

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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| Monique Long, | : | |
| Plaintiff-Appellant, | : | |
| v. | : | No. 12AP-191 (M.C. No. 2011 CVR 17142) |
| Joseph Nesbit, | : | (REGULAR CALENDAR) |
| Defendant-Appellee. | : | |
| Joseph Nesbit, | : | |
| Plaintiff-Appellee, | : | |
| v. | : | No. 12AP-192 (M.C. No. 2011 CVG 18730) |
| Monique Long, | : | (REGULAR CALENDAR) |
| Defendant-Appellant. | : | |

D E C I S I O N

Rendered on October 23, 2012

*The Legal Aid Society of Columbus, Scott E. Torguson and
Emily R. Crabtree, for appellant.*

APPEAL from the Franklin County Municipal Court

TYACK, J.

{¶ 1} Monique Long is appealing from the judgment entered in her dispute with her former landlord. She assigns two errors for our consideration:

I. THE TRIAL COURT ERRED BY SHIFTING THE BURDEN OF PROOF TO MS. LONG, REQUIRING THAT SHE PROVE

SHE WAS ENTITLED TO THE RETURN OF HER SECURITY DEPOSIT.

II. THE TRIAL COURT ERRED BY NOT AWARDING ATTORNEY FEES TO MS. LONG.

{¶ 2} The history of this litigation is important for our analysis of the issues. Because of a dispute about the condition of the property she rented, Long began depositing her rent in an escrow account. Her landlord, Joseph Nesbit then filed an action in forcible entry and detainer ("FE&D").

{¶ 3} A few months later, the parties apparently settled the dispute and an agreed judgment entry was journalized. Subject to an inspection of the property scheduled for August 24, 2011, Long was to receive her security deposit of \$250 and the \$600 she had deposited in the rent escrow account.

{¶ 4} After the inspection, Nesbit signed a written agreement which Long interpreted as indicating she was to receive the sums indicated. This agreement was drafted by Nesbitt's attorney and stated:

Monique Long has vacated the property and the parties conducted a walkthrough inspection of the premises at 1268 Kossuth Avenue together. The Landlord, Joseph T. Nesbit, is hereby returning the security deposit of \$250.00 and releasing funds of \$600.00 held in the escrow Case No. 2011 CVR 17142, to Monique Long.

(Plaintiff's exhibit No. 2.) This written agreement conflicts with the agreed judgment entry in the case which provides:

If there are damages at the time of inspection, Plaintiff shall provide Defendant with a list of damages within 30 days of August 24, 2011. If Plaintiff does not provide Defendant with a list of damages within 30 days and does not return the security deposit, Defendant shall be entitled to receive double the amount of the security deposit (\$500.00).

(Defendant's exhibit D.)

{¶ 5} A little over three weeks later, Nesbit did not provide the security deposit to Long, but, instead, sent a list of repairs he allegedly made to the rental property. The cost of repairs exceeded the amount of the security deposit.

{¶ 6} Long filed a motion requesting that the journalized settlement agreement be enforced. A judge in the Franklin County Municipal Court overruled the motion, leading to this appeal.

{¶ 7} The trial court judge who heard the case found that the journalized settlement agreement had not been breached because repairs in excess of the \$250 security deposit were made. These expenses included repair to a bathroom, the cleaning of a stove and repairs to the kitchen area. At least some of the work was done by two friends/neighbors of Nesbit's who allegedly received payment via a check payable to "CJS & Co." Receipts for out-of-pocket costs related to this work were written not by the persons who did the work, but by Nesbit's girlfriend Cornelia Banks.

{¶ 8} Despite these questionable expenses, the trial court found that the apartment had been damaged and repairs had been made at a cost exceeding the security deposit. We cannot say this finding was against the manifest weight of the evidence.

{¶ 9} We do not see the municipal court as shifting the burden of proof. Nesbit provided an itemized list of repairs and costs within 30 days of Long's vacating the apartment. His providing the list constituted compliance with both the journalized settlement agreement and the pertinent Ohio landlord-tenant law. Long did not prove she was entitled to a refund of her security deposit.

{¶ 10} The first assignment of error is overruled.

{¶ 11} Because non-compliance with Ohio landlord-tenant law was not proved, the trial court had no basis for awarding attorney fees to Long.

{¶ 12} The second assignment of error is overruled.

{¶ 13} Both assignments of error having been overruled, the judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

BROWN, P.J., concurs.
SADLER, J., concurs in judgment only.
