

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

BLUE TIDE PARTNERS, LLC,	:	APPEAL NO. C-190601
Plaintiff-Appellee,	:	TRIAL NO. 19CV-03938
vs.	:	<i>JUDGMENT ENTRY.</i>
ANDRE BONNER,	:	
Defendant-Appellant.	:	

The court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1.1(A), and this judgment entry is not an opinion of this court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Andre Bonner appeals the trial court's judgment awarding his former landlord, plaintiff-appellee Blue Tide Partners, LLC, ("Blue Tide") \$1575 in past due rent and late fees.

At the trial, Blue Tide claimed that Bonner's rent was \$600 per month but Bonner argued that the rent under the original lease agreement was \$500 per month. Bonner claimed that he was paying an additional \$100 monthly in anticipation that he would be responsible for replacing the carpet at the end of his lease term.

Blue Tide initiated eviction proceedings after Bonner had failed to pay rent in January and February of 2019. Because Bonner did not return the apartment keys until March 2019, Blue Tide sought rent for that month as well. Bonner testified at trial that he had twice attempted to return the keys but no one from Blue Tide met him at the apartment. Further, he indicated that there was no drop box or other place to leave the keys.

At the conclusion of the evidence, the trial court found that Bonner's rent under the lease agreement was \$500 per month but that Blue Tide had raised the

rent to \$600 per month beginning in June 2018. Bonner paid the monthly \$600 rental payment in June, July, August, September and December of 2018. Because he only made a partial rent payment in October 2018 and paid his December 2018 rent late, he began incurring late fees. The trial court determined that Bonner owed \$2250 in past due rent and late fees, which included rent for the month of March 2019. After deducting the \$675 deposit from that amount, the trial court entered an award in favor of Blue Tide for \$1575.

In a single assignment of error, Bonner contends that the trial court erred in awarding \$1575 in damages to Blue Tide. We sustain the assignment of error in part.

When reviewing an appeal from a civil bench trial, we apply a manifest-weight standard of review. *United States Fire Ins. v. Am. Bonding Co., Inc.*, 1st Dist. Hamilton Nos. C-160307 and C-160317, 2016-Ohio-7968, ¶ 16.

After reviewing the record, we conclude that there is competent, credible evidence to support the trial court's determination that Bonner's monthly rent had increased to \$600 per month beginning June 2018. Although Bonner's lease contained a no-oral modification clause, a party to the agreement may waive that clause by partial performance. *See 3637 Green Rd. Co. v. Specialized Component Sales Co.*, 2016-Ohio-5324, 69 N.E.3d 1083 (8th Dist.), citing *Glenmore Builders, Inc. v. Smith Family Trust*, 9th Dist. Summit No. 24299, 2009-Ohio-3174, ¶ 41 (holding that landlord had waived its right to enforce the "no-oral-modification provision" of the lease by accepting the tenant's lower rent payments for almost 20 months). Here, Blue Tide presented Bonner's cancelled checks and/or money orders for \$600 for the last six months that he had paid rent, demonstrating that Bonner had accepted the increased rent amount by voluntarily paying it.

Although the trial court properly used the monthly rent amount of \$600 to calculate damages, we find that there was no credible evidence supporting Blue Tide's allegation that Bonner owed rent for March 2019. Bonner had moved out of the apartment by the end of February 2019 and had attempted to return the keys to

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Blue Tide. Accordingly, we hold that Blue Tide was not entitled to rent for March 2019, and reduce its damage award by \$600. The trial court's judgment therefore is hereby modified to award Blue Tide \$975 in past due rent and late fees.

The single assignment of error is sustained in part, overruled in part, and the trial court's judgment is affirmed as modified.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**MYERS, P.J., WINKLER and SUNDERMANN, JJ.**

J. HOWARD SUNDERMANN, JR., retired, from the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on June 25, 2021,  
per order of the court \_\_\_\_\_.  
Administrative Judge