

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

RALPH CUNNINGHAM,	:	APPEAL NO. C-090388
Plaintiff-Appellant,	:	TRIAL NO. 08CV-30028
vs.	:	<i>JUDGMENT ENTRY.</i>
HOWARD JONES,	:	
Defendant-Appellee.	:	

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

Ralph Cunningham appeals the trial court's entry of judgment in favor of Howard Jones. We conclude that his sole assignment of error does not have merit, so we affirm the judgment of the trial court.

Cunningham filed suit against Jones, his former landlord, alleging that Jones had locked him out of his apartment and had disposed of Cunningham's personal property. Cunningham alleged that the personal property was worth \$6,000. Jones filed a counterclaim, alleging that Cunningham owed him \$1,400 for four months' past-due rent and late fees. Jones also alleged that Cunningham had caused excessive wear and tear in the apartment for which he sought damages of \$2,000.

Cunningham filed a motion for summary judgment, which was denied by a magistrate. A trial was held before the magistrate. At the conclusion of the trial, the magistrate found in favor of Jones with respect to the past-due rent, but the magistrate credited Cunningham with \$700 for any personal property that he had lost. Jones had abandoned his claim for excess wear and tear during the hearing.

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

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Cunningham objected to the magistrate's decision. His objection challenged only the magistrate's denial of his motion for summary judgment. A transcript of the hearing before the magistrate was not filed with the trial court. The trial court adopted the magistrate's decision.

In his pro se appellate brief, Cunningham asserts as his sole assignment of error that the magistrate erred by failing to grant a judgment of more than \$700 for the trespass and conversion allegedly committed by Jones. The issues that Cunningham has raised on appeal involve questions of fact that were not properly raised before the trial court. We are bound by the record that was before the trial court. Accordingly, we limit our decision to whether the magistrate's decision, as adopted by the trial court, was contrary to law. We conclude that it was not.

As demonstrated by the hearing before the magistrate, there were several issues of material fact in dispute.<sup>2</sup> The magistrate properly denied the motion for summary judgment. And having reviewed the magistrate's decision, we are unable to conclude that it was contrary to law. The trial court, therefore, did not err when it adopted the decision. The sole assignment of error is overruled, and the trial court's judgment is affirmed.

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.

**CUNNINGHAM, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on March 10, 2010

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

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<sup>2</sup> See Civ.R. 56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.