

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Kenwood Gardens Association, LLC
dba Kenwood Garden Apartments

Appellee

v.

Cecelia P. Shorter and LaDonna Shorter

Appellants

Court of Appeals No. L-10-1315

Trial Court No. CVF-10-02683

DECISION AND JUDGMENT

Decided: August 19, 2011

* * * * *

James P. Silk, Jr., for appellee.

LaDonna Shorter, pro se.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from an October 8, 2010 judgment of the Toledo Municipal Court, in which the trial court awarded judgment against Cecelia and LaDonna Shorter, jointly and severally, in the amount of \$1,464.50 plus interest and costs. A

notice of appeal was filed on October 22, 2010. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} From that judgment, appellants set forth the following sole assignment of error:

{¶ 3} "1. THE TRIAL COURT ERRED AWARDED APPELLEE JUDGMENT IN THE AMOUNT OF \$1,464.50 PLUS INTEREST AND COURT COSTS."

{¶ 4} The following undisputed facts are relevant to this appeal. Appellants were residents of the Kenwood Gardens apartment complex in West Toledo pursuant to a written lease agreement. Appellants ceased tendering their monthly rental payment and breached their lease agreement obligation. Specifically, appellants failed to tender the rent owed by them during the months of June, July, and August 2009, as well as the first two days of September 2009. Appellants asserted that they were not responsible for paying rent or late fees for these months because of a bed bug infestation in the apartment. However, it should be noted that appellants conceded to having caused the bed bug contamination through their exposure at a different location, which they then transported back into the apartment.

{¶ 5} On May 1, 2009, in conformity with the lease agreement, appellee hired a professional exterminating company in an effort to exterminate and remediate the bed bug issue. Appellants inexplicably failed to comply with the required preparation of their apartment for the extermination services and thereby prevented the extermination from successfully going forward. In response, appellee notified appellants that if they refused

to cooperate, then the infestation could not be remedied. As a result of appellants' ongoing lack of cooperation, the extermination did not occur until August 2009.

{¶ 6} Subsequent to the bed bug infestation caused by appellants, they did not pay rent for the months of June, July, and August 2009, as well as the first two days of September 2009. In conjunction with this, appellants' escrow action failed and was dismissed at the trial court level due to procedural errors by appellants. When the escrow money was returned to appellants, they elected to keep the money and still failed to tender the rent owed to appellee. Appellants ultimately vacated the apartment at the beginning of September 2009.

{¶ 7} In the sole assignment of error, appellants contend the trial court erred in its judgment awarding appellee the amount of \$1,464.50 plus interest at the statutory rate and costs. We disagree.

{¶ 8} Appellants are proceeding pro se in this matter. Pro se litigants are bound by the same rules and procedures as litigants who retain counsel. *Meyers v. First Natl. Bank of Cincinnati* (1981), 3 Ohio App.3d 209, 210. See, also, *Dawson v. Pauline Homes, Inc.* (1958), 107 Ohio App. 90. This court has made some allowances for pro se litigants. However, there is a limit. Principles requiring generous construction of pro se filings do not require us to conjure up questions never squarely asked, or to construct full-blown claims from convoluted reasoning. *Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 206.

{¶ 9} Furthermore, appellants, as the party asserting an error in the trial court, bear the burden to demonstrate error by reference to matters made part of the record in the

court of appeals. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199; App.R. 9(B). More specifically, App.R. 16(A) requires that an appellant include in his brief statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division (D) of this rule.

{¶ 10} In addition, an argument containing contentions with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies must be included. When an appellant fails to comply with this rule, App.R.12(A)(2) permits us to disregard the assignment of error. See *State v. DeMastry*, 155 Ohio App.3d 110, 2003-Ohio-5588, ¶ 79.

{¶ 11} We have carefully reviewed and considered the pro se brief. We find that appellants' brief is predominantly undecipherable. It contains a stream of disconnected, unsupported thoughts, notions, and conclusions. Nevertheless, we elect not to dispose of appellants' appeal on this basis. Rather, we will proceed to address the trial court's decision as applied in the context of the language of the submitted assignment of error.

{¶ 12} Appellants contend they should not be required to pay rent because appellee breached the lease agreement when the infestation was not immediately exterminated. We do not concur. As the record overwhelmingly reflects, appellants did not pay rent for the months of June, July, and August 2009, as well as the first two days of September 2009. As such, appellants breached the lease agreement.

{¶ 13} Upon notice of the infestation, appellee attempted to exterminate the bed bug disturbance in a timely manner. In order to treat the bed bug problem, appellants were required to prepare the apartment to enable the completion of the treatment. However, appellants did not cooperate. In fact, rather than comply, appellants left their furniture and clothing in the apartment and elected to intermittently come and go during the process. Appellants also failed in their escrow account action. That money was returned to them. It was not tendered to appellee.

{¶ 14} In addition to these facts, the record reveals appellants were actually the underlying cause of the bed bug infestation. Appellants transported the bed bugs into their own apartment. As such, the fact that appellee did not exterminate the infestation until their second attempt in August is irrelevant. Pursuant to the lease agreement, appellants, as occupants of the apartment, were still obligated to pay rent during this process. Appellants' sole assignment of error is not well-taken.

{¶ 15} After careful review of the record and evidence presented at trial, we find substantial justice has been done. Appellants were in clear breach of the lease agreement. The record contains no evidence that the factfinder lost its way or created a miscarriage of justice.

{¶ 16} On consideration whereof, the judgment of the Toledo Municipal Court is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.