

IN THE MUNICIPAL COURT OF CHILLICOTHE, OHIO

NORTH RIVER PLACE APTS.,

CASE NO. CVG 01 00240

Plaintiff,

JOURNAL ENTRY

vs.

CHRISTOPHER HUCKS and

CHANDRA SCOTT,

Defendants.

FILED

NOV 20 2001

ROSEMARY J. ... CLERK
CHILLICOTHE MUNICIPAL COURT
CHILLICOTHE, OHIO

On July 23, 2001, Defendants filed a motion for partial summary judgment on their fourth counterclaim regarding the illegality of the late fees charged by plaintiff. The matter was set for non-oral hearing on October 15, 2001. The court has considered the motion, plaintiff's response to the motion filed September 28, 2001, defendants' reply memorandum filed October 5, 2001, and the other pleadings and filings in the court's file.

Defendants' Fourth Counterclaim reads as follows: "Defendant requests the court to declare that the late fee policy of Plaintiff as applied is illegal and enjoin Plaintiff from enforcing it." The facts with respect to the late fee policy of plaintiff are not in dispute. Plaintiff and defendant entered into a written lease on September 29, 2000, in which rent of \$500.00 per month was to be paid on the first calendar day of each month. The lease further provided:

If rent is not paid in full for 5 days after it is due and without the demand of the Landlord, the Tenant agrees to pay a fee of \$35.00 on the 6th day of the month. Thereafter, the Landlord may collect \$5.00 for each additional day the rent remains unpaid during the month it is due. The Landlord may not terminate

this Agreement for failure to pay late charges, but may terminate this Agreement for non-payment of rent.

From the printout of the account balance for defendants, it appears that plaintiff has assessed a late charge of \$35.00 on the 6th day of each month and \$5.00 per day for every other day since November 1, 2000. Plaintiff has done so even though the December rent payment was made before the 6th day of the month, the January payment was made on January the 8th, and the February, March, April, May and June payments were made before the 6th day of the month. Defendants argue that the charges for late payments constitute penalty and, as such, are not enforceable. Defendants further argue that the imposition of the late charges is unconscionable and should be stricken by the court pursuant to R. C. 5321.14.

In some cases late fees have been likened to liquidated damages. Clauses in contracts providing for reasonable liquidated damages are recognized in Ohio as valid and enforceable. Samson Sales, Inc. v. Honneywell, Inc. (1984), 12 Ohio St. 3d 27. If the liquidated damages are manifestly inequitable or unrealistic, courts will ordinarily regard them as a penalty. Id. Whether a particular sum specified in a contract is intended as a penalty or as liquidated damages depends upon the operative facts and circumstances surrounding each particular case. Id. In Samson Sales, the court found that a \$50.00 liquidated damages clause was in the nature of a penalty. As such, it was not enforceable because it was way too low compared to the actual damages.

In Calabria v. Greene (September 11, 1995) Trumbull County 95-T-5181, unreported, the court reviewed other cases and determined that “late charges not reasonably related to the damages incurred are a penalty and thus are unenforceable.” The Calabria court went on to

hold that the imposition of a one-time late charge, that is reasonable in proportion to the rental rate and that has a rational basis for the imposition of the charge, is proper. A second daily charge was not proper in the Calabria case.

The Fourth District Court of Appeals, on the other hand, appears to approve of penalty provisions in rental agreements: "A landlord has a right to receive prompt rental payments. The penalty provision in a lease is designed not to grant landlords interest on late payments, but rather to deter recalcitrant tenants from continually breaching the payment terms in their leases." Knoll Group Management Company v. Wolfe (June 28, 1994), Adams County 93 CA 553 and 93 CA 554, unreported.

R. C. 5321.14 reads as follows:

A) If the court as a matter of law finds a rental agreement, or any clause thereof, to have been unconscionable at the time it was made, it may refuse to enforce the rental agreement or it may enforce the remainder of the rental agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

B) When it is claimed or appears to the court that the rental agreement, or any clause thereof, may be unconscionable. The parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination."

The Court finds that the assessment of the \$5.00 daily late fee is unconscionable. The Court will order that the \$5.00 daily fee be stricken from the contract. Plaintiff may assess the \$35.00 late payment fee on the 6th day of each month if payment has not been made.

It is further ordered that this case be scheduled for a pre-trial hearing on Monday, the 28TH day of January, 2002 at 1³⁰ P.m.



JUDGE JOHN B. STREET


PROOF OF SERVICE

Copy of the foregoing Journal Entry mailed to the following by ordinary first class mail postage prepaid on the 27th day of November, 2001:

Jennifer L. Ater, Attorney at Law, 6 West Main Street, Chillicothe, Ohio 45601

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ROSEANNA J. STRONG, CLERK BY:



Deputy Clerk