

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

TRINA TURNER,	:	APPEAL NO. C-080147
	:	TRIAL NO. 07CV-36068
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
JERRY L. HICKS,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellant Trina Turner rented an apartment from defendant-appellee Jerry L. Hicks. After Turner moved out, Hicks did not return her security deposit, and Turner filed suit. Hicks claimed that the costs of cleanup and repair had exceeded the deposit amount. Turner produced photographs of the apartment that showed that the apartment was clean when she left. The magistrate found that the security deposit had been wrongfully withheld and ordered Hicks to pay double the amount of the deposit to Turner pursuant to R.C. 5321.16(C). The trial court overruled Hicks’s objections to that ruling.

In one assignment of error, Hicks argues that the trial court was incorrect for several reasons. Hicks first claims that Turner was not entitled to a refund of the deposit because the deposit money had come from St. John’s Social Services.

R.C. 5321.16(C) provides that “if the *landlord* fails to comply with division (B) of this section, *the tenant* may recover the property and money due him [under R.C. 5321.16(B)], together with damages in an amount equal to the amount wrongfully withheld, and

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

reasonable attorneys fees.”<sup>2</sup> A tenant is “a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.”<sup>3</sup> Importantly, the definition of “security deposit”—any deposit of money or property to secure performance by the tenant under the rental agreement—does not require that the funds come from the tenant personally.<sup>4</sup>

The Landlord-Tenant act authorizes actions between landlords and tenants.<sup>5</sup> According to the record, St. John’s gave Turner the deposit money. Hicks did not have an agreement with St. John’s; he had an agreement with Turner. The ultimate source of the funds, or any obligation Turner might have had to pay them back, did not alter the fact that Turner was the tenant. Under R.C. 5321.16, she was the party entitled to the refund of the deposit.

Hicks next argues that Turner failed to provide a forwarding address, failed to return the apartment keys, and failed to prove when her photographs had been taken. But Turner testified that she had left a forwarding address, that she had left the apartment key with a neighbor pursuant to Hicks’s instructions, and that the photographs showed the condition of the apartment when she had moved out. The magistrate found this testimony credible. “The credibility of the witnesses and the weight to be given to their testimony is a matter for the trier of fact to resolve.”<sup>6</sup>

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<sup>2</sup> R.C. 5321.16(C) (emphasis added); see *Vardeman v. Llewellyn* (1985), 17 Ohio St.3d 24, 29, 476 N.E.2d 1038 (“we hold that the term ‘amount wrongfully withheld’ means the amount found owing from the landlord to the tenant over and above any deduction that the landlord may lawfully make [pursuant to R.C. 5321.6(B)]”).

<sup>3</sup> R.C. 5321.01(A).

<sup>4</sup> See R.C. 5321.01(E).

<sup>5</sup> Compare *Beatley v. Schwartz*, 10th Dist. No. 03AP-911, 2004-Ohio-2945, at ¶22 (third parties do not have standing under the Landlord-Tenant Act because they are not “tenants” under the Act) and *Foss v. Reddy* (Nov. 2, 1995), 8th Dist. No. 68836 (a tenant had standing under the Landlord-Tenant Act, even when the majority of her rent was paid through government assistance, because she was a “tenant” under the Act).

<sup>6</sup> *State v. Dubose*, 1st Dist. No. C-070397, 2008-Ohio-4983, at ¶77, citing *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212.

Hicks next claims that the magistrate failed to “review or admit” the lease agreement between the parties. But he did not seek to admit the lease into evidence. While he raised the issue in his objections to the trial court, his entire argument on the point was that “there was no lease requested for submittal.” This objection seems to be based on the assumption that the magistrate was required to ask for the lease. The magistrate had no such duty.

Finally, Hicks argues that it was error to find for Turner because the damage to the apartment exceeded the amount of the deposit. Turner had photographs of the apartment that, she testified, were taken at the time she had moved out. Hicks had invoices for the work he or his maintenance men had done, but he had no photographs of the claimed damage. The magistrate looked at Turner’s photographs and found nothing more than “ordinary wear and tear.” The magistrate simply chose to believe Turner’s version of events. In doing so, the magistrate noted that “[t]he defendant’s charges on his check-out list were so exorbitant that he destroyed his own credibility.” Again, this was a decision for the trial court to make.

We overrule Hicks’s sole assignment of error and affirm the trial court’s judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on November 12, 2008

per order of the Court \_\_\_\_\_.  
Presiding Judge