

IN THE CIRCUIT COURT OF CRITTENDEN COUNTY
STATE OF ARKANSAS

FILED
2020 NOV 19 PM 1:18
TERRY HAWKINS
CLERK
CRITTENDEN COUNTY, AR

RUBY EVANS,)
)
Plaintiff,)
)
vs.)
)
UNITED APARTMENT GROUP)
MANAGEMENT, INCORPORATED,)
)
Defendant.)
_____)

CIVIL ACTION FILE

NO. CV2020-023

COMPLAINT

COMES NOW Plaintiff Ruby Evans and respectfully files this complaint as follows:

JURISDICTION AND VENUE

1.

Plaintiff Ruby Evans ("Plaintiff") is a natural person and a resident of Crittenden County, Arkansas.

2.

Defendant United Apartment Group Management Incorporated ("Defendant") is a Texas corporation with a principal office located at 7734 Blanco Road, Suite 300, San Antonio, Texas. Defendant may be served through its registered agent at 7734 Blanco Road, Suite 300, San Antonio, Texas, 78216.

3.

This Court has jurisdiction over all parties and matters in this action, and venue properly rests in Crittenden County, Arkansas pursuant to A.C.A. § 16-4-101(B).

FACTS

4.

On or about September 11, 2019, Plaintiff entered into an agreement (the "Lease") with Defendant to lease the apartment located at Riverwalk Park I - 3956 East Service Road, #23, West Memphis, Arkansas 72301 (the "Apartment"), pursuant to and in connection with the U.S. Department of Housing and Urban Development ("HUD") Housing Choice Voucher Program (the "Program"). Beginning shortly thereafter, in September 2019, Plaintiff began informing Defendant of water leaks within the Apartment. On numerous occasions, Plaintiff observed, what appeared to be, water intrusion through the concrete foundation of the Apartment. On numerous occasions, the water saturated the Apartment floors. On each such occasion, Defendant failed to respond to Plaintiff's requests for maintenance.

5.

On or about March 2020, Plaintiff discovered rashes on her arms and legs. Moreover, and due to the condition of the Apartment and reoccurring respiratory issues, Plaintiff's five-year-old grandson temporarily moved out of the Apartment. Notwithstanding, Plaintiff continued to make requests for maintenance. After several complaints of water intrusion, damage to the condition of the Apartment, damage to Plaintiff's personal property, and health complications, Defendant completely and negligently failed to repair the Apartment and address Plaintiff's damages.

6.

Believing she had no other option or no one else to turn to for help, Plaintiff contacted West Memphis Code Enforcement to report the conditions of the Apartment.

7.

Since September 2019, the occurrences of water intrusion have caused Plaintiff property damage and health complications, due to the development and presence of mold throughout the Apartment.

The Dangers of Water Intrusion and Mold Growth

8.

Mold and/or mildew can grow in any portion of a home that is exposed to elevated levels of moisture. The Centers for Disease Control and Prevention states the most common molds, including black mold, can develop on several surfaces inside of a home exposed to elevated levels of moisture. According to the Federal Emergency Management Agency, mildew rapidly develops into mold within 24-48 hours of water exposure. Once developed, mold will continue to grow until the source of the moisture is eliminated according to the United States Environmental Protection Agency (the "EPA").

9.

The EPA maintains that physical contact with mold is not necessary for human health to become adversely affected by mold. Furthermore, simply breathing in air exposed to mold may cause skin irritation, eye irritation, and chronic respiratory complications. Additionally, the EPA has warned that prolonged exposure to mold can potentially induce nervous system complications, flu-like symptoms, and physical aches and pains.

HUD Quality Standards

10.

As part of the Program, HUD provides federal funding to local housing agencies that manage housing for low-income residents. Through the Program, low-income residents rent at a reduced rate, while landlords benefit from the tenant's occupancy and rental assistance.

11.

Pursuant to 24 C.F.R. § 982.401, all Program housing must meet performance requirements with respect to HUD's housing quality standards, both at commencement of assisted occupancy, and throughout the assisted tenancy. HUD's housing quality standards include: (a) sanitary

facilities, (b) interior air quality, and (c) sanitary conditions, and the standards establish the minimum criteria necessary for the health and safety of program participants.

Defendant Breaches Its Lease and the Program's Quality Standards

12.

The Lease, as provided by Defendant to Plaintiff, creates a Landlord-Tenant relationship amongst the parties. Accordingly, and under Arkansas law, “[a] landlord is subject to liability for physical harm caused to the tenant and others upon the leased property with the consent of the tenant or his subtenant by a condition of disrepair existing before or arising after the tenant has taken possession if: (1) the landlord, as such, has contracted by a promise in the lease or otherwise to keep the leased property in repair; (2) the disrepair creates an unreasonable risk to persons upon the leased property which the performance of the landlord's agreement would have prevented; and (3) the landlord fails to exercise reasonable care to perform his contract. Majewski v. Cantrell, 293 Ark. 360, 362-63, 737 S.W.2d 649, 651 (1987).

13.

Pursuant to Defendant's participation in the Program, Defendant has contracted by a promise to keep the leased property in repair. As a result of the actions and inaction of Defendant, as described herein, Defendant has breached its Lease with Plaintiff, along with the Program's Quality Standards.

Defendant's Conduct is Negligent, Unfair and/or Deceptive

14.

The occurrences of water intrusion caused mold growth in the Apartment, and the mold growth caused damage to Plaintiff's personal belongings, health complications, and significant disruption to Plaintiff's use and enjoyment of her Apartment. Defendant's failure to properly

identify and repair the source of the water intrusion, as well as Defendant's failure to properly address and remedy the mold growth, has resulted in foreseeable and significant damage to Plaintiff's Apartment and harm to Plaintiff's person, including health complications and personal property damage.

15.

"Conduct by a landlord that effectively deprives the tenant of the use and benefit of the premises amounts to a constructive eviction. The landlord's conduct must be such that it will prevent the tenant's use of the premises for the particular purposes for which it was leased." Fairpark, LLC v. Healthcare Essentials, Inc., 2011 Ark. App. 146,381 S.W.3d 852. As a result of Defendant's failures, and its retention of compensation paid by Plaintiff, Plaintiff has suffered and is still suffering an inordinate degree of financial hardship and emotional distress.

16.

By reason of the foregoing, Plaintiff is entitled to recover from Defendant compensatory and other damages in such amounts as may be shown by the evidence at trial and determined in the enlightened conscience of the jury.

17.

Plaintiff reserves the right to raise additional claims not specifically set forth hereinabove, but which may be revealed through discovery and/or further assessment (including medical assessment).

COUNT ONE
Constructive Eviction

18.

Plaintiff incorporates by reference Paragraphs 1 through 17 of the Complaint, as if set forth fully herein.

19.

Due to the presence of the mold rendering the Apartment unfit for Plaintiff's use and benefit, Plaintiff has been constructively evicted from the Apartment. As a result of Defendant's negligence, Plaintiff has suffered damages, including, but not limited to, property damage and incidental damage. As a result of Defendant's breach, Defendant is liable to Plaintiff for reimbursement of paid rent from September 2019 through September 2020, consequential, compensatory, expectation, and delay damages in an amount to be determined at trial. Plaintiff is also entitled to recover pre-judgment interest at the maximum rate allowable by Arkansas law.

COUNT TWO
Unjust Enrichment

20.

Plaintiff incorporates by reference Paragraphs 1 through 19 of the Complaint, as if set forth fully herein.

21.

Defendant's improper retention of compensation paid by Plaintiff, without correcting the water intrusion and mold defects, constitutes an unjust enrichment to Defendant, for which Defendant is liable to Plaintiff in an amount to be proven at trial, plus pre-judgment interest at the maximum rate allowable by Arkansas law.

COUNT THREE
Bad Faith and Stubborn Litigiousness

22.

Plaintiff incorporates by reference Paragraphs 1 through 21 of the Complaint, as if set forth fully herein.

23.

Defendant has acted in bad faith by failing and refusing to perform their obligations to Plaintiff, and by failing and refusing to take appropriate corrective action, causing Plaintiff unnecessary trouble and expense.

24.

Plaintiff has incurred attorney's fees and expenses as a result of the bad faith of Defendant.

25.

In carrying out the actions described in the foregoing paragraphs of this Complaint, Defendant has acted in bad faith and has been stubbornly litigious by ignoring Plaintiff's attempts to resolve Plaintiff's issues. Defendant has ignored Plaintiff's complaints and calls, and has caused Plaintiff unnecessary trouble and expense, thereby, entitling Plaintiff to recover his expenses of litigation, including attorney's fees, pursuant to A.C.A. § 16-55-206.

COUNT FOUR

Negligence

26.

Plaintiff incorporates by reference Paragraphs 1 through 25 of the Complaint, as if set forth fully herein.

27.

As a professional landlord / property management company, Defendant is trained, well versed in Apartment management, and has a higher aptitude and duty of care for remediating and discovering issues associated with water intrusion and the presence of mold in an apartment unit. Defendant also made several unsuccessful attempts to repair the water intrusion within the Apartment. "Our law is well settled that when a landlord undertakes to repair the premises, the landlord is liable for any negligence in making those repairs." Hurd v. Hurt, 519 S.W.3d 710, 714 (Ark. App. 2017).

28.

As a result of Defendant's negligence, Plaintiff has suffered damages, including, but not limited to personal property damage and incidental damage. As a result of Defendant's negligence, Defendant is liable to Plaintiff for consequential, compensatory and special damages in an amount to be determined at trial. Plaintiff is also entitled to recover pre-judgment interest at the maximum rate allowable by Arkansas law.

COUNT FIVE

Deceptive or Unfair Practices in Violation of A.C.A. § 4-88-107 et seq.

29.

Plaintiff incorporates by reference Paragraphs 1 through 28 of the Complaint, as if set forth fully herein.

30.

A.C.A. § 4-88-107 declares unfair or deceptive acts or practices in the conduct of consumer transactions, and deceptive acts or practices in trade or commerce, to be unlawful.

31.

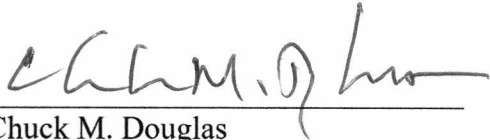
Defendant has violated Arkansas's Fair Business Practices Act, A.C.A. §18-16-110 et seq., by engaging in unfair, false, and misleading, and/or deceptive acts or practices as set out in the above Paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that Defendant be served with process and that Plaintiff be awarded judgment as follows:

- (a) TRIAL BY JURY OF TWELVE;
- (b) Pursuant to Count One, judgment holding Defendant liable to Plaintiff for consequential, expectation, compensatory and delay damages in an amount to be determined at trial, plus pre-judgment interest at the maximum rate allowable by Arkansas law;
- (c) Pursuant to Count Two, judgment holding Defendant liable to Plaintiff for consequential, compensatory, and delay damages in an amount to be determined at trial, plus pre-judgment interest at the maximum rate allowable by Arkansas law;
- (d) Pursuant to Count Three, judgment holding Defendant liable to Plaintiff for all unjust benefits received by Defendant in an amount to be determined at trial, plus pre-judgment interest at the maximum rate allowable by Arkansas law;
- (e) Pursuant to Count Four, expenses of litigation and attorney's fees incurred in connection with this litigation, pursuant to A.C.A. § 16-55-206;
- (f) Pursuant to Count Five, judgment holding Defendant liable to Plaintiff for actual, consequential, and compensatory damages in an amount to be determined at trial, plus pre-judgment interest at the maximum rate allowable by Arkansas law;
- (g) That Plaintiff recover all damages allowable under Arkansas law, including, but not limited to, delay damages, consequential damages, expectation damages, compensatory damages, punitive damages and treble damages;
- (h) That all costs of this action be taxed upon Defendant;
- (i) That this Court enter and award such other and further relief to Plaintiffs as it deems just and appropriate.

Submitted this 16 day of November, 2020.



Chuck M. Douglas

Arkansas Bar No. 2020033

Attorney for Plaintiff

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