

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO
SMALL CLAIMS DIVISION

FILED
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FRANKLIN COUNTY
MUNICIPAL COURT
SMALL CLAIMS DIVISION

XENIA COMPANY,

Plaintiff(s),

-vs-

WILLIAM CLINE, et al.,

Defendant(s).

CASE NO. M 9005CVG-015839

REFEREE'S REPORT

This cause came on for hearing before Referee Susan E. McNally on plaintiff's complaint for money judgment.

Plaintiff is a partnership and George A. Bavelis, a general partner, testified on behalf of the partnership. Defendants appeared represented by David Scott, Attorney at Law.

From the sworn testimony taken, the Referee finds as follows:

FINDINGS OF FACT

1. On or about September 1, 1988, plaintiff and defendants entered into a written rental agreement for a period of one year which continued on a month-to-month basis for premises commonly known as 122-C West Dodridge in Columbus, Ohio.

2. Plaintiff testified that he tendered the defendants seven (7) different eviction notices caused by repeated late payment of rent. On or about April 18, 1990, plaintiff tendered an eviction notice for nonpayment of rent. Rent has not been paid and the plaintiff seeks to recover possession of the property.

3. Plaintiff testified that there is an arrearage of approximately

\$1,500 in rent on the unit.

4. On cross-examination, plaintiff's witness testified that the lease calls for a \$2.00 per day late fee if rent is not paid by the 2nd of the month, with an initial \$12.00 late fee on the first missed day and \$2.00 per day service charge beyond the third day.

5. On cross-examination, plaintiff's witness testified that late payment of rent cost the plaintiff business money. Plaintiff's witness testified that the property manager must go to the unit to check and see if the tenants are still in the unit when rent has been missed. Four secretaries and a property manager process the notices of late payment and the accounting entries for nonpayment. Mr. Bavelis testified that his time is worth \$150.00 per hour.

6. Defendant testified that he has paid a late fee "virtually every month since the outset of the lease". No exact figures were given as to the amount of late fees paid.

CONCLUSIONS OF LAW

Defendants' attorney argued that the late fees charged under this lease are a penalty and invalid under contract law. Defendants' attorney argued that the amounts of money paid during the course of the tenancy in late fees would cover any arrearages and actual rent owed. There were no specific fees given to prove that this would be the case. The Court finds that plaintiff has gone forward with sufficient evidence that the late fees are reasonable, at least up to a point, to compensate the plaintiff as liquidated damages for the cost to process the accounting and to check the unit for vacancy. Defendants testified that they tendered no rent for the month of

April which is the issue presented in this eviction action. Based on the evidence presented in the courtroom, the Court cannot find that the defendant should receive a sufficient credit to cover rent for the month of April from past late fees which were paid. On its face, the lease provision is not a penalty. No sufficient evidence was presented that in any one month the total amount paid in late fees was, in fact, a penalty.

RECOMMENDATION

Judgment for possession to the plaintiff. Writ to issue forthwith.

Susan E. McNally
REFeree SUSAN E. MCNALLY

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PLAINTIFF

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ATTORNEY FOR DEFENDANTS

June 22, 1990
SEM/bs