

BELMONT COUNTY COURT - WESTERN DIVISION  
147 WEST MAIN STREET  
ST. CLAIRSVILLE, OHIO 43950

DOCKET AND JOURNAL ENTRY

JOURNAL 62

CASE NO 98CVG00063

TAPE #:

DATE: 07/08/98

Darlene Ondrick

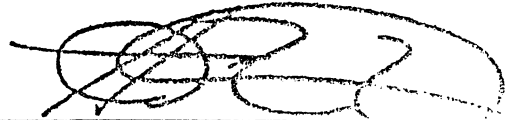
VS

Tina Courim

Defendant's Motion to Dismiss sustained as to claim for forcible entry and detainer. Hearing on July 9, 1998 vacated.

Case shall continue as to second claim for damages.

See Opinion and Decision



JUDGE

\_\_\_\_\_  
PLAINTIFF

\_\_\_\_\_  
DEFENDANT

IN THE BELMONT COUNTY COURT, WESTERN DIVISION,  
ST. CLAIRSVILLE, OHIO

Darlene Ondrick, :  
 :  
 Plaintiff, :  
 : Case No. 98-CVG-63  
 vs. :  
 : **OPINION AND DECISION**  
 Tina Courim, :  
 :  
 Defendant. :

This matter came on to be heard on the Motion of the Defendant to dismiss Plaintiff's claim for restitution of rental premises in forcible entry and detainer. The relevant facts are as follows.

Plaintiff-Landlord served the three day notice required by R.C. 1923.04 upon the Defendant-Tenant on June 8, 1998. For cause, the Plaintiff stated that the Defendant was in default of rent. The rental agreement between Plaintiff and Defendant was executed effective June 1, 1998, which is the date on which rent of \$300.00 for the month of June was due. Subsequently, on June 10 and June 17, Plaintiff received from or on behalf of Defendant two separate checks as payment of rent totaling \$232.10. The Plaintiff cashed these checks.

In the case of Dundon vs. Balluck, unreported (Ohio App. 7th District) 1994 WL 55755, the Court of Appeals held:

If a landlord receives a money order for future rent payment, he may not simply retain that money order. He must either establish that the money order was being held for evidentiary purposes or inform the tenant that such money order would not be accepted in payment of rent.

In the case of Cornerstone Companies and Fairlawn Ventures, LTD vs. Zipkin (1989) 60 Ohio Misc. 2d 14, the court held that:

Future rent payments means payments for any period of occupancy which occupancy is after the date of the acceptance by the landlord of the payment.

In the case of Knights Center Corporation vs. Thomas, unreported (Ohio App. 8th District) 1985 WL 9039, the court held that the landlord may accept rent for liability already incurred, but cannot accept rent for future periods. In so holding, the court stated that in this context:

Future payments includes payment for any period subsequent to the three day eviction notice.

Based on the foregoing case law, the Defendant's Motion is well taken and shall be granted. Although rent for the entire term of June was not received, the rent that was accepted by the landlord was over the amount that would have been owed on June 8. Since the acceptance of rent waived the three day notice, then the cause of action for restitution of premises cannot commence.

Dated at St. Clairsville, Ohio this 8<sup>TH</sup> day of July, 1998.



\_\_\_\_\_  
Judge Harry W. White