

CLERMONT COUNTY COURT
CLERMONT COUNTY, OHIO

BELLA VISTA APARTMENTS, : Case No. 91-CVG-54-471
Plaintiff, :
-vs- :
SANDRA RAGLAND, : ENTRY
Defendant. :

This Court has considered defendant's "Motion To Dismiss and Memorandum In Support Based On Plaintiff's Acceptance Of Rent After Service Of The Notice To Vacate" submitted February 13, 1991, plaintiff's "Memorandum In Opposition" to said motion filed March 26, 1991, and defendant's Supplemental Memorandum submitted April 2, 1991. On March 27, 1991 the Court accepted the parties' oral stipulation of facts to wit:

1. Defendant is a tenant of plaintiff under a written lease, a copy of which is attached hereto and marked "Exhibit A".
2. Defendant was served a Notice to Leave the Premises on January 4, 1991.
3. The United States Department of Housing and Urban Development (H.U.D.) makes monthly payments to plaintiff through the Ohio Housing Finance Agency (O.H.F.A.) and on behalf of defendants (42 U.S.C. §1437a and f); said payments are received as part of the monthly payment for 150 units, paid in one lump sum

by electronic transfer from O.H.F.A. to plaintiff's bank account.

4. Plaintiff must submit a voucher to O.H.F.A. approximately 30 days prior to the month for which payment is sought.
5. Plaintiff submitted to O.H.F.A. a voucher for payment of the amounts due from HUD for defendant for January 1991, February 1991 and March 1991 on the respective dates: December 6, 1990; January 9, 1991; and February 9, 1991.
6. Plaintiff received from O.H.F.A. the amounts due from H.U.D. for January 1991, February 1991 and March 1991 on the respective dates: January 7, 1991; February 7, 1991, and March 7, 1991.

Upon presentation and acceptance of the written memoranda and the stipulations of facts that Court makes the following entry:

1. The Court will consider defendant's "Motion To Dismiss..." at issue herein to be a Rule 56 "Motion For Summary Judgment" for the reason that the matters presented are outside of the pleadings.
2. The Court sustains defendant's "Motion To Dismiss..." (now Motion For Summary Judgment) based on plaintiff's continued receipt of payments from the United States Department of Housing and Urban Development (HUD) made on behalf of defendant.

payments made by H.U.D. through O.H.F.A. are made directly to the plaintiff but as such are made on behalf of and for the direct benefit of the defendant/tenant. 42 U.S.C. §1437 a and f. The payments made by O.H.F.A. for H.U.D. and received and accepted by plaintiff are made for the purpose of assisting the defendant pay for the monthly rent and must be considered rental payments.

The Court reasons that continued receipt of future rent payments subsequent to an ORC \$1923.04 notice to vacate the premises amounts to a waiver of said notice and is inconsistent with attempts to evict the defendant. Without a proper notice to vacate this action cannot be considered as properly commenced. This Court has no jurisdiction to proceed and thus it is ORDERED that the case (defendant's counterclaim having been dismissed voluntarily) is dismissed at plaintiff's cost.

R. DANIEL HANNON
Attorney for Plaintiff

JUDGE



MARK J. CARDOSI
Attorney for Defendant

REC'D FEB 14 1992

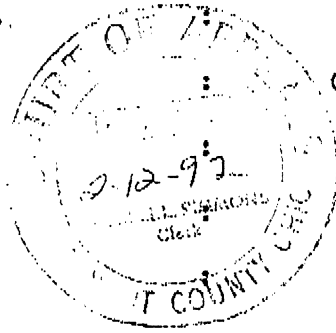
IN THE COURT OF APPEALS OF CLERMONT COUNTY, OHIO

BELLA VISTA APARTMENTS,

Appellant,

CASE NO. CA91-07-044

- vs -



DISMISSAL ENTRY

SANDRA RAGLAND,

Appellee.

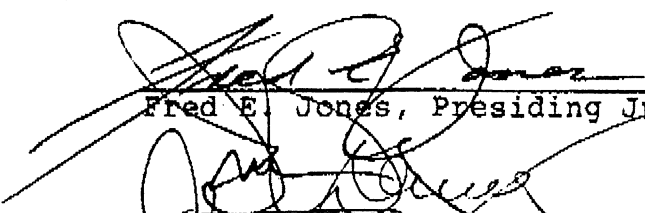
This matter came on to be considered upon a motion to dismiss filed by counsel for appellee on November 29, 1991, a memorandum in opposition to the motion to dismiss filed by counsel for appellant on January 10, 1992, a reply to appellant's response to the motion to dismiss filed by counsel for appellee on January 17, 1992, and a supplemental memorandum in opposition to the motion to dismiss filed by counsel for appellant on January 28, 1992.

Appellant appeals a judgment granted to appellee in appellant's forcible entry and detainer action in which appellant sought to recover possession of premises it had leased to appellee. During the pendency of this appeal, appellee voluntarily relinquished possession of the premises to appellant.


Upon due consideration of the foregoing, and it appearing to the court that the appeal is rendered moot since appellant has

achieved the relief it was seeking, IT IS HEREBY ORDERED that said motion to dismiss as filed by appellee is GRANTED. This matter is hereby dismissed with prejudice. One-half of the costs to be paid by each party.

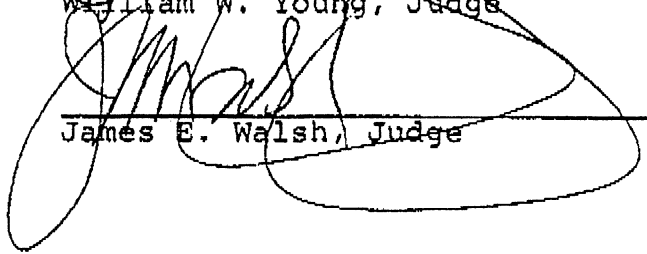
IT IS SO ORDERED.



Fred E. Jones, Presiding Judge



William W. Young, Judge



James E. Walsh, Judge