

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

**FILED**  
November 28, 1995  
Cecil Crowson, Jr.  
Appellate Court Clerk

ANI TA K. BEETS, VI CKI BUNDREN, )  
VI CTOR CHI N, J ACKI E GOODMAN, )  
J AMES GOODMAN, M ICHAEL GUSH, )  
W LLI AM HALE, GERI HANKI NS, )  
LUCI LLE LAYDEN, KI MBERLY )  
LOVEDAY ROM NES, TOLLI E )  
MULLI NS, DARRELL SELVI DGE, )  
MARYJ ANE WADHAMS, CHERYL )  
MENALEY, DAVI D WILSON, )

C/ A NO. 03A01-9506-CV-00184  
KNOX LAW

HON. HAROLD WIMBERLY,  
JUDGE

Pl a i n t i f f s - A p p e l l a n t s , )

v. )

PI ONEER WESTERN PROPERTIES, )  
CORPORATI ON, d/ b/ a CREEKRI DGE )  
APARTMENTS; PI ONEER WESTERN )  
PROPERTIES I NCOME FUND LI M TED )  
PARTNERSHI P, d/ b/ a CREEKRI DGE )  
APARTMENTS; and EVANS REALTY, )  
I NCORPORATED, d/ b/ a CREEKRI DGE )  
APARTMENTS, )

VACATED  
AND  
REMANDED

Defendant s - Appellees. )

HERBERT S. MONCIER, Knoxville, for Plaintiffs-Appellants.

JOHN D. SCHWALB and JOHN M BRYANT, JR., BREWER, KRAUSE,  
BROOKS & MILLS, Nashville, for Defendants-Appellees.

O P I N I O N

Franks. J.

In this action plaintiffs sued "for damages and for

violations of Tennessee's 'Uniform Residential Landlord and Tenant Act' [codified at T. C. A. §66-28-101, *et seq.*] resulting from a fire on August 11, 1989 in a residential apartment complex known as Creekridge Apartments" in Knoxville. The judgment reveals that at the conclusion of all the evidence, plaintiffs moved for a directed verdict "on the issue of liability for a violation of the housing and building codes of the City of Knoxville, which is incorporated in the Tennessee Residential Landlord and Tenant Act", and "the court was of the opinion that said motion was well taken and there being no dispute that the defendants violated Section 502.7 of the Fire Prevention Code and, in turn T. C. A. §66-28-304(1) and accordingly the court directed a verdict on the issue of liability against the defendants".

The jury returned a verdict of damages for each of the plaintiffs and the Court awarded pre-judgment interest to plaintiffs. The Court refused to award attorney's fees under the Tennessee Residential Landlord and Tenant Act, because he concluded "that said statute does not provide for attorney's fees under the facts of this case". Plaintiffs have appealed, insisting they are entitled to attorney's fees under T. C. A. §66-28-501 which provides:

**Noncompliance with rental agreement by landlord. -**  
(a) Except as provided in this chapter, the tenant may recover damages, obtain injunctive relief and recover reasonable attorney's fees for any noncompliance by the landlord with the rental agreement or any section of this chapter upon giving fourteen (14) days' written notice."

Plaintiffs damages were based on the violation of T. C. A. §66-28-304(1) which provides:

**Maintenance by landlord. -** (a) The landlord shall:

(1) Comply with requirements of applicable building and housing codes materially affecting health and safety;"

and they insist they have satisfied the statutory requirement for recovering attorney's fees, because they gave the requisite notice and recovered "damages" based upon the landlord's non-compliance with the Act.

Defendants counter that the letter from plaintiffs' attorney sent August 18, 1989, seven days after the fire, did not satisfy the requirements of the statute, and assert the statute contemplates the tenant will give "prior" notice of the rental agreement breach or non-compliance, the purpose of which is to afford the landlord the opportunity to remedy any breach or non-compliance.

In interpreting this Act, we must take into account the purposes of the Act as pronounced by the Legislature and codified at T.C.A. §66-28-103. This section provides "this chapter shall be liberally construed and applied to promote its underlying purposes and policies," and among its underlying purposes and policies are to "promote equal protection to all parties".

While a purpose of the 14 day requirement is that argued by defendants as to continuing violations, liberally construing the Act readily demonstrates that the Act is not so limited. The statute provides that when a plaintiff recovers damages based on a violation of the Act, she "may" recover reasonable attorney's fees where the requisite notice has been given. It is noted that the statute contemplates the giving of notice in all cases after a violation of the statute or lease agreement has occurred, and the statute does not

differentiate among violations for the purpose of awarding fees.

Defendants further argue that T.C.A. §66-28-503<sup>1</sup> addresses the event of fire or casualty damage to a dwelling unit but does not provide for attorney's fees. This section sets forth the rights of the parties in the event of destruction by fire as it relates to the mechanics of the leasing agreement, and does not address the issue of damages recoverable by tenants for other violations of the lease or the Act, although a violation of §66-28-503 could afford a basis for recovery of attorney's fees.

Finally, defendants argue that the Trial Judge in fact exercised his discretion in not awarding attorney's fees under the act. We cannot agree. We believe the Trial Judge concluded that the Act did not vest him with discretion to award attorney's fees, and we cannot exercise his discretion. Accordingly, we are vacating the judgment and remanding for the Trial Judge to determine whether or not plaintiffs should be awarded attorney's fees, taking into consideration all the circumstances surrounding this action.

The Act does not contemplate an award of attorney's fees in every case, and the Trial Judge has broad discretion

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<sup>1</sup>**Fire or casualty damage.** - (a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the use of the dwelling unit is substantially impaired, the tenant:

(1) May immediately vacate the premises; and

(2) Shall notify the landlord in writing within fourteen (14) days thereafter of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating.

(b) If the rental agreement is terminated, the landlord shall return all prepaid rent and security deposits recoverable under §66-28-301. Accounting for rent in the event of termination or apportionment is to occur as of the date of the casualty.

in deciding this issue.

The costs of the appeal are assessed to the  
defendants.

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Herschel P. Franks, J.

CONCUR:

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Houston M. Goddard, P. J.

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Don T. Murray, J.