THE LAKEWOOD MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

Joyce Supinski

PLAINTIFF

VS.

Gold Coast Properties
DEFENDANT

TO-WIT 07/15/96
CASE NO. 95 CVI 3026

JUDGMENT ENTRY

(1 of 2 pages)

This case was called for hearing before the Court on May 23, 1996 on the plaintiff's objections to the Report and Recommendation of the Magistrate. The plaintiff commenced this action to recover funds in the amount of $525.00 that were deposited with the defendant with the rental application.

The hearing was held before the Magistrate on February 5, 1996. Both parties were present at the hearing and presented evidence to the Magistrate. Based upon the evidence presented, the Magistrate issued a Report and Recommendation on March 4, 1996 recommending judgment in favor of the defendant on the plaintiff's claim. From that Report the plaintiff filed timely objections to this Court. Upon review of the issues raised by the plaintiff's objections a further hearing was held before this Court on those objections.

The record reflects that on Friday, December 15, 1995 the plaintiff contacted the defendant to rent an apartment at 12505 Edgewater Drive. The defendant filled out an application and submitted a application fee in the amount of $525.00, the first month's rent of the apartment. A tentative move in date of December 18, 1995 was set. The record reflects, however, no lease was offered to the plaintiff. Nor was the rental application form or any other document signed by the defendant that legally bound the defendant to accept the plaintiff as a tenant. On the following day, Saturday, December 16th, the plaintiff notified the defendant that she chose not to take the apartment and requested the return of her application amount. The defendant refused to return the amount based on the language of rental application which provides that it is a non-refundable amount. As a result, the plaintiff commenced this action in Small Claims Court to recover the amount of the rental application deposit.

The defendant relies on the case of Hartman v. Garden Woods Apartment, (Case No. 15228, Ct. App., Montgomery Cty., decided October 25, 1995), in support of its position that it was entitled to keep the rental application. While in Hartman, supra the Court of Appeals found that the rental application clearly stated that the deposit would be forfeited if Hartman failed to execute a twelve (12) month lease, the Court also found that because of the tenant's actions, the landlord incurred a loss rent for one half of the first month, and therefore, was entitled to compensation for that amount.

Based upon the facts of the present case, the Court finds that the decision of the Court of Appeals in Hartman, supra is not determinative of the issues in this case. To begin with, the

record in the present case reflects that the plaintiff looked up at apartment on Friday, December 15th and signed the rental application at that time. The plaintiff contacted the defendant the next day, Saturday, December 16th and notified the defendant that she did not want to take the apartment. The record reflects that prior to the plaintiff's notice that she did not want to take the apartment, the defendant had not notified the plaintiff that he had accepted the application. Thus, no agreement had occurred at the time the plaintiff sought the return of her deposit.

The mere fact that the rental application called for a forfeiture of the deposit is not grounds by itself to justify the defendant to hold the rental application deposit in this case. As was pointed out earlier, the Court in Hartman, supra based this decision not only on the language of the rental application which gave the perspective tenant in that case notice that the deposit would be forfeited, but also on the loss incurred by the landlord in that case and the acceptance of the application by the landlord. In the present case not only was there no acceptance by the defendant prior to the plaintiff's notice to withdraw the application, but also, no monetary loss was incurred by the defendant.

The record reflects that the apartment at issue had been vacant for nine months prior to that time. Thus, this is not a situation in which the defendant turned down other perspective renters and incurred a loss as a result of the plaintiff's actions. In addition, the record reflects that at the time the parties in the present case met the defendant's rental office had been closed. Thus, no other person could have sought to see the apartment due to the fact that the rental office was not available. Nor did the defendant present any evidence of other perspective tenants that were turned away due to the application of the plaintiff for that one day period.

While the forfeiture language in the rental application is necessary to give a perspective tenant notice that the amount of the deposit could be forfeited if, upon acceptance of the application, if the perspective tenant fails to take the apartment, this alone is not the basis to forfeit the deposit in this case. The language itself does not relieve the landlord of the obligation to show loss of rent. In the present case, as was stated earlier, in light of the fact that the premises had been available and unrented for nine (9) months as well as the fact that the plaintiff gave timely notice within twenty-four (24) hours that she chose not to take the apartment and such notice was given to prior to notice of acceptance of the application, the Court finds that the plaintiff is entitled to the return of her deposit. To allow a landlord to retain an application deposit based solely on the forfeiture language of the application itself would clear the situation in which a landlord could have to competing tenants for the same premises, one which would withdraw the application. In such a situation the landlord would be able to rent the premises to the other perspective tenant and maintain an additional month's rent without any loss.

Based on the foregoing, the Report of the Magistrate is amended and judgment is entered in favor of the plaintiff and against the defendant in the amount of $525.00 with interest at the rate of ten percent per annum from the entry of judgment. The costs of this action are assessed against the defendant.

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RECEIVED FOR FILING 07/15/96

Judge P.B. Cuff
JUDGE