

IN THE MUNICIPAL COURT OF MIAMI COUNTY  
TROY, OHIO

FILED  
MIAMI COUNTY  
JUL 6 2 59 PM '93

STEVEN JENKINS

CASE NO. 93-CVGT-601

PLAINTIFF

-vs-

JUDGE WILLIAM KESSLER

AMY RUNG

DEFENDANT

OPINION AND  
JUDGMENT ENTRY

On June 9, 1993 Plaintiff filed this action for forcible entry and detainer and for damages. Plaintiff alleged that there was a failure to pay rent. The Defendant filed an answer and a motion to dismiss.

The Defendant argued that: (1) The lease was not breached. (2) There had been no demand for rent prior to declaring a forfeiture. (3) Since the lease was subsidized under the Section 8 Existing Housing Program, that the lease could not be terminated except for serious or a repeated breach of the lease. (4) Weighing the equities a forfeiture should not be granted. (5) Plaintiff waived his right to commence this eviction action by accepting rent after service of the notice to leave premises required by R.C. 1923.04.

Since the Defendant's motion presents matters outside the pleadings, the motion shall be considered a motion for summary judgment which the court grants leave for the Defendant to file. All parties appeared for the hearing scheduled for June 24, 1993. The attorney for the Plaintiff appeared and stated that the Plaintiff demanded rent before

for forfeiture of the lease was declared and that the Plaintiff offered to return rent paid to him by the Defendant for June's rent. The court announced that it would decide the Defendant's motion based on facts in Defendant's motion which were not contested by the Plaintiff.

The Defendant, Amy Rung, leased a home under the Section 8 Existing Housing Program from James Gustin. The lease was for a one-year term ending September 30, 1993. In May 1993, James Gustin sold the premises to the Plaintiff, Steven Jenkins. James Gustin and Steven Jenkins each believed that he was entitled to rent for June 1993. Amy Rung paid James Gustin her portion of the rent on June 1, 1993 and on June 5, 1993 she also sent Steven Jenkins her portion of the rent. Steven Jenkins served a notice to leave premises on June 5, 1993 and then filed this action on June 9, 1993.

The court concludes that even though a technical breach of the lease has occurred that being five days late on rent is not a serious breach of the lease under 24 C.F.R. 883.215 or the lease agreement. See Cincinnati Metropolitan Housing Authority v. Green, 41 Ohio App.3d 365, 536 N.E.2d 1 (Hamilton Cty. 1987).

The court further concludes that weighing the equities, Plaintiff's request for a forfeiture of the lease should not be granted. Since the Defendant raises equitable defenses, this court must consider those defenses. Considering that there was confusion as to who the Defendant should pay;

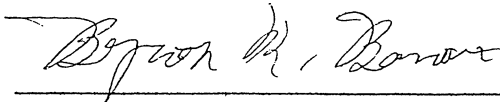
considering that Defendant was only a few days late in her payments; and considering that the Plaintiff was only inconvenienced by the delay in the rent payment, a forfeiture of the lease is not warranted.

For the above reasons, the court hereby sustains the Defendant's motion. This matter is hereby dismissed with prejudice at Plaintiff's cost.

**WILLIAM E. KESSLER**

---


JUDGE



---

Byron K. Bonar  
Attorney for Defendant  
RURAL LEGAL AID SOCIETY  
12 West Main Street  
Troy, OH 45373  
(513) 339-0828  
Registration # 0002602

Read but not approved



---

James R. O'Donnell  
Attorney for Plaintiff  
Registration # 0006431  
PO Box 98  
Covington, Ohio 45318  
473-3161