

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-015906

12/09/2005

COMMISSIONER PHEMONIA L. MILLER

CLERK OF THE COURT
P. Valenzuela
Deputy

FILED: 12/12/2005

NOEL P KRINGLE, et al.

JOHN W ACER

v.

CHARLES H FONES

CHARLES H FONES
811 W NORTHERN AVENUE
PHX AZ 85021

MINUTE ENTRY

A Forcible Detainer trial was held on October 20, 2005. The Court has considered the testimony and exhibits introduced at the trial and the arguments of counsel. The Court has observed the demeanor of the witnesses while testifying and the following findings are based on the evidence as well as the Court's assessment of credibility.

The Court finds that the Defendant, Charles H. Fones is not in material and irreparable breach of the contract pursuant to A.R.S. 33-1368 and/or A.R.S. 12-1173 and has the right to possess the property. The undisputed testimony was that Defendant was a good tenant and paid his rent on time until July 2005; on July 24, 2005, a vehicle, through no fault of the Plaintiffs or Defendant, ran into Defendant's apartment and caused major damage; the apartment became uninhabitable due to the extensive damage caused by the vehicle; the Defendant did not terminate the lease; the Defendant resided consistently with his mother after the premises became uninhabitable; on August 3, 2005, Plaintiffs' asked Defendant to vacate the premises due to nonpayment of rent.

A.R.S. 33-1366 (A) states that if the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may do either of the following:

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1. Immediately vacate the premises and notify the landlord in writing fourteen days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating.
2. If continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

In this case, the apartment was destroyed by the vehicle, which caused Defendant's enjoyment of the apartment to be substantially impaired. The testimony presented was that Defendant resided consistently with his mother after the apartment was damaged. The Defendant did not terminate the lease agreement, but chose to continue the lease. The uncontroverted testimony was that the apartment was uninhabitable after the extensive damage caused by the vehicle. The defendant's liability for the rent was reduced to zero until the damage to the apartment was repaired. Therefore,

IT IS ORDERED finding the Defendant not guilty and the Court will enter judgment in accordance with the provisions of A.R.S. 33-1377(G), and A.R.S. 12-1178(B) which requires the Court to enter judgment for damages. The Court has not heard any testimony regarding damages. The Defendant is to submit a Sworn Affidavit of Statement of Costs by December 27, 2005, and provide a copy to Plaintiff's attorney, Mr. Acer. Mr. Acer shall have an opportunity to respond to the affidavit within 15 days after it is filed. If the Plaintiffs have acquired possession of the apartment since October 20, 2005, the Defendant may petition the Court for a writ of restitution in order to gain possession of the apartment.

IT IS FURTHER ORDERED that the Defendant shall allow Plaintiffs access to the apartment in order to make the necessary repairs. If the Defendant fails to grant Plaintiff access to the apartment within 24 hours after the request is made, the Plaintiffs may enter the apartment without the permission of the Defendant to make the necessary repairs.