

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

Case Nos. B-89207
B-89208

LABLE AND COMPANY
Citizens Building
Cleveland, Ohio 44114

Plaintiff

-vs-

ERNESTINE BROOKS - Case #89208
7831 Garden Valley, Apt. #5
Cleveland, Ohio

SHIRLEY BROWN - Case #89207
7771 Garden Valley, Apt. #5
Cleveland, Ohio

Defendants

X

X

X

X

X

X

X

X

X

X

O P I N I O N

STATEMENT OF THE CASE

On August 6, 1974 Landlord Lable and Company brought action in Forcible Entry and Detainer for possession of premises occupied in two separate cases.

The cases came on for hearing on August 16, 1974. Manager of plaintiff company, Paul Williams, appeared in court with counsel. Defendants were not present.

Testimony of plaintiff was that defendants had not paid rent since July 1, 1974 and that statutory notices were duly served on defendants in each case on July 31, 1974.

The record indicates summonses were properly served on a responsible person at each of the subject premises. Because a rent strike by tenants at plaintiff's premises was ongoing, the court sua sponte had subpoenaed Irvin Anderson and Neal Wiemels, inspectors from the City of Cleveland, Division of Housing, requiring them to inspect the premises occupied by

defendants and to appear before the Court to testify regarding the condition of the subject property as it related to conformance with the housing code of the City of Cleveland.

The subpoenas were issued on August 14, 1974. No notice of the subpoenas was given in advance to counsel for plaintiff or defendants.

Uncontroverted testimony of the designated inspectors was that violations of the housing code of the City of Cleveland existed in the two buildings occupied by defendants, to wit: Failure of plaintiff to provide closures on the exterior doors of the two buildings in question (Codified Ordinances of the City of Cleveland - Section 6.0703) and faulty and exposed electrical wiring in the laundry room utilized by defendant tenants. (Codified Ordinances of the City of Cleveland - Section 6.0513) Both violations constituted safety hazards. (Codified Ordinances of the City of Cleveland - Section 6.0513) On cross-examination both inspectors stated that they did not enter either of the suites occupied by defendants.

Their testimony concerning the existence of violations of the Codified Ordinances remained uncontroverted.

Plaintiff's agent stated that plaintiff Lable and Company was financially unable to make the repairs required by the Codified Ordinances of the City of Cleveland.

FINDINGS OF FACT

The Court finds that defendants are in default of rent payment as claimed.

The Court further finds that proper 3 day notice was given to defendants and summonses properly served.

The Court finds that plaintiff Lable and Company is in charge of the management of the subject premises and that said premises are under the control of the plaintiff Lable and Company.

The Court further finds that the subject housing was constructed under the auspices of the Federal Government under Section 236 of the National Housing Act approximately 12 years ago and that the entire project has deteriorated extensively during that period.

The Court finds that the subject buildings are ill-maintained and

are in violation of the Codified Ordinances of the City of Cleveland, to wit:

§ 6.0703 Fire Protective Features.

"Every dwelling structure containing three or more dwelling units shall be provided with such fire-protective features as may be required for the adequate protection of the occupants thereof. The minimum requirements for such protection is as follows:.....

3...every door leading from a public or common hallway to a dwelling unit or other private space shall be made self-closing..."

§ 6.0513 General Maintenance Requirements.

(a) All dwelling structures and all parts thereof, both exterior and interior, shall be maintained in good repair and shall be capable of performing the function for which such structure or part or any feature thereof was designed or intended to be used.

(b) All equipment and facilities appurtenant to a dwelling structure or dwelling unit shall be maintained in good and safe working order.

CONCLUSIONS OF LAW

Held that failure on the part of the landlord to maintain the premises in accordance with the Codified Ordinances of the City of Cleveland constitutes a breach of an implied warranty to maintain said dwelling in accordance with the Code. Glyco v. Schultz, 35 O Mis. 25, 289 NE 2d 919, Municipal Court of Sylvania, Ohio 11-24-72.

Where a lease contract is made in violation of a statutory provision designated for the protection of health and welfare, such as a housing code, contract is illegal and void and confers no right on the wrongdoer.

"....A contract which violates a statute is unlawful and void and will not be enforced."
11 O Jur. 2nd Contracts 331

Lack of door closings on exterior doors and lack of adequate and safe electrical wiring constitutes a breach by the landlord of a covenant of quiet enjoyment.

A covenant on the part of a tenant to pay rent, and the covenant whether express or implied on the part of the landlord to maintain the demised premises in an habitable condition are for all purposes mutually dependent. (See Bertzito v. Gambino, 63 N.J. 460, 308 A. 2d 17 (1973))

WHEREFORE, each of the captioned cases is dismissed at plaintiffs cost.

ANN McMANAMON, Judge
Courtroom #11
Cleveland Municipal Court
Cleveland City Hall
Cleveland, Ohio 44114 - 621-6345