
Plaintiffs:

**Monique Dufour
Paul Maliszewski
Durham, North Carolina**

v.

Defendant:

**Robert L. Schmitz Properties
Durham, North Carolina**

in

**The State of North Carolina, Durham County, in the
General Court of Justice, District Court
Division--Small Claims**

File No: **OCVM11191**

Re: **Complaint for Money Owed**

Court date: **September 29, 2000**

Summary of Complaint

Robert L. Schmitz (“Defendant”) consistently misrepresented his property, at 900 Dacian Avenue, Apt. B (“the property”), neglected his responsibilities as specified in his own lease, and turned over the property to us (“the plaintiffs”) in an unclean state, in poor repair, and not ready for occupancy. We arrived in Durham on Friday, August 4, 2000, with a twenty-four-foot Ryder truck loaded with all of our possessions. Monique needed to begin her job at Duke University on Monday, August 7. However, it was immediately clear that property was not fit for occupancy. Overall, the condition of the apartment exhibited a clear, long-term pattern of neglect. We were not satisfied with the condition of the premises, and did not take possession of the apartment.

We are seeking the full refund of our security deposit, pet deposit, and fair compensation for financial losses and hardship resulting directly from the defendant’s misrepresentation and neglect of the property.

Total Amount Owed

\$ 800.00	Deposit.
\$ 75.00	Pet deposit.
\$ 605.00	Difference between rent at new apartment and rent at defendant's property, ($\$855 - \$800 = \$55$), multiplied by 11 months remaining in the lease ($\$55 \times 11 = \605).
\$ 440.00	Cost of daily commute from new apartment to Duke University, plaintiffs' principle place of employment, at \$.10/mile. 10 miles each way x 2 trips per weekday = 20 miles = \$2/day; 220 days traveled over the remainder of the lease at \$2/day=\$440.
\$ 15.00	Cost of placing stop payment on check to defendant for August rent.
\$ 9.71	PSNC Energy Bill (Cost of hooking up service at defendant's property).
\$1944.71	Amount Owed

In addition to the above amount owed, we are asking the court to order the defendant to reimburse us for court costs (\$50.00) and interest on the amount owed.

Defendant's Neglect of the Property

We arrived in Durham on Friday, August 4, with a twenty-four-foot Ryder truck loaded with all of our possessions. Monique needed to begin her job at Duke University on Monday, August 7. However, it was immediately clear that property was not fit for occupancy. Overall, the condition of the apartment exhibited a clear, long-term pattern of neglect. We were not satisfied with the conditions of the premises, and did not take possession of the apartment. The defendant provides *no way* for tenants to reach him over the weekend and after 5:00 p.m. during the week, even in case of emergencies; he could not be contacted, and could not fix and repair them before we moved in. At this time, we immediately sought out a clean, suitable place to live.

The apartment should have been cleaned, maintained and prepared for occupancy by the owner *before* our arrival. The lease stipulates that it will be cleaned and prepared before occupancy. Moreover, the problems with the apartment could not have been adequately rectified once we moved all of our possessions in, and some of the misrepresentations could not have been corrected at all.

Below are some of the major ways the defendant neglected the property and failed to prepare it for our planned occupancy. Each of the major problems with the property are documented in photographs we took.

1. Dirty Apartment

The apartment was very dirty. The walls were stained throughout the apartment with yellow drips. The woodwork and the lightswitch plates throughout the apartment were smudged with fingerprints and grease. There was dirt ground in between the floorboards, dirt covering the windowsills and molding. The bathroom and kitchen floors and counters were sticky and the bathrooms smelled of urine.

2. Broken and Dirty Windows and Screens

Five windows in the apartment lacked screens. Nine windows had screens that did not fit the windows properly. All the windows were extremely dirty, many covered inside by thick spider webs loaded with dead bugs. Several windows were broken. The back screen door wouldn't close because thick ivy had been allowed to grow inside. Elsewhere ivy had forced itself in between the storm windows and windows, or between the screens and windows. The screen on the porch door was torn and broken.

3. Damp, Moldering Basement

When Monique first looked at the apartment, she was told by the defendant's agent, "Unlike a lot of basements in the south, this one stays dry." In fact, the basement was flooded with water. Debris and trash were piled in the foundation. Wires dangled from the ceiling to the floor. The basement also housed at least fifty plastic gallon jugs filled with unidentified liquid.

4. Old, Patched-Together Air Conditioners

According to the lease, the owner is responsible for keeping the appliances in good working order. These appliances include the air conditioners. One air conditioner seems to have been repaired by stacking several small pieces of wood on top of it and then covering the unit with an old green bath towel. The window above that unit is held in place with duct tape. Another air conditioner has no front cover, so that the filter is exposed.

5. Unkept Yard

According to the lease, "The landlord will be responsible for keeping the grass cut." When we arrived, the backyard looked as though it hadn't been mowed in over a month. In the front yard there was a pile of rubble and rubbish, including large fallen branches from a tree, pieces of snapped wood more than five feet in length, and broken ceramic tiles that had fallen from the crumbling awning over the front door.

6. Abandoned furniture and Beds in Property

When we arrived at the property, there were beds in all three of the bedrooms and abandoned furniture in the downstairs living room. The property had not been completely emptied prior to our arrival.

We ask the court to find that the defendant's neglect of the property and his failure to meet his responsibilities listed in the lease, invalidates the lease.

Defendant's Misrepresentation of the Property--Basement

When Monique Dufour saw the property, on June 23, 2000, the defendant's leasing agent, Christina Coffey, opened the door to the basement and, while standing in front of the doorway, so that the Monique could only see past her, said, "This is the basement. Unlike a lot of basements in the south, this one stays dry."

Taking the defendant's agent at her word, we rented the property with the understanding that the basement would be dry and safe for storage. Both of us are writers and teachers, and so have a lot of papers, research, and files. We need dry storage space.

The basement at the property does not stay dry, as photographs show. The basement is not an acceptable place to store paper. Dampness and an overall moldering quality pervade the walls and floor, especially toward the rear of the apartment, the only area of the basement where there's any room for storage.

The basement housed between thirty and forty plastic jugs of some unknown liquid. When we asked the defendant's agent about the jugs in the basement, she could only say they had been there since she first showed the apartment. The defendant's agent not only didn't know what the jugs were for or what liquid filled them, she didn't know and couldn't explain why they hadn't been removed.

When the representative from Public Service Gas Company came to light the pilot lights, he told Paul Maliszewski that in his professional opinion we should have someone out to look at the heater, because “it’s quite likely that water got up into it.”

Acting through his official agent, the defendant misrepresented the property. When the defendant’s leasing agent said the apartment stayed dry she misrepresented the basement to us. The basement does not stay dry. The basement is not suitable for storage. Because the defendant’s leasing agent was acting as an official representative of the defendant, the defendant misrepresented his property. Monique signed the lease on the basis of this misrepresentation. We ask the court to find that the defendant’s misrepresentation invalidates the lease.

Defendant's Misrepresentation of the Property--Noise

When Monique met with the defendant's agent she represented herself, forthrightly, as an incoming faculty member at Duke University looking for a place that is both quiet and safe. Both of us work extensively at home and need quiet in order to write. Other landlords and leasing agents told Monique openly, honestly, and helpfully that their property was not for her, on the basis of her simple criteria.

We trusted and relied upon the defendant to represent his properties accurately. When Monique saw the apartment, all the windows were closed and the blinds pulled. The ceiling fans and air conditioners were all running. When the apartment is shown in this manner, particularly to a person who doesn't know Durham well, one cannot notice the constant roar of the traffic from Duke Street.

Still Monique did express some concern about what noise there was, again emphasizing that we needed a quiet place.

The defendant's representative said that Duke Street is a through-street, but traffic was only heavy at eight in the morning and at five in the evening. This is patently untrue and represents the defendant's second major misrepresentation. Duke Street is busy at every hour we have been in the apartment, including weekends and early Sunday morning. It is as busy on weekends as weekdays.

The property is also within earshot of trains.

The property is also across the street from an apartment complex where residents regularly play loud music at night.

When the defendant's leasing agent said the property was quiet, she misrepresented the property to us. When the defendant's agent said Duke Street is only busy, and the property noisy, at around eight in the morning and five in the evening, she misrepresented the property to us. The apartment is not, in fact, a quiet one. Because the defendant's leasing agent was acting as an official representative of the defendant, the defendant misrepresented his property. As with his similar misrepresentation of the basement, Monique signed the lease on the basis of this misrepresentation. We ask the court to find that the defendant's misrepresentation invalidates the lease.

Conclusions

The defendant consistently misrepresented the property, neglected his responsibilities as specified in his own lease, and turned over the property to us in an unclean state, in poor repair, and not ready for occupancy.

After we refused to occupy the apartment and sent the defendant the letter of August 7, 2000, the defendant began to work on the property. At the same time the defendant had workers fixing up the property, he argued, in his letter of August 9, 2000, that the apartment was “beautiful” and ready for tenants. After our complaint, the defendant undertook to have the property thoroughly cleaned and professionally painted, mowed the yard, removed large tree limbs and a pile of shattered roofing tile from the front lawn, fixed the awning over the front door, and much else. The property cannot be both ready for occupancy and in need of work. The defendant’s own lease and related documents specify that he will turn the property over to tenants already cleaned and ready for occupancy. The defendant failed to prepare the property for us in advance of our arrival. In doing so, the defendant failed to satisfy his own responsibilities as detailed in the lease. In failing to meet all the responsibilities the lease promises he will, the defendant invalidated the lease.

The defendant’s misrepresentation about the property also invalidates the lease.

We ask the court to find in our favor and order the defendant to refund our full security deposit and pet deposit as well as compensate us for the financial losses and hardship caused by the defendant's misrepresentation and neglect of the property.