Case No. M-79-CVG-01404	

FINDINGS OF FACT

- 1. The defendant has been a month-to-month tenant at 711 Derrer, Apartment A, Columbus, Franklin County, Ohio, for the past 4 years. He lost his copy of the written lease.
- 2. The plaintiff is the new landlord of the apartment described in Finding 1. The plaintiff was not given a landlord's copy of the lease when it took over ownership or management of the apartment.
- 3. . On December 13, 1978, the new landlord sent written notice to its tenants that rent would be payable "on or before the due date" (Plaintiff's Exhibit 1).
- 4. The old management company had told the new landlord that defendant's rent "was due on December 1, 1978."
 - 5. The defendant had always paid his rent later than the first of the month.
- 6. On December 19, 1979, the landlord served a 3-day "eviction" notice on the defendant. The defendant paid his rent that day.
- 7. The landlord contacted the defendant's wife; shortly before January 1, 1979, and asked for payment. The landlord demanded rent on January 2, 1979. When the rent was not paid on January 5, 1979, the tenant was served with a 3-day notice, rent payment was refused by the landlord, and this case was filed.

CONCLUSIONS OF LAW

- A. When a landlord consistently accepts over a 4 year period a tenant's rent at a time in the month later than when the rent was agreed to be paid, a course of dealing is established between the parties and the landlord waives the right to claim forfeiture of the lease because of late payment.
- B. A landlord which is a successor to the landlord described in Conclusion A above, takes over that rental agreement subject to the established course of dealings.
- C. A successor landlord may halt the established course of dealings by giving notice of its intention to accept rent only when in its due according to the terms of the

- D. If the rental agreement does not state the period for such notice, the correct time for notice is decided in relation to \$5321.17, Revised Code.
 - E. In this case the defendant was entitled to thirty day's notice.
- F. Since the first notice of changed dealings given to defendant by the new landlord was on December 13, 1978, the defendant had until January 13, 1979, to pay the January rent.
- G. The eviction notice of January 5, 1979, was served without cause and was not valid.

H. Plaintiff's Complaint must be dismissed.

March 12, 1979

Appearance:

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