

IN THE HILLSBORO MUNICIPAL COURT, HIGHLAND COUNTY, OHIO

James Rains

Plaintiff **FILED** Case No. 88-CV-G-74
HILLSBORO MUNICIPAL COURT

vs.

MAY 2 1988

Ron Temple, et al.

Deanna D. [unclear]

OPINION AND JUDGMENT ENTRY

Defendants

This cause came on for hearing, and upon the evidence, the Court finds as follows:

1. Defendants satisfied their obligation to pay rent from the time they entered the premises until November 1, 1987. Thereafter, Defendants refused to make any further rental payments to Plaintiff on the basis that Plaintiff was supplying inadequate heat. Defendants failed to comply with Ohio Revised Code Section 5321.07 which sets forth an obligation on the part of the tenant to notify the landlord, in writing, that the premises were not fit and habitable because of improper heat. Defendants further failed to deposit the rental payments with the Clerk of the Municipal Court provided by said Section.

2. Plaintiff, during the period from November 1, 1987 to date, failed to keep the premises in a fit and habitable condition in that he failed to provide proper heat, contrary to Ohio Revised Code Section 5321.04. The evidence presented by both Plaintiff and Defendants shows that Plaintiff, on numerous occasions, attempted, by way of numerous repair calls, to keep going on an inadequate heat system. Defendants, at times, had to open the windows during the winter season because of the fumes.

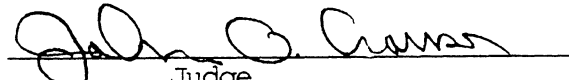
Notwithstanding Plaintiff's violation of his obligations under Ohio Revised Code Section 5321.04, it is the judgment of this Court that the Defendants did not avail themselves of the proper remedies under Section 5321.07. Defendants failed to pay the required rent, whereas Ohio Revised Code Section 5321.07 requires the rent to be paid into the Court. It is therefore the order of this Court that judgment be entered in favor of the Plaintiff for restitution of the premises.

As stated above, Plaintiff failed to keep the premises in a fit and habitable condition, contrary to the statutory obligation. The fact that the Defendants could "move out at any time" does not absolve him of that responsibility. On this basis, the Court is of the opinion that the Plaintiff/landlord is estopped from collecting back rent for failing to live up to his statutory obligation. It is therefore ordered that judgment be entered in favor of the Defendants on Plaintiff's claim for money damages for back rent.

It is ordered the Defendants pay the costs.

The Clerk is ordered to send a copy of this entry to counsel for Plaintiff and to Defendants.

ENTER:


Judge

J. 12, P. 102