damages per the Lease Agreement.
<u>\$3,500.45</u>	Total damages relating to Rent and Liquidated Damages.

DISPUTED PROPERTY DAMAGE CLAIM

The Plaintiff has made an additional claim for damage to the subject rental property in the total amount of \$806.44. The Defendant, Judy H. Adams, disputes that either all, or some, of the alleged damages were caused by the Defendants. After hearing testimony and reviewing exhibits in this case, the court is of the Opinion that Plaintiff is entitled to the full amount of the claimed damages of \$806.44

with the exception of \$45.00 ("new light and blinds broke"). Therefore, the Plaintiff is to recover the additional amount of \$761.44 in regards to the disputed property damage claim.

CLAIM FOR ATTORNEY'S FEES PURSUANT TO KRS 383.660

The Plaintiff cites **KRS 383.660** in reliance on its claim for attorney's fees. That statute reads, in part, as follows:

- (3) Except as provided in KRS 383.505 to 383.715, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or KRS 383.605 or 383.610. If the tenant's noncompliance is willful the landlord may recover actual damages and reasonable attorney's fees.

In analyzing Plaintiff's claim for attorney's fees pursuant to KRS 383.660, the Court has considered the following:

1. The parties entered into a Lease Agreement on May 2, 2012 wherein the Defendants leased residential space from Plaintiff located at 3329 Kenesaw Drive in Lexington. The lease term was for a period of twelve months, beginning June 1, 2012 and ending on May 31, 2013. (See Lease Agreement)
2. By correspondence dated September 28, 2012 the Defendants, Charles Aaron Adams and Jennifer C. Fraley-Adams, sent a document to Plaintiff styled "NOTICE TO VACATE PREMISES AND TERMINATE LEASE AT 3329 KENESAW DRIVE, LEXINGTON, KY 40515". This letter advised that the Defendants "are canceling the lease on the property...effective October 31, 2012." Additionally, the Defendants advised that "[T]he house will be ready for inspection and to show to prospective tenants on October 31, 2012. However if we can get everything moved and cleaned prior to that date, we will let you know." (See Correspondence dated September 28, 2012)
3. Due to non-payment of two months rent and late fees, the Plaintiff commenced forcible detainer proceedings against the Defendants on September 28, 2012 and the Fayette District Court found Defendants guilty of a forcible detainer of the property on October 9, 2012 and an appropriate Order to that effect was entered.

4. The Defendants appeared to have vacated the property sometime in September or October 2012.
5. Following the Defendants move from the leased premises, the Plaintiff discovered what has been described as "substantial damages and disrepair to the property..." (See Complaint, at "14").
6. Plaintiff filed its Complaint in this action on February 5, 2013.
7. The Defendant, Judy H. Adams, filed her Answer by certificate dated March 7, 2013.
8. The Defendant, Jennifer C. Fraley-Adams, sent a letter dated April 8, 2013 to Lexington Rental Homes. This correspondence was filed in the record of this case by counsel for Plaintiff by certificate dated October 6, 2013 as an exhibit to Plaintiff's Motion to Vacate Default Judgment Entered Against Defendant Jennifer C. Fraley-Adams and for Motion for Summary Judgment Against Defendant Jennifer C. Fraley-Adams. It is this correspondence that has been deemed to be Defendant's, Jennifer C. Fraley-Adams, "Answer" to Plaintiff's Complaint. This "Answer" reads, in part, as follows:

"On or about September 5th, 2012 @ the residence my now estranged husband Charles Aaron Adams I, was arrested for alcohol intoxication & destroying our property. The police were called to the residence and took Mr. Adams to jail due to his actions. I was forced to find somewhere to stay due to Mr. Adams actions. He was drinking again, and the home was extremely unsecure due to his actions, kicking the front door in & busting out the front windows of the home in a violent alcohol induced rage. For these safety reasons, my children were sent to my parents home. I requested on several occasions that Mr. Adams repair the home & allow me to stay there & fulfill the lease, & he vacate. He was unwilling to come to any compromise. If I would not agree to live with him (which was not a safe option for me) he did not want to make any arrangement. Then I spoke with the co-signer, my mother-in-law, Judy Adams, who was convinced that her son can do no wrong, and she said that if I was not going to be with Aaron...get my stuff & get out because she was taking my name off the lease & I could not come to any agreements, it was Aaron's house. Period. At this point, not having to be told again, I made other living arrangements & Mr. Adams & I are still

separated. When I vacated the premises, the house was cleaned properly. Unsure of what took place once my belongings were removed. This was a situation of domestic violence and I strongly do not feel as though I should be held responsible under the circumstances. Mr. Adams should bear the responsibility & burden of payment.”
(See “Answer” of Jennifer C. Fraley-Adams).

9. The Defendant, Charles Aaron Adams, did not file an Answer to the Complaint and Default Judgment has previously been entered against him in this action.
10. On October 23, 2015 this Court sustained Plaintiff’s Motion for Summary Judgment as to the Defendants, Judy H. Adams and Jennifer Fraley-Adams, as to liability. The Court, however, reserved judgment as to the damages and a hearing to determine damages was scheduled for December 4, 2014.
11. During the course of the hearing on December 4, 2014 the Plaintiff was represented by counsel and Plaintiff’s representative, Keith Gadd, appeared and testified as to the damage claim.
12. During the course of the hearing on December 4, 2014, the Defendant, Judy H. Adams, was represented by counsel and she testified as to the damage issue.

Based on the evidence of this case, the Court finds as follows:

- a. The parties entered into a Lease Agreement on May 2, 2012 with a lease term beginning June 1, 2012 and ending May 31, 2013.
- b. By correspondence dated September 28, 2012 the Defendants, Charles Aaron Adams and Jennifer C. Fraley-Adams, gave Plaintiff “NOTICE TO VACATE PREMISES AND TERMINATE LEASE”.
- c. Due to non-payment of two months rent and late fees the Plaintiff commenced forcible detainer proceedings against the Defendants on September 28, 2012.
- d. The Defendants, Charles Aaron Adams and Jennifer C. Fraley-Adams, appear to have vacated the premises sometime in September or October 2012.
- e. The Defendant, Judy H. Adams, never resided at the leased premises.

- f. The Defendant's, Jennifer C. Fraley-Adams, "Answer" to the complaint states, in part, as follows:

"On or about September 5th, 2012 @ the residence my now estranged husband Charles Aaron Adams I, was arrested for alcohol intoxication and destroying our property. The police were called to the residence and took Mr. Adams to jail due to his actions..... He was drinking again, and the home was extremely unsecure due to his actions, kicking the front door in & busting out the front windows of the home in a violent alcohol induced rage.I requested on several occasions that Mr. Adams repair the home....."
(See "Answer" of Defendant, Jennifer C. Fraley-Adams).

- g. The Defendant, Jennifer C. Fraley-Adams did not appear in court on December 4, 2014 to testify in regards to the damage issues and, specifically, Plaintiff's claim for Attorney's fees.
- h. The Defendant, Charles Aaron Adams, did not appear in court on December 4, 2014 to testify in regards to the damage issues and, specifically, Plaintiff's claim for Attorney's fees.
- i. The Defendant, Judy H. Adams, did appear in court on December 4, 2014 to testify in regards to all damage issues, including the claim for Attorney's fees.
- j. The Defendant, Judy H. Adams, never resided at the leased premises.
- k. The photographs of the leased premises, introduced as exhibits in this case, depict damages to the leased premises that appear to represent damages far in excess of what can be considered fair wear and tear, especially considering the Defendants had only been in possession of the leased premises for approximately three to four months prior to their eviction for non-payment of rent. Additionally, the photographs appear to depict damage to the leased premises that did not exist as of May 2, 2012, the date of the initial walk through inspection, as evidenced by the "Inspection Form", which is of record in this action.

In *O'Rourke v. Lexington Real Estate Company L.L.C.*, 365 S.W.3d, at page 586, the Kentucky Court of Appeals stated that:

"Generally, with respect to attorney's fees, Kentucky follows the American Rule of individual party responsibility rather than the fee shifting practice of some states and some other nations. [citations omitted]. However, the Kentucky General Assembly

has created a limited statutory exception to the general rule. That exception provides that if 'noncompliance is willful the landlord may recover actual damages and reasonable attorney's fees.' KRS 383.660(3). 'Willful' means with deliberate intention, not accidentally or inadvertently, and done according to a purpose.' KRS 383.545(17)."

From the record of this case, this Court is of the opinion that the Defendants were noncompliant with the terms of the Lease Agreement for the following reasons:

1. The Defendants breached the lease agreement by vacating the premises within three to four months of moving into the residence;
2. The photographs of the leased premises, referenced above, appear to represent damages far in excess of what can be considered fair wear and tear over the three to four month period the Defendants had possession of the residence.
3. By Defendant's, Jennifer C. Fraley-Adams, own admission, the Defendant, Charles Aaron Adams, was arrested and taken to jail on or about September 5, 2012 for "alcohol intoxication and destroying property", which consisted, in part, of him "...kicking the front door and busting out the front windows of the home in a violent alcohol induced rage". (See Answer of Defendant, Jennifer C. Fraley-Adams).
4. That the Defendants, Jennifer C. Fraley-Adams and Charles Aaron Adams, despite the claims made against them, chose not to appear in court to testify in their own defense.
5. That the Court is of the opinion, based upon the evidence of this case as set forth above, that the actions of the Defendant, or Defendants, were "willful" as they relate to their "noncompliance" with the terms and conditions of the Lease Agreement, and this Court is of the opinion that Plaintiff is entitled to attorney's fees pursuant to KRS 383.660.

JOINT AND SEVERAL LIABILITY

The Lease Agreement, as executed by all parties to this action, states in part, as follows:

- "1. TERMS AND RENTAL AMOUNT:.....Tenants acknowledge and agree that each is jointly and severally obligated for all obligations of payment and performance under this

lease.”

This Court is not unsympathetic with Defendant’s, Judy H. Adams, claim that she should not be obligated for the part of this Order and Opinion as it relates to attorney’s fees. However, she did legally obligate herself, both “jointly and severally”, to “all obligations of payment and performance of the lease”, when she executed the applicable Lease Agreement.

WHEREFORE IT IS THE OPINION AND ORDER of the Court that the Plaintiff shall recover from the Defendants, both jointly and severally, Judgment in the amount of three thousand five hundred dollars and forty five cents (\$3,500.45) [undisputed damages]; seven hundred sixty one dollars and forty four cents (\$761.44) [disputed property damages]; as well as attorney’s fees [to be determined]. Plaintiff shall submit its claim for attorney’s fees within ten (10) days from the date of this ORDER AND OPINION. The Defendants will have ten days after receipt of the filing of Plaintiff’s claim for attorney’s fees to object to same. A final Judgment will be entered in this action after a determination is made as to the amount of recovery for Plaintiff’s attorney’s fees, pursuant to KRS 383.660.

DATED this the 12th day of June, 2015.

A TRUE COPY
ATTEST: VINCENT RIGGS, CLERK
FAYETTE CIRCUIT COURT

BY [Signature] DEPUTY

[Signature]
Judge, Fayette District Court
Third Division

Clerk’s Certificate of Service

This is to certify that a true and correct copy of the foregoing was mailed on this the 12 day of June, 2015 to:

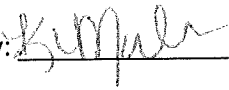
Carroll M. Redford, III
Miller, Griffin and Marks, PSC
271 West Short Street, Suite 600
Lexington, KY 40507-1292

William A. Dykeman
Dykeman & Rosenthal
P.O. Box 910
Winchester, ky 40391

Charles Aaron Adams

12 Hillcrest Drive
Winchester, KY 40391

Jennifer C. Fraley-Adams
3313 Buckhorn Drive
Lexington, KY 40515

By:  D.C.