

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

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EMMA PARRETT and HENRY PARRETT,)

Plaintiffs-Appellants,)

vs)

MERLE KUPPINGER,)

Defendant-Appellee.)

6-05
84-1950

Appeal from the Iowa District Court for Cerro Gordo County (No. 48047) -

Ralph F. McCartney, Judge.

Plaintiffs appeal their jury award against their former residential landlord.

AFFIRMED

Mark A. Cody and Jon Wallach, of the Legal Services Corporation of Iowa, Mason City, for the plaintiffs-appellants.

J. Mathew Anderson, of Laird, Burlington, Heiny, McManigal, Walters & Winga, Mason City, for the defendant-appellee.

Heard by Donielson, P.J., and Snell, and Sackett, JJ.

SACKETT, J.

Plaintiffs Emma Parrett and Henry Parrett rented a home in Mason City from Defendant Merle Kuppinger. Plaintiffs sued defendant claiming defendant breached his duty to keep the premises fit and habitable. Plaintiff also sought relief for damage to personal property, emotional distress, constructive eviction, and attorney fees. Plaintiffs further claimed the rental agreement was illegal and sought to have the agreement declared null and void.

By agreement, the issue of whether the rental agreement was void was tried to the court which dismissed the claim. The other issues were submitted to a jury which returned a verdict for plaintiffs in the amount of \$100.

I.

Plaintiffs appeal contending the trial court erred in failing to submit to the jury certain elements of damages. To support an award of actual damages, plaintiffs must prove the damages have been sustained. Poulsen v. Russell, 300 N.W.2d 289, 295 (Iowa 1981). If uncertainty lies only in the amount of damages, recovery may be had if there is proof of a reasonable basis from which the amount can be inferred or approximated. Patterson v. Patterson, 189 N.W.2d 601, 605 (Iowa 1971); see also Orkin Exterminating Co., Inc. v. Burnett, 160 N.W.2d 427, 430 (Iowa 1968).

We agree with the trial court there was no evidence adduced by the plaintiffs on the issue of rental values and damaged property. We find no error on the trial court's failure to instruct on this issue.

II.

Plaintiffs assert defendant did not obtain a Certificate of Habitability from the City of Mason City and because of this fact the rental agreement was an illegal contract and therefore null and void. Title III, Chapter 9 and Ordinance No. 1585 of the City Code of the City of Mason City, Iowa (1980) states in part:

3-9-4: CERTIFICATE OF STRUCTURE COMPLIANCE
AND RENTAL PERMIT:

(A) REQUIREMENTS FOR RENTAL PROPERTY: It shall be a violation of this Code for any person to let to another for rent and occupancy any dwelling, dwelling unit, duplex, multiple dwelling, rooming unit (except a rooming unit or units within owner-occupied single family dwellings, condominiums and cooperatives containing no more than two (2) roomers) or rooming house unless:

1. The owner or operator has registered all such residential rental dwellings with the City Assessor's office within one (1) year of final passage of this Chapter.
2. The owner or operator holds a valid Certificate of Structure Compliance, issued by the Building Official, applicable to those portions of the specific structure used for residential rental purposes.
3. The owner or operator holds a valid rental permit, issued by the Building Official, in the name of the owner or operator, applicable to those portions of the specific structure used for residential rental purposes.

(B) CERTIFICATE OF STRUCTURE COMPLIANCE: The Certificate of Structure Compliance shall be a permanent document (except as noted below) which, when issued, shall satisfy the requirements of Section 3-9-5 and 3-9-6. The certificate shall be transferable at the time of a change in ownership and shall remain a part of the Mason City property file as a matter of public record. The certificate, in and of itself, shall not be interpreted as granting the owner or operator the privilege of letting the structure for residential occupancy, but must be accompanied by a valid Rental Permit. The Certificate of Structure Compliance shall state the date of issuance, type of structure for which the certificate is being issued and address of the structure to which it is applicable. All dwelling units and rooming units being let for rent and occupancy without a valid Certificate of Structure Compliance or application for the same on file with the City and fees paid may be ordered vacated.

The building inspector for the City of Mason City testified as follows:

Q. Okay. Under the Mason City Housing Code is there some writing or some condition that the landlord has to go through prior to renting a dwelling? A. Yeah. Supposedly there's — they're supposed to register their property with the City Assessor's Office as well as making application to the Building Department for a rental permit.

Q. All right. Was this in effect back in 1983 when you inspected the property? A. No. We were not in — in that — At that particular time we were not enforcing it, no.

Q. There was the requirement but it wasn't being enforced? A. That's correct.

Q. Was a certificate required — some sort of — A. Either a letter that states that, you know, the dwelling was in compliance with the Housing Code or a certificate of compliance, yes.

Q. Was that in effect back when the Parretts were renting this dwelling? A. That was in the Housing Code, yes.

Q. Was that in the Housing Code when they first rented this unit in 1981? A. Yes.

Q. Did Mr. Kuppinger have such a certificate? A. I don't believe so, no.

Q. Was the City giving out those certificates? A. To tell you the truth, no, we weren't.

Q. Okay. Did Mr. Kuppinger ever come to the City and ask that his dwelling be inspected by the City during the time the Parretts lived there or prior to the time the Parretts lived there? A. I don't believe so, no.

During the period in question, the city was not enforcing the certificate requirement and the city did not make routine inspections of the rental properties as required by the ordinance. The trial court did not err in failing to find the rental agreement void because of the defendant's failure to obtain a certification of compliance with the city housing code.

Plaintiffs also contend the trial court should have instructed the jury to determine whether the defendant's conduct was willful so as to allow an award of attorney's fees. Because of the disposition of the certificate issue, we need not address attorney's fees.

AFFIRMED.