

Can A Roommate Who Never Signs A Lease Get Off Scot Free?

By Robert L. Cain

Phyllis Marshall and Jim Mayer moved in together. Mayer signed a one-year lease for 9902 Locust in Kansas City, Missouri, and a few days later Marshall became his housemate --- or something. Mayer renewed the lease once, but Marshall never signed it, and was never asked to by the landlords. Mayer and Marshall continued on as month-to-month tenants until the landlords, the bothers White, asked him to leave, since he hadn't paid rent in a while.

Marshall continued living there—with the blessing of the landlords—moving out three months later.

What a surprise Miryam Sinclair, the manager, got when she inspected the now-vacant apartment. Marshall and Mayer “had repainted several walls with white, black. And gold designs, and trash was strewn about every room. Sinclair additionally noted that the carpet in the apartment, which emitted an unpleasant odor, was stained and littered with sand and dirt. She also found that there were numerous holes in the walls throughout the apartment. As a result of the condition of the apartment when [Marshall] moved out, the [Whites] had to repair and repaint and repaint the walls, remove the carpet and linoleum throughout.” *Court decision*: One can only imagine what went on there.

When all the repairs were completed and an accounting made, the Whites sued Marshall and Mayer for the damages, plus attorneys fees. Mr. Marshall's share was \$2900, plus \$390 for the Whites' attorney. The district court ruled in the landlords' favor, telling Marshall to pay up.

Of course Marshall appealed. And her rationale for the appeal stretches credulity. First, she claimed that the award should have corresponded to “diminution of value” of the apartment, rather than the cost of repairs. Second, she claimed that because she never signed the lease, she wasn't bound by its terms and was only a month-to-month tenant.

She slid the second part by the appeals court, but that only saved her \$390, because the lease was the only place where attorneys' fees were mentioned. The rest she had to pay.

What a colossal waste of the court's time. Diminution of value is the difference between the fair market value of the property at the end of the tenancy, had no damage occurred, and the fair market value of the property as damaged. There was a long explanation of why that calculation was not appropriate by the judges, the best part of which was:

“From this, the court reasoned that where evidence is introduced establishing that the damage to the property is temporary and readily capable of repair, ‘it would be unrealistic’ to require plaintiff to introduce additional evidence of the before and after value of the entire building because the evidence of the cost of repairs logically reflects the property's reduction in value. Thus, the court held that where evidence is temporary and readily capable of repair, the burden of establishing that diminution of value was the appropriate measure of damages would fall on the tenant such that ‘[w]here evidence of the cost of repairs has been offered without objection and the [tenant] offers no evidence of the diminution in the market value of the property, the [tenant] may not complain on appeal that damages based on cost of repair were improperly awarded.’”

So if Marshall was going to claim the calculation should have been done by the “diminution of value” method, she would have had to prove it herself. That would have entailed getting an appraisal on the property in its damaged state and in its prior-to-damaged state. The minimum that would have cost would have been about \$350, and if the entire apartment building had to be appraised, it could have been an amount in the thousands. But then, bad tenants will try most anything.

It is difficult to figure out what Ms. Marshall thought she would get away with here. Did she think that she would completely avoid having to pay for trashing the apartment? Or maybe she thought she could make the landlords pay a huge appraisal bill that would show that the “diminution of value” was far less than the repair costs. Who knows? The best part is, though, she got the judgment against her and had to pay her lawyer, anyway.

The second best part for the Whites is that Ms. Marshall is their ex-tenant.
White v. Marshall, Court of Appeals of Missouri, Western Dist., No. WD59852 (2002)

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