GREENFIELD MEADOWS,

Plaintiff.

APCase No. : M9111CVG-040019

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Judge Anne Taylor

UNICIPAL COURT

TONYA MALONE,

Defendant.

JUDGMENT ENTRY

Defendant moves for a new trial pursuant to Ohio Civil Rule 59 (A)(8). The court has reviewed the motions and the supporting affidavits of the parties. An oral hearing on the motions was waived by both parties. Upon consideration of the facts presented and the arguments before the court, this court grants Defendant's motion for a new trial.

To prevail on a motion for a new trial, Defendant must show that:

- 1). New evidence was discovered following the original trial;
- 2). The movant used due deligence to discover the evidence at the time of original trial;
- 3). That the evidence was not merely cumulative or impeaching;
- 4). The evidence is material, and;
- 5). The introduction of the new evidence would probably produce a different result at trial.

The court finds that all of the above-referenced elements are present in this instance. The Referee found in the original hearing that the articulated sole basis for Defendant's eviction was the fact that her oven's broiler area in the kitchen of the apartment she rented from Plaintiff failed two of Plaintiff's routine monthly inspections-in August and October 1991.

On January 6, 1992 a trial was held before the Referee. No evidence was introduced concerning Defendant's subsequent cleaning of the broiler because such evidence was not relevant to the proceedings.

The fact was that Defendant's broiler "passed" the regular February 7, 1992 inspection of the premises. Plaintiff asserts that the broiler had not been cleaned between the time Plaintiff inspected the premises in October 1991, and the re-inspection in February 1992. This fact alone raises questions that would support granting of a new trial.

Plaintiff on the other hand argues that Ohio Civil Rule 59 allowing a new trial, is inapplicable to forcible entry and detainer actions because of the summary nature of the proceedings. Although the court appreciates the interest of Plaintiff in a prompt resolution of these matters, a further analysis of Ohio Civil Rule 59 and a review of the authority of House Authority v. Jackson, 67 Ohio St.2d 129 (1981), do not preclude the granting of a new trial in forcible entry and detainer cases.

For the foregoing reasons, Defendant's Motion for New Trial is hereby Granted. At the new trial the court shall consider the newly-discovered evidence as it pertains to the condition of Defendant's oven broiler and make a determination:

- (a) whether or not the condition of the broiler constituted a material breach of the lease and if so,
- (b) whether that breach warrants eviction of Plaintiff from the premises.

This matter shall come on for hearing before this court on May 13, 1992 at 9:00 a.m..

The court hereby directs the Municipal Court Clerk to serve upon all parties notice of this judgment, and its date of entry upon the journal.

IT IS SO ORDERED.

April 15, 1992

Judge Anne Taylor

Copies to:

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