

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

CINCINNATI METROPOLITAN
HOUSING AUTHORITY,

APPEAL NO. C-01 0459
TRIAL NO. OOCV-29745 ✓

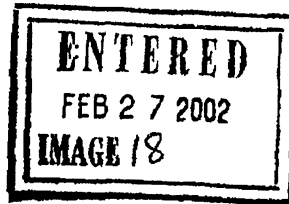
Plaintiff-Appellant,

JUDGMENT ENTRY.

vs.

ANDREA L. BROWN,

Defendant-Appellee.



JAMES DISSELL, CLERK
HAMILTON COUNTY
FEB 28 2002

This appeal, considered on the accelerated calendar under App.R. 11.1(E) and Loc.R. 12, is not **controlling** authority except as provided in S.Ct.R.Rep.Op. 2(G)(1).

The Cincinnati Metropolitan Housing Authority (“CMHA”) filed a complaint for forcible entry and detainer defendant Andrea L. Brown for nonpayment of rent for the month of October 2000. CMHA had served Brown with notice of termination of her lease on or about October 17, 2000. CMHA then **refused** to accept Brown’s rent when she attempted to pay on or about October 19, 2000. CMHA now appeals **from** the trial court’s judgment that “forfeiture of the premises” was “not appropriate.” CMHA raises two assignments of error: (1) that the trial court’s decision **was** contrary to law because Brown had failed to comply with the payment conditions of the original lease and the seventh-day

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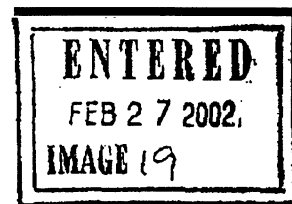
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agreement considered by CMHA to be an addendum to the original lease; and (2) that the trial court's decision was an abuse of discretion.

At trial, Brown's counsel told the court that Brown admitted that she had failed to timely pay her rent for October 2000 and asked only that the trial court exercise its equitable power to avoid *forfeiture*. The seventh-day agreement had been executed by the parties for Brown's failure to timely pay her rent for the months of February and April 2000.

"Ohio courts have the power, and often exercise it, to relieve a tenant from the consequences of forfeiture of a leasehold interest." Numerous Ohio cases stand for the proposition that equity abhors a forfeiture, and that a forfeiture will not be declared where the equities of the parties can be adjusted? A reviewing court must determine whether the trial court has abused its discretion in weighing the equities of a controversy to decide whether a forfeiture is to be declared.³ "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable."⁴

In this case, there is evidence to support the arguments of both parties. But, having reviewed the record, we cannot say that the trial court erred in balancing the equities in favor of Brown, or that the trial court abused its discretion by not ordering the extreme remedy of forfeiture of Brown's leasehold. Accordingly, the assignments of error are overruled.



¹ *Gorsuch Homes, Inc. v. Wooten* (1992), 73 Ohio App.3d 426, 435, 597 N.E.2d 554,561.

² See *Zanetos v. Sparks* (1984), 13 Ohio App.3d 242, 244, 468 N.E.2d 938,941; *Peppe v. Knoepp* (1956), 103 Ohio App. 223, 228-229, 140 N.E.2d 26, 29.

³ See *Joseph J. Freed & Assoc. Inc. v. Cassinelli Apparel Corp.* (1986). 23 Ohio St.3d 94, 96, 491 N.E.2d 1109, 1111; *Zanetos v. Sparks, supra*, at 244,468 N.E.2d at 940.

⁴ *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, 1142.

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Therefore, the judgment of the trial court is **affirmed**.

Further, 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**.

PAINTER, P.J., SUNDERMANN and WINKLER, JJ.

To the Clerk:

Enter upon the Journal of the Court on FEB 27 2002

per order of the Court *Mark R. DeWitt*
Presiding Judge



JAMES DISSELL, CLERK
HALL OF RECORDS
2002 FEB 28 7 30 02

**HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO**

CINCINNATI METROPOLITAN : CASE NO. 00 CV 29745
HOUSING AUTHORITY :
Plaintiff : JUDGE WILLIAM L. MALLORY

vs.

ANDREA L. BROWN
Defendant.

DECISION



The Court, after having heard the testimony of the witnesses, reviewed the evidence, and well written trial briefs of counsel, hereby rules as follows:

FACTS

Plaintiff Cincinnati Metropolitan Housing Authority (**CMHA**) filed a complaint for forcible entry and **detainer** against Defendant, Andrea L. Brown for nonpayment of rent for the month of October, 2000. Defendant attempted to pay her rent on or about October **19, 2000**, after having been served with notice of termination of lease on or about October **17, 2000**. CMHA refused to accept late payment.

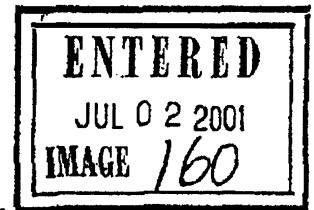
Defendant had previously entered a “seventh day agreement” wherein she agreed to make rent payments at the management office on or before the seventh day of each month, The agreement provided an exception in the event of “reasons beyond my control”. Defendant agreed to the “seventh day agreement” because of previous late payments of her rent.

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Defendant lost her job in September of 2000 and could not pay her rent in a timely manner. Plaintiff maintains that defendant should have promptly notified CMHA of her change in circumstances.

Defendant maintains that she had vehicle trouble in September 2000 and could not get to work. As a result of her lack of transportation she lost her job. Ms. Brown testified that in her attempts to **find** work, attend to her children, and deal with her lack of transportation, she was overwhelmed and did not promptly **notify** CMHA of her change in circumstances.

DECISION



Plaintiff is entitled to restitution of the premises when it has been **established that** the tenant has not paid rent and had repeated delinquencies in payment. Cincinnati Metropolitan Housing Authority v. Green (1987) 41 Ohio App. 3d 65. The burden then shifts to the tenant to go forward **with** evidence of an affirmation defense. Defendant must show: nonpayment was caused by circumstances beyond her control, that the landlord was promptly notified of the circumstances, and reasonable diligence in her efforts to pay her rent **Id.**

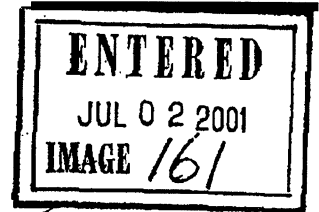
The Court has the authority to impose equity in cases forfeiture of the previous creates a hardship upon the tenant. Cincinnati Metropolitan Housing Authority v. Harris (June 15, 1983), Hamilton App. No. C-820540 & C-820541. It seems that in any case forfeiture of the premises is a hardship. Ms. Brown was overwhelmed with first, the breakdown of her car and then her inability to get to work. Although, **Ms.** Brown did not attempt to pay her rent until she received a notice of eviction, she was able to quickly

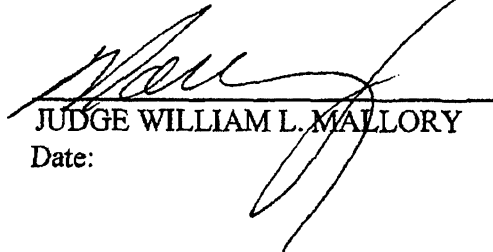
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make the proper arrangement as soon as she possibly could. Therefore, forfeiture of the premises, is not appropriate.

Ms. Brown found herself in circumstances beyond her control. There is no requirement of prompt notification for "reasons beyond my control" contained in Plaintiff's "seventh day agreement". Therefore, this Court specifically finds that notification on October 19th 2000 to Cincinnati Metropolitan Housing Authority of her change in circumstances satisfied the "seventh day agreement".

IT IS SO ORDERED.




JUDGE WILLIAM L. MALLORY
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