

FILED
COURT OF COMMON PLEAS
FEB 16 2021
JILL FANKHAUSER, Clerk
PORTAGE COUNTY, OH

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

BERNIE NOBLE
1008 Mogadore Road
Kent, Ohio 44240

CHARLENE LEECH
RICHARD SHANE LEECH
1101 Lake Street
Kent, Ohio 44240

MADELINE R. KERCHNER
MAXWELL J. AMBROSIO
251 Dodge Street
Kent, Ohio 44240

CONNIE J. WORTMAN
1496 Mogadore Road
Kent, Ohio 44240

MICHAEL J. SHRIGLEY
7758 West Blvd
Kent, Ohio 44240

MARKETPLACE RENTALS LLC
2154 Meloy Road
Kent, Ohio 44240

Plaintiffs,

v.

CITY OF KENT
c/o Community Development Department
930 Overholt Road
Kent, Ohio 44240

Defendant.

CASE NO. **2021CV00087**
JUDGE

JUDGE BECKY L. DOHERTY

VERIFIED COMPLAINT

Declaratory Judgment
Injunctive Relief
Constitutional Violations
Unjust Enrichment
(other civil)

For their Verified Complaint against Defendant City of Kent, Plaintiffs state:

(1) Plaintiff Bernie Noble owns several residential rental houses in Defendant City of Kent,

Portage County, Ohio ("Kent"). Kent is a municipal corporation under the laws of Ohio.

(2) Plaintiffs Charlene Leech, Richard Shane Leech, Madeline R. Kerchner, Maxwell J. Ambrosio, and Connie J. Wortman are his tenants residing in those houses.

(3) Plaintiff Michael J. Shrigley owns a residential rental duplex in Kent; his tenants have not been joined in this action but are similarly situated to the above-named tenants.

(4) Plaintiff Marketplace Rentals LLC owns several residential rental houses in Kent; its tenants have not been joined in this action but are similarly situated to the above-named tenants.

(5) Plaintiffs, as landlords and tenants in Kent, are subject to Kent Codified Ordinances Chapter 1367, Licensing Requirements, and Section 501.13, Civil Offenses ("Licensing Code").

(6) The Licensing Code states that "No person shall own, operate, or be an agent for a residential rental unit without having in his/their possession a current, unrevoked housing license" (1367.01(a)). After applying for a license (1367.01(b)) and paying a fee (1367.01(c)), Plaintiffs "shall have the residential rental unit inspected by the Director of Community Development" (1367.01(d)(2)A). "No housing license shall be issued or renewed until a residential rental unit is inspected and determined to be in compliance with the requirements of this Housing Code" (1367.01(d)(2)B). If Plaintiffs do not allow the inspection, "the Chief Building Official, or his designee, has the authority to condemn any residential rental unit" (1367.01(d)(2)E) and "Any residential rental unit *** without a current housing license for more than 30 days may be condemned by the Director of Community Development" (1367.01(d)(2)F).

(7) Further, the Licensing Code states that "Any owner or operator of a residential rental unit in violation of the standards set forth in Section 1367 *** shall be subject to a civil offense in accordance with [Section] 501.13" (1367.99)). Section 501.13(b) states that "A property owner

who violates a standard of conduct set forth in [Section 1367] shall be deemed an offending property owner and is liable for the civil offenses specified in Section 501.13(m).” The fines range from \$100 to \$1,000 with multipliers depending on various factors. Finally, Section 501.13(m)(8) states that if after 20 days the violation has not been corrected, Kent “may hire someone to remove the nuisance and the actual costs incurred by [Kent] shall be added to the fine.”

(8) Plaintiffs bring this action challenging the Licensing Code and the unconstitutional and unlawful policies, practices, and conduct of Kent under the Fourth and Fourteenth Amendments to the United States Constitution and similar provisions in the Ohio Constitution and state law.

(9) Under the Licensing Code, Kent enforces policies that (a) threaten Plaintiffs with inspections of their houses without probable cause; (b) violate their reasonable expectation of privacy; and (c) retaliate against them for not scheduling inspections by assessing fines (and collecting those fines through the County auditor and treasurer), and by threatening condemnation and possible removal of their houses.

(10) Kent employs Eric Helmstedter (“Helmstedter”) who is, and has been at all relevant times, its “Code Enforcement Official.” As part of his official duties and responsibilities, he enforces, and has enforced against Plaintiffs and others, the Licensing Code and its unconstitutional and unlawful provisions.

(11) Helmstedter is the individual who undertook specific action against Plaintiffs and did so under his official duties and responsibilities as an employee and agent of Kent.

(12) For example, about January 2020, Kent, through Helmstedter, mailed Plaintiff Bernie Noble a “residential rental licensing application packet” for him to complete on each of his rental houses. He completed the applications and paid the application fees. Thereafter, Kent, through

Helmstedter, required him to schedule an inspection of his houses (so that Helmstedter could search for violations of Kent's Housing Code). He and Plaintiffs Charlene Leech, Richard Shane Leech, Madeline R. Kerchner, Maxwell J. Ambrosio, and Connie J. Wortman, his tenants, refused to schedule the inspections. About October 2020, Kent, through Helmstedter, sent him a "warning letter" stating if he did not schedule the inspections, he would receive citations. See Notice of Civil Offense attached as **Exhibit A**. He did not schedule the inspections. About November 2020, Kent, through Helmstedter, sent him an "invoice" for \$900 in fines and posted a "Notice of Civil Offense Citation" on his houses. See Invoice and Notice attached as **Exhibits B and C**.

(13) At no time did Kent, through Helmstedter, indicate to Plaintiff Bernie Noble that Kent had received a complaint regarding any of his houses or believed an emergency existed to justify a warrantless inspection or offered to obtain an administrative search warrant. Rather, Kent, through Helmstedter, tried to coerce him and his tenants to "consent" to the inspections.

(14) Plaintiffs Michael Shrigley and Marketplace Rentals LLC, and their tenants, experienced circumstances similar to those of Plaintiff Bernie Noble and his tenants.

(15) Kent, through Helmstedter, assessed fines against Plaintiffs Bernie Noble, Michael Shrigley, and Marketplace Rentals LLC and has threatened them with further fines as a consequence of them not scheduling inspections and asserting their constitutional right to be free from unreasonable searches. None of the fines assessed against Plaintiffs are the result of any public nuisance maintained at their houses or violation of the Kent Housing Code.

(16) Further, Kent, through Helmstedter, has sought to collect those fines against Marketplace Rentals LLC and others through the County auditor and treasurer.

(17) All actions by Kent and Helmstedter were taken under color of state law that have

deprived Plaintiffs of their rights protected by the Constitutions.

(18) Plaintiffs have standing to bring this action because if they continue to not consent to warrantless inspections of their houses, they are faced with further fines and unlawful collection of those fines, and possible condemnation and removal of their houses by Kent.

(19) Plaintiffs intend to refuse all further efforts by Kent and Helmstedter to (a) inspect their houses, and (b) assess and collect fines under the current Licensing Code. As a consequence, Plaintiffs are in imminent risk of facing further fines and loss of their property rights in response to them asserting their constitutional rights.

(20) Plaintiffs Charlene Leech, Richard Shane Leech, Madeline R. Kerchner, Maxwell J. Ambrosio, and Connie J. Wortman have never complained to Kent or Helmstedter about code violations or other nuisances at any of the subject houses.

(21) Further, no conditions exist at these houses that would give (a) rise to the need for emergency entry into them, or (b) Kent probable cause to believe that Plaintiffs maintain an interior Housing Code violation or other nuisance at this time.

(22) Plaintiffs Bernie Noble, Michael Shrigley, and Marketplace Rentals LLC, as landlords, are contractually and statutorily obligated to provide their tenants with a fit and habitable properties, free from any nuisances or other dangerous conditions, and understand and abide by those terms.

Count 1—Declaratory Judgment

(23) Plaintiffs incorporate by reference the allegations in the foregoing paragraphs.

(24) Ohio R.C. 2721.03 allows this Court to determine questions regarding the validity and construction of municipal ordinances; and to declare the rights of Plaintiffs thereunder.

(25) An actual controversy has arisen and now exists between Plaintiffs and Kent concerning Plaintiffs' rights under the Licensing Code in light of the United States and Ohio Constitutions and state law; a declaration is necessary and appropriate to resolve this controversy.

(26) As a state actor, Kent is liable under 42 U.S.C. § 1983 if it took "action pursuant to official policy of some nature [that] caused a constitutional tort" and it cannot condition the receipt of a rental license on Plaintiffs agreeing to refrain from exercising their constitutional rights, particularly the right to be free from warrantless searches of their houses without probable cause. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

(27) Plaintiffs desire a judicial determination of their rights against Kent as they pertain to their right to be free from unlawful searches, coerced surrender of property rights and privileges, fines, and collection of fines through the County auditor and treasurer.

(28) The County auditor and treasurer have no authority to collect fines assessed by Kent against Plaintiffs and others for not scheduling or consenting to unconstitutional, warrantless inspections of their houses.

(29) To prevent violation of their constitutional and other rights by Kent, Plaintiff asks this Court to declare unconstitutional, facially and as-applied to them, and unlawful all relevant portions of the Licensing Code, as well as the enforcement policies, practices, and actions related to the Licensing Code undertaken by Kent and Helmstedter (and the County auditor and treasurer).

Count 2—Injunctive Relief

(30) Plaintiffs incorporate by reference the allegations in the foregoing paragraphs.

(31) Plaintiffs have no adequate remedy at law because a violation of their constitutional and state rights cannot accurately be measured or compensated on a pecuniary scale.

(32) Per Civ.R. 65, Plaintiffs ask this Court to issue preliminary and permanent injunctions prohibiting Kent and Helmstedter, and those in active concert and participation with them, from enforcing Kent's inspection policies and all policies, practices, and conduct reliant on and related to the Licensing Code to the extent they are unconstitutional or otherwise unlawful.

Count 3—Constitutional Violations (42 U.S.C. § 1983)

(33) Plaintiffs incorporate by reference all of the foregoing paragraphs.

(34) Kent has threatened and continues to threaten Plaintiffs into forfeiting their Fourth Amendment rights by assessing fines against them under the Licensing Code.

(35) In part, the Fourth Amendment states, "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" (emphasis added).

(36) Since *Camara v. Mun. Court of City and County of San Francisco*, 387 U.S. 523 (1967), building-code-search ordinances have been held unconstitutional unless they require a search warrant supported by administrative probable cause because administrative inspections are significant intrusions on Fourth Amendment rights for which warrants generally are required.

(37) Exceptions to the warrant requirement have been recognized for searches of pervasively or closely regulated industries and emergencies. Plaintiffs are not doing business in a "pervasively or closely regulated industry" and no "emergency" exists regarding their houses.

(38) The inspection requirement in the Licensing Code, both in its provisions and in its practice, is warrantless, and the requirement, as a physical intrusion into houses to collect information to be used against Plaintiffs, is a "search" as contemplated by the Fourth Amendment.

(39) Further, the warrantless inspection of residential rental houses located within Kent

is not necessary to further its regulatory goals. Kent could operate on (a) a complaint-driven basis, (b) probable cause, or (c) a regulation that permits the use of private building inspectors hired by Plaintiffs and others similarly situated.

(40) The Licensing Code violates Plaintiffs' right to be free from unreasonable searches by (a) coercing their consent to inspections, and (b) violating their reasonable expectation of privacy, while (c) maintaining no warrant requirement.

(41) The Fourth Amendment further states, "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized," and guarantees Plaintiffs the right to refuse warrantless inspections of their houses unless Kent first secures a valid administrative search warrant issued by a court or unless an emergency exists.

(42) The Licensing Code does not authorize Kent or Helmstedter to obtain a warrant to search Plaintiffs' houses because its regulatory scheme (a) has no provision for obtaining a warrant, (b) is not tied to neutral, objective principles, and (c) does not require probable cause.

(43) The actions of Kent and Helmstedter against Plaintiff Marketplace Rentals LLC and others, and threatened against Plaintiffs Bernie Noble and Michael J. Shrigley, of placing for collection with their real estate taxes fines assessed against them for not scheduling warrantless inspections of their houses violates the Fourth and Fourteen Amendments and state law.

(44) Further, the actions of Helmstedter were the direct and proximate result of the policy, practice, and custom of Kent, a person in this context, as adopted and implemented by it in its Licensing Code ordinances, and such policy, practice, and custom have subjected and deprived Plaintiffs of rights and privileges secured by the United States and Ohio Constitutions and violated

their civil rights actionable under 42 U.S.C. § 1983.

(45) Plaintiffs are entitled to nominal damages for such violation of their civil rights.

Count 4—Unjust Enrichment

(46) Plaintiffs incorporate by reference all of the foregoing paragraphs.

(47) Through its collection of application fees and fines assessed against Plaintiffs and others who do not schedule or consent to inspections, Kent has wrongfully acquired funds rightfully belonging to Plaintiffs and others.

(48) Kent acquired these funds to advance unconstitutional searches of houses likes Plaintiffs and others, and it would be unconscionable and unjust and contrary to law and equity for Kent to keep and not return such funds.

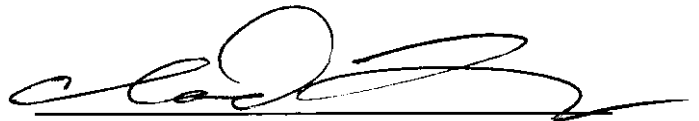
WHEREFORE, Plaintiffs demand judgment against Kent and respectfully ask this Court to:

- (A) Declare that the inspection provision in the Licensing Code is unconstitutional, both facially and as applied to Plaintiffs;
- (B) Declare that the Licensing Code is insufficient, without more, to serve as a basis for Kent to obtain an administrative search warrant;
- (C) Declare that the fine provisions of the Licensing Code violate Plaintiffs' constitutional rights and placing for collection such fines with their real estate taxes is contrary to state law;
- (D) Declare that through the collection of application fees and fines on Plaintiffs and others for not scheduling and refusing to grant warrantless inspections under the Licensing Code, Kent has been and continues to be unjustly enriched;
- (E) Enjoin Kent, and its employees, agents, and those in active concert and participation

with it, from enforcing the Licensing Code and its unconstitutional warrantless inspection requirement and fines against Plaintiffs and others, and from placing such fines for collection with their real estate taxes;

- (F) Enjoin Kent from attempting to seek and obtain a warrant under the current Licensing Code to search Plaintiffs' houses;
- (G) Order Kent to return the funds paid by Plaintiffs and others under the Licensing Code to the extent that Kent has been unjustly enriched;
- (H) Award nominal damages against Kent and in favor of Plaintiffs to compensate them for violations of their civil rights;
- (I) Per 42 U.S.C. §1988 and other applicable law, award Plaintiffs their costs incurred in bringing this action, including reasonable attorney fees; and
- (J) Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,



CHAD MURDOCK (0055322)
PO Box 334
Rootstown, Ohio 44272
330-524-2085
cmurdocklaw@gmail.com
Attorney for Plaintiffs

Verification

State of Ohio; County of Portage

Bernie Noble, being first duly sworn according to law, deposes and says that he is one of the Plaintiffs in this action, that he has read the foregoing Verified Complaint, and that the statements contained therein are true and correct to the best of his knowledge, information, and belief.

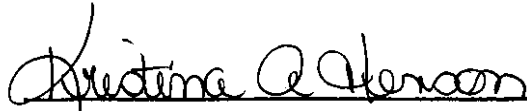


Bernie Noble, Plaintiff

This is a jurat. An Oath or affirmation was administered to the signor. Sworn to before me and subscribed in my presence this February 15, 2021.



KRISTINA A. HENSON
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
March 13, 2021
Recorded in
Portage County



Notary

City of Kent

Community Development Dept.
930 Overholt Rd.
Kent, OH 44240
330-678-8108



**NOTICE OF CIVIL OFFENSE (KCO 501.13)
WARNING LETTER**

TO:

Bernie Noble
1008 Mogadore Rd
Kent, OH 44240

RE: 251 Dodge St, 1101 Lake St, 1496 Mogadore Rd

On 1/2/20 a residential rental licensing application packet was mailed to you at your Tax Mailing Address. On 5/18/2020 you submitted your complete residential rental license application and payment. As of 10/29/20 you have not scheduled an inspection for your rental properties on file with the City, and are in violation of KCO 1367.01(a) and 1371.98.

This letter shall serve to notify the property owner of the violation and provide a period of time for the violation to be corrected. This matter will be reviewed in ten days from the date of this notice. If it is determined that you have failed to submit your completed residential rental licensing application, payment, or schedule an inspection upon the completion of the investigation, you will receive a Citation for Civil Offense for each residential rental dwelling unit in violation, which will result in a fine of \$100 to \$300 per violation.

 _____, Code Enforcement Officer

Eric Helmstedter

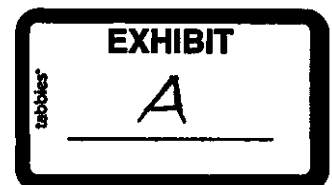
10/29/20

Method of Service:

In Person (Given to _____ On _____)

Left at Front Door (Date _____)

X Notification by 1st Class Mail





NOTICE OF CIVIL OFFENSE CITATION (KCO 501.13)

**Bernie Noble
1008 Mogadore Rd
Kent, OH 44240**

11/9/20

As the owner of the property located at 1101 Lake St, Kent, OH 44240, you are hereby cited for the following Civil Offense(s) of Kent Codified Ordinance:

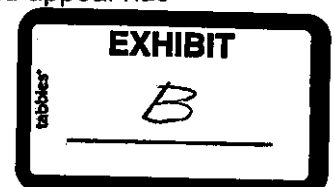
1367.01(a) LICENSING PROCEDURE. (a) Licensing. No person shall own, operate or be an agent for a residential rental unit without having a current, unrevoked housing license.

(b) Application. Prior to obtaining a housing license for a residential rental unit, the owner, operator or agent of the residential rental unit must make application on the prescribed forms, to the Health Commissioner or Community Development Director, as required by KCO 1367.01. Such application shall be submitted with all requested information completed, signed and accompanied by the appropriate fee.

The fine for this Civil Offense is \$100 *per violation per unit* plus the cost of any expense incurred by the City in correcting the violation. You may be eligible for a reduction of 50% of the above noted fine if you correct the violation within 48 hours of the date noted at the top of this citation. You have the right to answer this citation in writing and the answer must be filed within ten (10) calendar days from the date of this citation.

The written answer may:

- 1) Admit that the person committed the offense by the payment of the civil fine specified in the notice, or
- 2) Admit that the person committed the offense and, for those offense(s) that provide for a reduction in civil fine on proof of correction, offer proof that the violation has been corrected, or
- 3) Deny that the person committed the offense and request a hearing through the City's Hearing Officer. If the person desires the presence, at the hearing, of the enforcement officer or city official who issued the citation, the person must request the same in his or her answer, or
- 4) If the person has filed an administrative appeal authorized by another section of the Kent Codified Ordinances from an order on which the offense was based, the person may request that the time for answering the notice of civil offense be continued until the said appeal has been finally resolved.



Note: The written answer shall be directed to the city official issuing the citation within the prescribed time period. If the request involves a request for a hearing with the Hearing Officer, a copy of the request shall also be filed with the Community Development Department, and a date will be set for the hearing. The party appealing will be notified in writing of the date, time and location of the hearing. The hearing may be informal but all testimony shall be under oath. Hearings will be scheduled within 10 days and held within 15 days from the date the request for a hearing is filed. The failure to appear at a requested hearing will be considered an admission of the Civil Offense.

The Hearing Officer may uphold the citation and fine as issued, modify or reduce the amount of the fine if the violation is resolved, or set aside the citation entirely if the citation is without merit.

Default / Delinquency: In the event that the business, person or property owner cited for a Civil Offense fails to answer within the time frame provided by Kent Codified Ordinance Section 501.13 (d) or fails to attend a requested hearing, the violation will be default and the fine deemed delinquent. The amount due is as specified by Section 501.13 (m) of the Kent Codified Ordinances. Unpaid fines double on the eleventh day. Fines sent to the Portage Co. Auditor for collection on property taxes double again.

Collection of Unpaid Fines & Assessed Charges: The City of Kent will utilize all available collection remedies.


Repeat Violations: If the same violation is observed within two years, the offenders shall receive a warning prior to a second citation being issued and any subsequent fine will be \$200. Starting with the third occurrence of the same violation, no warning need be issued prior to citation and the fine will be \$300. Each separate citation will be obligated to pay fines and fees applicable.

Rental Properties: Rental property owners may designate a local agent to be contacted by the City in the event of a warning or violation. This must be done in writing with both the property owner and designated agent's acknowledgement. If no local agent is designated, the property owner shall be the responsible party.

If noncompliance with 1367.01(a) continues, you may also be found in noncompliance of:

1371.98 OPERATING A RESIDENTIAL RENTAL UNIT WITHOUT A VALID LICENSE - FINES/PENALTIES.

(a) Any owner that is found operating a residential rental unit without a valid housing license may be fined up to \$1000.00.


Eric Helmstedter, Code Enforcement Officer

Method of Service:

In Person (Given to _____ On _____) OR

X Posted with photo AND

X Mail (1st class and Certified # 9314 8699 0430 0076 7232 89)



CITY OF KENT, OHIO

DEPARTMENT OF COMMUNITY DEVELOPMENT

INVOICE

Bernie Noble
1008 Mogadore Rd
Kent, OH 44240

November 9, 2020

Dear Mr. Noble:

Your properties at 251 Dodge St, 1101 Lake St, and 1496 Mogadore Rd are in violation of KCO 1367.01(a) for operation of a residential rental unit without a housing license. Violations of KCO 1367.01(a) incur a civil fine as outlined in KCO 501.13.

11/9/20	Civil Offense Fine 251 Dodge	\$100
11/9/20	Civil Offense Fine 1101 Lake	\$100
11/9/20	Civil Offense Fine 1496 Mogadore	\$100

TOTAL DUE BY NOVEMBER 19, 2020: **\$300**

IF UNPAID, TOTAL WITH DELINQUENT CIVIL OFFENSE FINE: **\$600**

TOTAL TO BE SENT FOR COLLECTION ON PROPERTY TAX: **\$900**

Payments may be mailed (check only made payable to the City of Kent) or made in person (cash, check, Visa, Mastercard, Discover) at the Community Development Offices located at 930 Overholt Rd., Kent, Ohio.

Sincerely,

Eric Helmstedter
Code Enforcement Officer

