

STATE OF OHIO  
COUNTY OF PORTAGE

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IN THE COURT OF APPEALS  
ELEVENTH DISTRICT

FILED  
COURT OF APPEALS

PORTAGE METROPOLITAN  
HOUSING AUTHORITY,

MAR 11 2008

Plaintiff-Appellee,

LINDA K. FANKHAUSER, CLERK  
PORTAGE COUNTY, OHIO

JUDGMENT ENTRY

CASE NO. 2008-P-0019

- vs -

FRANCESCA BRUMLEY, et al.,

Defendant-Appellant.

This appeal is presently before this court for final consideration of the motion to stay of appellant, Francesca Brumley. On February 20, 2008, this court rendered a judgment which granted a temporary stay of the trial court's final judgment. That is, our judgment ordered that no further steps could be taken to evict appellant from the leasehold until this court had an adequate opportunity to address the merits of her stay request. Our judgment further indicated that appellant would not be required to post any supersedeas bond during the interim period. Now that we are in receipt of appellee's response to the stay request, a final determination can be made.

A review of the limited materials before us indicates that this appeal stems from an action in forcible entry and detainer. As part of the appealed judgment, the trial court adopted the magistrate's finding that a member of appellant's household had engaged in criminal behavior by assaulting another tenant in the housing complex. Based upon this, the trial court further found that proper cause existed for appellee, the Portage Metropolitan Housing Authority, to evict appellant from the leasehold. Accordingly, the trial court ordered that a writ of restitution be issued immediately.

After initiating this particular appeal, appellant moved the trial court to stay the execution of the writ. Ultimately, the trial court issued a second judgment in which it expressly granted the stay, but conditioned its effectiveness upon the posting of a supersedeas bond in the amount of \$4,902. As the basis for this amount, the trial court concluded that appellee was entitled to six months of loss rental income at a market rental value of \$817 per month.

In her present motion before this court, appellant seeks to challenge the legal propriety of the trial court's "bond" determination. Essentially, appellant submits that, since she is indigent at this time, the trial court abused its discretion in holding that she had to compensate appellee for the market rental value of her leasehold while this appeal is pending. According to appellant, she should only be required to post a "use and occupancy" bond, which is usually intended to cover only the amount that an indigent tenant was originally required to pay under the lease. In light of this, she maintains that, since her lease with appellee did not require any monthly rental payment on her part, she should not be obligated to post a supersedeas bond.

In responding to the foregoing, appellee first contends that there is no authority for the proposition that financial hardship can be considered as a legal excuse for not posting adequate security on appeal. Second, appellee argues that if appellant is allowed to remain in the leasehold during the entire appellate period, she should be deemed a hold-over tenant. Citing *Tuteur v. P. & F. Enterprises, Inc.* (1970), 21 Ohio App.2d 122, appellee also argues that, in such a situation, the proper measure of "damages" owed to the landlord is the fair rental value of the leasehold.

Our review of the *Tuteur* opinion indicates that the subject matter of that appeal

involved the damages owed by a commercial tenant under a supersedeas bond after the appeal had been dismissed as moot. In contrast, the instant matter pertains to federally subsidized housing in which the tenant, i.e., appellant, is not obligated to pay any monthly rent. Because the leasehold in question is intended to be leased to persons who cannot afford to pay the usual amount for housing, it is simply unlikely that appellee would receive the full rental value for the premises if it was able to rent the premises to another tenant. Under such circumstances, equity dictates that the amount of appellant's supersedeas bond should not be predicated upon the fair rental value of the leasehold. Therefore, this court concludes that the trial court did abuse its discretion in setting appellant's bond at the sum of \$4,902.

On the other hand, until this court has the opportunity to review the final merits of this appeal, the trial court's ruling in the underlying proceeding constitutes a valid pending judgment. As part of that judgment, the trial court specifically found that a member of appellant's household had committed a criminal offense by assaulting another tenant. Obviously, the commission of criminal activity creates a risk of harm to not only the premises occupied by appellant, but also the other leaseholds and the tenants. In light of this risk, it follows that appellee is entitled to some security to protect it from the potential harm. In other words, a minimal supersedeas bond is needed to ensure that appellant will have sufficient incentive to strictly abide by the terms and covenants of her lease.

Pursuant to the foregoing analysis, this court concludes that the parties' rights during the pendency of this appeal should not be governed by the stay of execution granted by the trial court. Instead, it is the order of this court that the stay of

execution, as set forth in our judgment entry of February 20, 2008, shall now remain in effect throughout the entire pendency of this appeal. To this extent, appellant's motion to stay is hereby granted. Under this stay order, appellee shall not take any further steps to enforce the writ of restitution granted by the trial court in the appealed judgment.

The continuing effectiveness of our stay order shall be conditioned upon the following two requirements. First, appellant must continue to abide by the terms and covenants contained in her lease with appellee which pertain to her use of the subject premises. Second, appellant must deposit with the Clerk for the Portage County Municipal Court the sum of \$100 for each month in which the stay remains in effect. Appellant's payment for the month of March 2008 must be deposited with the Clerk by Friday, March 21, 2008. All subsequent payments for the ensuing months must be made on the first day of the month upon which the Clerk's office is open for business.

Appellant's failure to comply with either of the foregoing requirements shall result in the dissolution of the stay of execution.

  
ADMINISTRATIVE JUDGE MARY JANE TRAPP

TIMOTHY P. CANNON, J., concurs.