

IN THE MUNICIPAL COURT OF LANCASTER, OHIO

Thomas Moore, et al.,

Plaintiffs,

-v-

Greg Shumaker, et al.,

Defendants.

24 2 3 47 PM '91
CASE NO. 91-CVG-1659

ENTRY

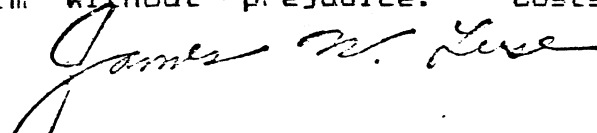
This matter came for a hearing on December 17, 1991 on Plaintiffs' First Cause of Action in Forcible Entry & Detainer. Plaintiffs were present and represent themselves. Defendants were present and represented by counsel. After hearing the testimony and reviewing the exhibits, this court hereby finds the following facts to be true:

1. Plaintiffs own the premises at 434 E. Walnut Street, Lancaster, Ohio.
2. On July 1, 1991, Plaintiffs and Defendants entered into a written month to month lease agreement whereby Plaintiffs agreed to rent the premises at 434 E. Walnut Street to Defendants for \$325/month.
3. Rent was due on the 25th of the month for the upcoming month. (Example - November rent was due October 25).
4. The late fee was \$5 per day.
5. On November 2, 1991, Defendants paid \$325 for November rent.
6. On November 14, 1991, Plaintiffs served Defendants a Notice to Vacate the Premises, alleging two violations:
 - (a) Failure to pay a \$40 late fee for November.
 - (b) Failure to keep the premises clean and sanitary, leading to roach infestation.
7. The Plaintiffs did not give Defendants a 30 day notice.
8. Plaintiffs filed their Complaint on November 27, 1991.

9. Defendants filed an Answer & a Counterclaim.

Based on these facts, the court must dismiss the Complaint. In order to evict a tenant for a breach of the lease or a breach of tenant's obligations, other than for failure to pay rent, Ohio Law requires that the landlord must give the tenant 30 days notice and an opportunity to cure the problems. (O.R.C. 5321.11). This was not done here. Furthermore, because a partial payment of November rent was tendered and accepted, Plaintiffs may not evict the Defendants for non payment of rent for that month. F.M.J. Properties v. Hinton, No. 50314, (Ct. App. Cuyahoga Cty, April, 1986); Southern Heights Apts v. Davis No. 3737 (Ct. App. Lorain Cty, April, 1985).

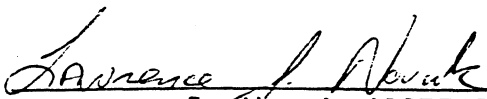
IT IS THEREFORE ORDERED that Plaintiffs' Complaint is dismissed without prejudice. Defendants have voluntarily dismissed their counterclaim without prejudice. Costs to Plaintiffs.



JUDGE

SUBMITTED AND APPROVED:

CENTRAL OHIO LEGAL AID SOCIETY, INC.



Lawrence J. Novak (0039794)
Attorney for Defendants



Thomas L. Moore, Plaintiff Pro Se



Marie T. Moore, Plaintiff Pro Se

