IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

BRIDGEPORT INVESTMENTS, LLC, d.b.a. BRIDGEPORT APARTMENTS,	:	APPEAL NO. C-240122 TRIAL NO. 23CV13100
Plaintiff/Counterclaim Defendant-Appellee,	:	
vs.	:	*JUDGMENT ENTRY*
STEPHEN SOUDERS,	:	
Defendant/Counterclaim Plaintiff-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calender, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Defendant/counterclaim plaintiff-appellant Stephen Souders appeals from the judgment of the Hamilton County Municipal Court granting judgment in favor of plaintiff/counterclaim defendant-appellee Bridgeport Investments, LLC, d.b.a Bridgeport Apartments ("Bridgeport").

Bridgeport filed a complaint against Souders for past due rent and other damages. In response, Souders filed counterclaims against Bridgeport for wrongful withholding of his security deposit, failure to maintain the premises in accordance with the Landlord-Tenant Act, and breach of contract. A bench trial was held on January 18, 2024, after which the trial court entered judgment in favor of Bridgeport

in the amount of $669.84. Souders now raises four assignments of error challenging the trial court's judgment.

"An award of damages in a landlord-tenant dispute is governed by a manifest-weight-of-the-evidence review." (Citations omitted.) *Hensel v. Childress*, 2019-Ohio-3934, ¶ 24 (1st Dist.). In reviewing the manifest weight of the evidence, "we must determine whether the trial court's judgment was supported by the greater amount of credible evidence, and whether the plaintiff met its burden of persuasion, which is by a preponderance of the evidence." *Risch v. Samuel*, 2020-Ohio-1094, ¶ 21 (1st Dist.), citing *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 19.

In the first assignment of error, Souders argues that he was entitled to withhold payment of his rent as Bridgeport failed to uphold its responsibilities under the lease agreement. In his third assignment of error, Souders argues that the trial court erred in finding that Bridgeport provided parking as stated in the lease agreement. The only provision of the lease agreement that Souders references in his brief is the parking "Rules and Regulations." As a result, the first and third assignments of error are interrelated, and we address them together.

The relevant parking provision in the lease agreement states, "Limit of one car per apartment in parking spaces in front of each building. If there is more than one car, the extra car(s) shall be parked on the other side of the lot." Souders argues that this provision guarantees him a parking space in front of his building. However, this provision makes no such guarantee. Beyond that, Souders only testified to one instance where he could not find parking at all, and the trial court found that Souders's testimony was not persuasive. On the other hand, Cameron Bommer, the manager of Bridgeport Apartments and Owner of Bridgeport Investments, testified that there was

adequate parking available and that a nearby resident indicated no issues with finding parking.

The trial court found that Souders testified that Bridgeport "was responsible for things that he ultimately could not prove for instance that there was inadequate parking." Based on the evidence in the record, we cannot say that this finding was against the manifest weight of the evidence. Beyond that, Souders points to no other relevant lease provision. Therefore, we overrule the first and third assignments of error.

In his second assignment of error, Souders asserts that Bridgeport was in violation of R.C. 5321.04 of the Landlord-Tenant Act by not maintaining the premises in a fit and habitable condition.

R.C. 5321.04(A)(2) requires a landlord to "[m]ake all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition."

"Under R.C. 5321.04(A)(2), 'a plaintiff must first establish that a defective condition exists on the premises which renders it unfit or uninhabitable.'" *Goodman v. Dan Rich, LLC*, 2021-Ohio-690, ¶ 28 (8th Dist.), quoting *Gress v. Wechter*, 2013-Ohio-971, ¶ 20 (6th Dist.).

> 'The meaning and interpretation of the statutory phrase "fit and habitable" will not be liberally construed to include that which does not clearly fall within the import of the statute. . . . ["]Fitness and habitability entails such defects as lack of water or heat, faulty wiring or vermin infestations" and does not include such items as missing handrails.'

Gress at ¶ 20, quoting *Avila v. Gerdenich Realty Co.*, 2007-Ohio-6356, ¶ 9 (6th Dist.).

Thus, "Ohio courts. . . have held that to violate this statute, the conditions of the property must be extreme, rendering the place 'uninhabitable.'" (Citation omitted.) *Roundtree v. Byrd*, 2024-Ohio-5511, ¶ 13 (2d Dist.). "Conditions or defects that are a mere annoyance or inconvenience do not render a premises unfit or uninhabitable." (Citations omitted.) *Pedra Properties, LLC v. Justman*, 2015-Ohio-5427, ¶ 20 (8th Dist.). "This court has held that R.C. 5321.04(A)(2) requires the defects in the premises to be 'so substantial as to amount to constructive eviction.'" *V.R. v. Cincinnati-Hamilton Cty. Community Action Agency*, 2014-Ohio-5061, ¶ 12 (1st Dist.), citing *Cipollone v. Hoffmeier*, 2007-Ohio-3788, ¶ 22 (1st Dist.).

The trial court found that Souders complained "about the conditions of building, parking and *other such problems of nuisance*." (Emphasis added.) Thus, the trial court, in essence, found that the issues complained about were the equivalent of conditions or defects that were a mere annoyance or inconvenience. This finding is supported by the record as Souders failed to put forth any evidence of any condition or defect that was extreme and rendered the premises uninhabitable, thus resulting in a constructive eviction. Consequently, we overrule the second assignment of error.

In the final assignment of error, Souders argues that Bridgeport failed to abide by its obligations under R.C. 5321.16 "concerning the notification as to the status [of the] tenant's security deposit," and wrongfully withheld his security deposit. More specifically, he argues that he did not receive a deduction itemization until 32 days after he turned over possession, and therefore Bridgeport is liable to him for double the amount of his security deposit.

However, a landlord is not liable to a tenant for double the security deposit, despite failing to comply with R.C. 5321.16(B), where the evidence shows that the

entire security deposit was lawfully withheld. *See Amba Invests., LLC v. Clark*, 2022-Ohio-43, ¶ 26 (12th Dist.), citing *Vardeman v. Llewellyn*, 17 Ohio St.3d 24, 29 (1985).

Here, the trial court found that Souders was liable for $2,279.84 for turnover costs, which included two months of late rent. Thus, the trial court found that the entire $1610 security deposit was lawfully withheld.

Souders only challenges this finding by asserting that Bommer's testimony that each unit is repainted and cleaned prior to the new tenant taking possession is "blatantly false."

However, "'[i]f the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.'" *Eastley*, 2012-Ohio-2179, at ¶ 21, citing *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77 (1984). Therefore, we overrule the final assignment of error.

For all the foregoing reasons, we overrule the assignments of error and affirm the judgment of the trial court.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and **WINKLER, JJ.**

To the clerk:
Enter upon the journal of the court on 12/13/2024 per order of the court.

By:_____
Administrative Judge