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Appendix A

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ERIKA JACOBS, )  
Appellant, )  
V. )  
35 WEST APARTMENTS, )  
Appellee. )

No. 119,242

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

JAN 25 2021

JOHN D. HADDEN  
CLERK

ORDER

On the Court's own motion, this appeal is hereby dismissed as untimely because it was commenced more than thirty (30) days after the filing of the order appealed from. 12 O.S. Supp. 2017, § 990A.

When a petition in error is mailed in accordance with Oklahoma Supreme Court Rule 1.4(c), the pauper's affidavit or cost deposit must be (1) included in the same package as the petition in error, or (2) separately mailed in accordance with Rule 1.4, or (3) delivered over-the-counter to the Supreme Court clerk within the same 30-day time period required by § 990A. *Lear Siegler Services, Inc. v. Nance*, 2001 OK 36, ¶3, 22 P.3d 1213 (appeal dismissed as untimely where petition in error

Appendix A

was timely mailed but cost deposit not delivered until after 30-day deadline). See Oklahoma Supreme Court Rules 1.4(c) and 1.23.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS  
25TH DAY OF JANUARY, 2021.



CHIEF JUSTICE

DARBY, C.J., KANE, V.C.J., KAUGER, WINCHESTER, EDMONDSON, COMBS,  
GURICH, and ROWE, JJ. - Concur

COLBERT, J. - Not present

IN THE DISTRICT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA  
CLEVELAND COUNTY } S.S.

ERICA JACOBS,

vs.

35 WEST APARTMENTS,

Plaintiff,

**FILED**

NOV 02 2020 Case No. SC-19-2102

)  
)  
In the office of the  
Court Clerk MARILYN WILLIAMS  
Defendant,

**COURT ORDER**

A small claims hearing was held in this matter on October 5, 2020, with Plaintiff Erica Jacobs present by phone and with 35 West Apartments present through its counsel, Charles B. Sexson, and its representative. The Court heard evidence and testimony from all parties and asked numerous questions of all parties. Plaintiff also sent additional documents by email following the hearing for the Court's determination, and the Court refrained from entering a final decision until Plaintiff submitted any additional evidence. After review of all the testimony and evidence, the Court finds as follows:

Plaintiff has filed this claim seeking \$2,110.00 for "non-repair and breach of contract of the lease agreement." Plaintiff seeks reimbursement for the monies she has expended in renting the property in question and submitted several exhibits in support for her argument. Exhibits "A-E" were filed into the Court record on April 22, 2019. Defendant filed a counterclaim requesting an amount of \$2,903.00 for breach of the lease agreement, claiming that Plaintiff owed for back rent due and for the early-termination fee of \$2000, as set out in the Lease Agreement. In response, Plaintiff claimed that the condition of the unit was such that she should be excused from her lease, and she submitted additional documents to the Court for the hearing, since Plaintiff could only be present over telephone. These have been

*Appendix B*

## Appendix B

filed as well and marked Exhibit "F". The Court reviewed all these documents prior to making its final ruling herein.

The testimony and evidence presented for the hearing showed that, during her tenancy, Plaintiff requested that repairs be made to the property. These requests are set forth in the documents included as Exhibit "A". For purposes of this decision, the central complaint made was regarding "vents still giving off a moldy smell that makes the tenant cough and ill," but other requests centered on unclean water, a faulty washing machine, and unfinished baseboards. She also requested deductions in her rent for the condition of the property and Defendant's inaction in remedying these allegedly poor conditions.

Defendant responded to the request for repairs and some work was done, specifically, Defendant stated that the air vents were cleaned. See Exhibit "B". However, it was not sufficient for Plaintiff, and she ultimately terminated the lease, sending notification on April 12, 2019. See Exhibit "C".

Ultimately, Plaintiff wants relief for terminating the lease agreement, and she is specifically relying on 41 O.S. § 121:

A. Except as otherwise provided in this act, if there is a material noncompliance by the landlord with the terms of the rental agreement or a noncompliance with any of the provisions of Section 18 of this act which noncompliance materially affects health or safety, the tenant may deliver to the landlord a written notice specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within fourteen (14) days, and thereafter the rental agreement shall so terminate as provided in the notice unless the landlord adequately remedies the breach within the time specified.

D. Except as otherwise provided in this act, if there is a noncompliance by the landlord with the terms of the rental agreement or Section 18 of this act, which noncompliance renders the dwelling unit uninhabitable or poses an imminent threat to the health and safety of any occupant of the dwelling unit and which

noncompliance is not remedied as promptly as conditions require, the tenant may immediately terminate the rental agreement upon written notice to the landlord which notice specifies the noncompliance.

Plaintiff is claiming that Defendant's inaction and failure to remedy the issues with the property rendered the dwelling unit uninhabitable and posed an imminent threat to her health and safety. In addition to questioning the particular issues Plaintiff had with the unit, the Court also inquired extensively of Plaintiff regarding her health and safety. Plaintiff testified that she was ill and visited with a Dr. McCarter on April 22, 2019. She did not provide records from that visit, but did provide proof of medications prescribed, particularly, Esomeprazole Magnesium and Terbinafine. Plaintiff did not present any testimony or evidence proving beyond a preponderance of the evidence that any illness she was dealing with was directly caused by any of the conditions of her apartment, nor is there anything proving that the medications were necessary because of Plaintiff's living conditions. For example, the Court has no evidence that dangerous mold was present in the apartment or that any such mold threatened Plaintiff's health and safety, nor is there any evidence that Defendant was aware of the mold and failed to remediate it.

Unfortunately for Plaintiff, the statute's language is harsh and unsparing. "Uninhabitable" indicates that the property is not fit for any person to live in, and "an imminent threat" means that it is likely that Plaintiff's health and safety is very close to danger specifically because of the conditions of the property. It is difficult to prove these severe conditions, and Plaintiff simply has not succeeded in meeting her burden.

Plaintiff has every right to vacate the premises and terminate her end of the lease agreement. However, she has to face the consequences of that decision and is held responsible for the contractual terms agreed to at the time she began her tenancy, unless she

is excused from those terms. Under the lease agreement, the relevant language states as follows:

**26. Lease Buy-Out:** In the event Residents desire to terminate this Agreement prior to the end of the Initial Term, Residents may do so by giving thirty (30) days written notice, paying all amounts due or which would fall due prior to move-out...and paying an agreed upon Lease Buy-Out Amount of the lesser of \$2,000; or, the full amount due under the remaining term of the lease.

Therefore, it is clear that Plaintiff agreed to pay the lesser of \$2000 or the full amount due under the remaining term of the lease if she desired to terminate the Agreement prior to the end of the term. According to both parties, the lesser amount is \$2000, which is what Defendant is seeking here.

The key question here is whether Plaintiff was legally permitted to terminate the lease without having to pay the Lease Buy-Out, hence her argument that 41 O.S. § 121(D) is applicable. Plaintiff is tasked with proving her case beyond a preponderance of the evidence and she has failed to do so regarding excusal from the \$2000 amount owed. However, the Court finds that Plaintiff is entitled some deductions to her rent due to the entire situation she was facing. Therefore, from the amount of one months' rent, \$795.00, this Court is giving Plaintiff \$600 worth of credit. The total amount of the judgment in favor of Defendant will be \$2,195.00.

The Court wanted to address a few side issues raised by Plaintiff prior to and during the hearing. At a few different points during the hearing, namely after this Court announced a portion of its ruling, Plaintiff requested that her case be assigned to another judge. Initially, the Honorable Jequita Napoli recused from this matter on May 24, 2019, and this matter was reassigned to former judge Steven Stice on June 13, 2019. For unknown reasons, this matter was not set for hearing before Judge Stice. After his small claims cases were reassigned to

this Court in or around May 2020, Plaintiff requested a hearing and one was set for September 23, 2020 at 8:30 a.m.

At that time, Plaintiff was advised that she would need to provide notice to Defendant, and she objected, arguing that she could not afford to do so by certified mail. She was informed that the notice did not have to be by certified mail, but still objected. She had complaints about communication with this Court's office and the court clerk's office about the service of a new hearing date to Defendant. This Court's office contacted Defendant's attorney with the Court date and because of a conflict in schedule, the hearing was reset a few days to September 25, 2020. Plaintiff then requested a continuance from the new court date, which led to the October 5, 2020 setting, with all parties available.

This Court did not find reasonable cause to reassign this matter or for it to recuse as this Court has had no previous dealings with either of the parties concerning the litigation at hand that would cause the Court to be biased against Plaintiff. Additionally, just because this Court announced a ruling unfavorable to Plaintiff does not justify reassignment after the hearing had already been conducted.



SCOTT F. BROCKMAN  
Special District Judge

I HEREBY CERTIFY THAT THE FOREGOING IS A  
TRUE AND CORRECT AND COMPLETE COPY  
OF THE INSTRUMENT HEREWITHE SET OUT AS IT  
APPEARS ON RECORD IN THE COURT CLERK'S  
OFFICE OF CLEVELAND COUNTY, OKLAHOMA.  
WITNESS MY HAND AND SEAL THIS 20 DAY  
OF November 2020  
MARILYN WILLIAMS COURT CLERK  
BY Deputy

DEC - 9 2020

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA  
JOHN D. HADDEN

CLERK

Wednesday, December 9, 2020

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

118,523 - BETTY LIVELY v. CITY OF DUNCAN

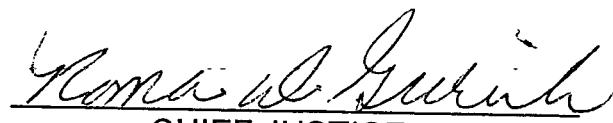
Appellee is directed to file an amended petition for certiorari, within 10 days of the date of this order, with the opinion of the Court of Civil Appeals attached. The amended petition shall not include any other attachments or appendices. Okla. Supreme Court Rule 1.179(a)(4), 12 O.S. Supp. 2013, app. 1. The time to file an answer to the petition for certiorari is not extended.

119,242 - ERICA JACOBS v. 35 WEST APARTMENTS

Appellant is directed to show cause, on or before **January 8, 2021**, why this appeal should not be dismissed as untimely because it appears to have been commenced more than 30 days after the filing of the November 2, 2020 order appealed. 12 O.S. § 990A.

The petition in error did not include a pauper's affidavit or cost deposit in conformance with Oklahoma Supreme Court Rule 1.4(c) (petition shall not be deemed filed on the date of mailing unless full amount of the cost deposit or a properly executed pauper's affidavit has also been mailed or delivered to the court clerk within the time period for perfecting the appeal). See also Oklahoma Supreme Court Rule 1.23(b); *Matter of K. L. F.*, 1994 OK 66, 878 P.2d 1067.

The Court notes the order appealed does not contain a certificate of mailing showing the date the order was mailed to Appellant. Therefore, Appellant is directed to state in the response the date on which Appellant received actual notice of the judgment. 12 O.S. § 990A. Facts provided in the response which are not in the record shall be supported by affidavit.

  
CHIEF JUSTICE

**Additional material  
from this filing is  
available in the  
Clerk's Office.**