

MUNICIPAL COURT OF
MAY -5 P 1:27
CUYAHOGA FALLS, OHIO

IN THE CUYAHOGA FALLS MUNICIPAL COURT
SUMMIT COUNTY, OHIO

AKRON METROPOLITAN HOUSING AUTHORITY)	CASE NO. 97 CVG 1293
)	
PLAINTIFF)	
)	
vs)	JUDGE LINDA TUCCI TEODOSIO
)	
LAY-SHONDA MAYSON)	
)	
DEFENDANT)	<u>MAGISTRATE'S DECISION</u>

The within matter came on for the conclusion of trial on May 4, 1998, on the plaintiff's complaint in forcible entry and detainer; the plaintiff's case having been presented on September 7, 1997.

After due consideration of all of the evidence presented and the arguments of counsel, it is found that the plaintiff, Akron Metropolitan Housing Authority, had a possessory interest in the premises set forth in the complaint, 8824 Ray Court, Apt. 1, in the City of Twinsburg, as owner; such premises being occupied by the defendant, Lay-Shonda Mayson and her minor children, pursuant to a lease between the parties. It is found that a lawful notice to leave the premises was properly served upon the defendant on May 7, 1997, which date was at least three days before the complaint was filed.

It is found that, due to an electrical power outage at 3321 Prange Drive in the City of Cuyahoga Falls, an AMHA dwelling leased to the defendant at the time, occurring in the evening of November 10, 1996, the defendant and members of her household were using candles to provide light. At some point during the evening, the defendant's oldest daughter was allowed to take a candle upstairs to her bedroom, with the daughter apparently falling asleep without extinguishing the candle. The same ignited a CD player upon which it had been placed, causing some fire in the daughter's bedroom and smoke damage to much of the second floor of the unit. No injuries were occasioned by the incident. Mayson and her family were relocated to the Ray Court address due to the fire, and the necessity for repairing the unit. The fire was the basis for the plaintiff's termination of the defendant's lease giving rise to the instant action in forcible entry and detainer.

It is found that the defendant's conduct constituted a violation of R.C. §5321.05(A)(6), such provision requiring a tenant to refrain from negligently damaging any portion of the premises. It is found that such breach was within the purview of R.C. §5321.11; a provision requiring the landlord to give notice to a tenant who fails to fulfill an obligation imposed by R.C. §5321.05 which materially affects health and safety. See, Sandefur Mgmt. Co. v. Wilson, 21 Ohio App. 3d 160 (Ct. App. Franklin County 1985). Such provision also indicates that, if a tenant does not remedy the condition complained of in the landlord's notification, the rental agreement will terminate. It is found that Mayson was entitled to remedy the condition complained of by paying to repair the damage; a total amount of \$1,436.26. It is found that the landlord never

afforded her any opportunity to remedy such condition, deciding to terminate her tenancy, instead. It is found that the landlord's conduct in such regard violated the provisions of R.C. §5321.11.

Additionally, it is found that, even if the landlord did not commit the above violation, equitable considerations warrant a finding in the tenant's favor. At the time of the incident, Mayson was recovering from surgery, had been a good tenant for approximately 18 months, has subsequently offered to make payments for the cost of repair, has taken (along with her daughter) fire safety classes, and no longer uses candles. Accordingly, it is believed that the doctrine "equity abhors a forfeiture" is appropriate in the circumstances of this action. See, Gorsuch Homes v. Wooten, 73 Ohio App. 3d 426 (Ct. App. Clark County 1992).

Accordingly, it is recommended that a judgment of restitution not be awarded the plaintiff, with the costs of this action to be taxed to such party.

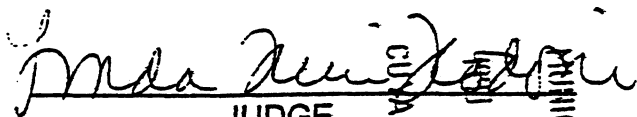


STEVEN J. SCHWARTZ, Magistrate

JUDGMENT ENTRY

The decision of the Magistrate is hereby approved.

It is the Judgment of the Court that a writ a restitution may not issue. Costs to be paid by plaintiff.



JUDGE
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cc: James E. Brown, Attorney for Plaintiff
Gregory R. Sain, Attorney for Defendant
File