

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION - SMALL CLAIMS
FILE NO. 24-CV-022933-910

CHARITY MAINVILLE,)
)
 Plaintiff,)
)
 vs.)
)
 ANNA DE SANTIS and)
 DE SANTIS RENTALS, LLC,)
)
 Defendant.)
)

AMENDMENT TO
COMPLAINT FOR MONEY OWED

NOW COMES the Plaintiff, Charity Mainville, appearing pro se, and for her Amended Complaint against the Defendants Anna De Santis and De Santis Rentals, LLC (collectively referred to as “Defendant”), alleges and states as follows:

FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT THROUGH VIOLATION OF IMPLIED
WARRANTY OF HABITABILITY AND COVENANT OF QUIET ENJOYMENT

1. Plaintiff moved into the Rental Property at 4304 Presley Court, Unit A, on May 4th, 2024.
2. The agreed-upon rent for the Rental Property is \$1700 per month.
3. Defendant has failed to comply with their obligations under the lease agreement and North Carolina General Statutes § 42-42 in the following ways:
 - a. Failure to make necessary repairs to maintain the Rental Property in a safe, fit, and habitable condition;
 - b. Failure to maintain common areas in a safe condition;
 - c. Failure to keep the Rental Property in compliance with local housing codes;
 - d. Failure to not promptly repaired all electrical, plumbing, sanitary, heating, ventilating, air-conditioning or other facilities and appliances that were supplied or required to be supplied.
4. Defendant knew or should have known that the Rental Property needed repairs because:
 - a. The Rental Property should have been in compliance with local housing codes before Plaintiff’s occupancy;
 - b. Plaintiff provided written notice to Defendant about needed repairs.
5. Defendant breached the covenant of quiet enjoyment by:
 - a. Allowing unauthorized occupants in neighboring units, creating safety concerns and consistent noise;
 - b. Failing to use appropriate professionals for repairs and not addressing issues prior to move-in, causing multiple disturbances.

WHEREFORE, Plaintiff prays for relief as follows:

- a. A refund of rent equal to the difference between the fair market value of the Rental Property in good condition and its actual condition for each month rent was paid.
- b. Damages for out-of-pocket expenses incurred due to Defendant's failure to comply with the law.
- c. Additional damages beyond the limitations stated in the lease agreement, including but not limited to consequential and secondary damages, due to the Defendant's willful or wanton negligence in maintaining the Rental Property, which resulted in unneeded fence installation, relocation costs, and hours of lost work. These actions by the Defendant justify an award of all damages incurred by the Plaintiff as a direct result of the Defendant's negligence.

RELIEF SOUGHT

Plaintiff seeks the following relief:

a. Rent Abatement: \$4,000

Justification: This amount represents the difference between the rent paid (\$1,700 per month) and the estimated actual value of the property (\$700 per month) given its current condition, calculated for the four months of May, June, July, and August of Plaintiff's tenancy. The calculation is as follows:

- i. The fair market value for similar properties in the neighborhood is approximately \$1,400 per month.
- ii. The landlord's justification for charging \$1,700 (a \$300 premium over market rate) was based on misrepresentations about a private backyard and the unit being an end unit. These claims have proven to be false, negating any basis for rent above the \$1,400 market rate.
- iii. The property has significant habitability issues that substantially reduce its value below even the fair market rate, including:
 1. Non-compliance with local housing codes
 2. An unsafe fireplace
 3. Ongoing pest issues
 4. Unsanitary countertops
 5. HVAC system not in code compliance
- iv. These issues severely impair the habitability and value of the property, justifying a reduction to \$700 per month, which is 50% of the fair market value of \$1,400.
- v. The monthly difference between rent paid and actual value: $\$1,700 - \$700 = \$1,000$
- vi. Total abatement for four months: $\$1,000 \times 4 = \$4,000$

b. Fence Installation Reimbursement: \$198

Justification: This amount represents reimbursement for a property improvement made under the expectation of long-term tenancy. Plaintiff would not have incurred this expense had the true nature of the property's conditions been disclosed. Due to multiple issues with lawn maintenance and lack of promised privacy, the backyard is not usable as represented.

c. Moving Costs: \$550

Justification: This amount represents expenses incurred due to necessary early move-out caused by habitability issues. While moving costs are typically expected, Plaintiff had recently moved cross-country and was not prepared for this additional expense so soon, which was necessitated by Defendant's breaches.

d. Lost Work Hours: \$2,400 (40 hours at \$60/hour)

Justification: This amount represents the time spent dealing with property issues, filing complaints, conducting necessary research, and searching for new housing due to uninhabitable conditions. Plaintiff is a contract/gig worker who works from home, a fact known to Defendant. The time spent addressing these issues, as well as disturbances during meetings, has directly impacted Plaintiff's financial health. In addition to:

- i. **Equitable Compensation for Time and Effort:** Plaintiff also seeks compensation for the time and effort invested in preparing this case. Due to the Defendant's decision to hire an attorney, Plaintiff has been forced to invest significant time and resources in defending herself. While compensatory damages for lost work hours are not typically awarded in small claims court, Plaintiff argues that it would be equitable under the circumstances, as the Defendant's use of legal counsel has created an imbalance. This additional burden on the Plaintiff justifies compensation to ensure fairness in the proceedings.
- ii. **Access to Justice:** The purpose of small claims court is to provide accessible justice to individuals without the need for legal representation. By hiring an attorney, the Defendant has potentially undermined this purpose, requiring Plaintiff to invest extra time and effort to ensure a fair hearing. Compensating Plaintiff for her lost time would help level the playing field and uphold the spirit of small claims court.
- iii. **Reciprocity of Attorney Fees:** The lease agreement awards the landlord attorney fees in any court case. Therefore, equity demands that the Plaintiff be similarly compensated for the time and effort required to defend herself, particularly given the Defendant's use of legal representation in a forum intended for pro se litigants.

e. Court Filing & Summons Fee: \$156

Justification: This amount represents the actual costs incurred by Plaintiff to file this action, which is commonly reimbursed in small claims court when found in favor of the plaintiff.

TOTAL RELIEF SOUGHT: \$7,304

Plaintiff also seeks:

- f. **Rescission of the lease agreement without financial penalty, based on both the breach of the implied warranty of habitability and covenant of quiet enjoyment (as stated in the First Claim for Relief) and the unenforceability of the contract due to unfair and deceptive practices (as stated in the Second Claim for Relief).** Additionally, the continued occupancy of the premises will result in significant

disturbances due to the extensive repairs required to bring the property up to minimal housing code standards, further justifying the immediate need for rescission.

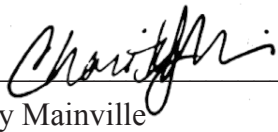
- g. The ability to remain in the Rental Property for up to 14 days after judgment, paying a prorated rent at the fair market value of \$700 per month for this period, should Plaintiff still be residing there at the time of judgment. Any unused portion of this 14-day period will be refunded to Plaintiff if they vacate earlier. This limited timeframe demonstrates Plaintiff's commitment to vacating the premises promptly while accounting for the challenges of securing new housing due to the unexpected nature of this move, caused by Defendant's breaches. This request is based on the ongoing habitability issues and the disturbances they will cause to the Plaintiff's covenant of peaceful enjoyment of the property.
- h. Request for Proper Handling of Security Deposit: Given the history of deceptive practices and abuse by the landlord, I respectfully request the court to take specific measures to ensure the proper handling of my security deposit. North Carolina law (N.C. Gen. Stat. § 42-52) mandates that the landlord return the security deposit within 30 days of the lease termination, barring any lawful and justified claims for damages.
However, due to the landlord's previous actions, which include deceptive behavior and violations of my rights as a tenant, I am concerned that the security deposit may be wrongfully withheld or that unjust damages may be falsely attributed to me. Therefore, I request the court to:
 - i. Issue a Specific Order: Direct the landlord to comply strictly with the statutory requirements regarding the return of the security deposit, including an itemized list of any lawful damages, if applicable, within the 30-day period.
 - ii. Prohibit Unlawful Withholding: Explicitly prohibit the landlord from withholding the security deposit for any damages that are not supported by clear, lawful, and documented evidence.
 - iii. Request for Court Oversight: I request that the court issue a specific order as part of its judgment, instructing the landlord to return the security deposit within the statutory 30-day period. This order should clearly state that the landlord must provide an itemized list of any lawful deductions, if applicable, and that any withholding of the deposit must be fully justified. If the landlord fails to comply with this order, I request that the court enforce the judgment, including the possibility of holding the landlord in Contempt of Court. This would involve additional legal consequences, such as fines or other penalties, until the landlord complies with the order.
 - iv. Joint Inspection Order: An order requiring Defendant to be present at the time of Plaintiff's move-out to conduct a joint inspection of the premises. Both parties shall sign an inspection form documenting the condition of the property at the time of move-out. Defendant shall provide Plaintiff with a copy of this signed form within 24 hours of the inspection. This request is made due to Defendant's pattern of misrepresentation and to ensure a fair process for the return of Plaintiff's security deposit.

SECOND CLAIM FOR RELIEF: UNFAIR OR DECEPTIVE ACTS OR PRACTICES

6. Defendant has been in the business of renting homes to one or more consumers in Wake County, North Carolina.
7. Plaintiff alleges that Defendant engaged in unfair and deceptive trade practices in violation of N.C. Gen. Stat. §75-1.1 by:
 - a. Misrepresenting the privacy and conditions of the Rental Property.
 - b. Failing to disclose material information about neighboring tenants and property conditions when specifically asked
 - c. Continuing to collect rent while failing to maintain the Rental Property in a fit and habitable condition.
 - i. It is well-established law that renting a dwelling for residential use constitutes “commerce” for purposes of the consumer protection law against unfair and deceptive trade practices. N.C. Gen. Stat. §75-1.1; *Love v. Pressley*, 34 N.C.App. 503, 239 S.E.2d 574, 583 (1977).
 - ii. In the context of landlord-tenant law, landlords have been held liable under §75-1.1 for not providing facilities and amenities which they have promised to tenants; *Marshall v. Miller*, 302 N.C. 539, 548, 276 S.E.2d 397, 403 (1981).
 - iii. Moreover, when a landlord fails to maintain a rented residence in a fit and habitable condition but continues to collect rent from their tenant, they engage in an unfair and deceptive trade practice; *Creekside Apartments v. Poteat*, 116 N.C.App. 26, 36-37, 446 S.E.2d 826, 833 (1994)
8. Plaintiff relied on Defendant’s representations when deciding to rent the property, as Plaintiff was unable to view the property in person before renting.
9. Defendant has continued to make misleading statements and engaged in intentional fraud, which has been supported by Defendant’s attorney. This is evidenced by statements made in Defendant’s motion to dismiss, where Defendant’s attorney claimed: *“Plaintiff makes no allegations either in the Complaint or to the Defendant directly that her property has been rendered uninhabitable. This claim against the Defendant should be dismissed as a matter of law.”*
 - a. This statement is factually incorrect and appears to be an attempt to mislead the Court. Plaintiff has made specific allegations regarding the habitability of the property, including issues that render it uninhabitable, both to Defendant directly and Defendant’s attorney.
 - b. Defendant’s ongoing misrepresentations, including those made through legal counsel, constitute a continuation of the unfair and deceptive trade practices alleged in this Complaint.
10. Due to Defendant’s unfair and deceptive acts, including material misrepresentations about the property’s condition and privacy, Plaintiff contends that the lease agreement is voidable. These misrepresentations induced Plaintiff to enter into a contract she would not have otherwise agreed to had she known the true conditions of the property and surrounding circumstances.

WHEREFORE, Plaintiff prays for the following relief:

- a. Treble damages as provided under the North Carolina Unfair and Deceptive Trade Practices Act (UDTPA), within the jurisdictional limit of \$10,000, based on the actual damages listed in the First Claim for Relief
- b. Any other relief the Court deems just and proper.

By: 
Charity Mainville
Plaintiff, Pro Se