

IN THE MUNICIPAL COURT
RAVENNA CIVIL DIVISION
PORTAGE COUNTY, OHIO

William D. Jones
PLAINTIFF

CASE # R 90 CVG 2776

VS.

FINDINGS OF THE REFEREE--FORCIBLE
ENTRY AND DETAINER

Dale and Delores Burns
DEFENDANT

HEARING DATE 11-29-90 COMPLAINT FILED 10-31-90 SERVICE DATE 11-6-90

PARTIES PRESENT PLAINTIFF
DEFENDANT

TYPE OF TENANCY: ORAL WRITTEN RENTAL AGREEMENT,
WRITTEN LEASE SQUATTER, OTHER,

RESIDENTIAL (ORC 4321) COMMERCIAL (ORC 1923)
TRAILER PARK (ORC 3733)

COPY ATTACHED: YES/NO

PLAINTIFF: OWNER/AGENT

DELIVERED HOW?

BASIS OF FIRST CAUSE OF ACTION
RENT DEFAULT BEGINNING 8/1/90

TENANCY BEGAN ON: 4/16/90

TERMINATION OF PERIODIC TENANCY
BREACH OF LEASE/RENTAL AGREEMENT TERM:

TERM OF TENANCY: 1 YEAR

ITEM #

RENT DUE ON: 1st

OTHER
PREMISES VACATED ON
KEY RETURNED ON

THREE DAY NOTICE TO VACATE

DELIVERED HOW?

DATE DELIVERED: 10/13/90

COPY ATTACHED: YES/NO

THIS CAUSE CAME ON FOR HEARING BEFORE THE REFEREE AS REGULARLY ASSIGNED BY THE COURT, EVIDENCE AND TESTIMONY WERE RECEIVED AND THE ABOVE FACTS WERE FOUND TO BE TRUE. AFTER FINDING JURISDICTION AND VENUE TO BE PROPER, THE REFEREE FINDS THAT:

A WRIT OF RESTITUTION IS TO ISSUE AGAINST THE DEFENDANT AS PRAYED

A WRIT OF RESTITUTION IS DENIED BECAUSE

A WRIT OF RESTITUTION IS TO ISSUE BY AGREEMENT AGAINST THE NAMED DEFENDANTS AS PRAYED, BUT IS NOT TO BE EXECUTED IF:

Stipulate to jurisdiction, venue, existence of lease, 3 day notice of 10/13/90. Plaintiff - Exh A, lease. No rent since 8/90. \$1.00 is their monthly rent, due 1st. Attempted to pay August rent in

PLAINTIFF
DEFENDANT

JUDGMENT ENTRY

THE FIRST CAUSE OF ACTION IS MOOT AND THEREFORE DISMISSED BY THE PLAINTIFF, WITHOUT PREJUDICE.

THE SECOND CAUSE OF ACTION IS PENDING UNTIL ANSWER DATE.

THE COURT, HAVING REVIEWED THE FINDING AND RECOMMENDATIONS OF THE REFEREE, APPROVES AND HEREBY ORDERS, ADJUDGES, AND DECREES THAT THE SAME BE ENTERED OF RECORD AND MADE AN ORDER OF THIS COURT. IT IS SO ORDERED.

REFeree
John P. Meill

JUDGE
[Signature]

PORTAGE COUNTY MUNICIPAL COURT

PC-1363

RAVENNA BRANCH

JONES
PLAINTIFF

CASE NUMBER R90CV62776

VS
BURNS
DEFENDANT

FINDINGS AND REPORT
OF REFEREE

September. Refused to accept. Did not attempt to pay September rent or October rent. Def. tried to pay rent to plaintiff's attorney. Has attempted to contact defendants, successful only once.

Cross ~~Defendant~~ - def used to bring rent to his home. Has accepted rental payment from PMHA for August and September, did refuse tenants payment. Def did say he was waiting for decision of referee before he paid rent.

Defendant or cross - attempted to pay August rent on 8/1 or 8/2, attempted again in September and was refused. Mostly he paid rent when landlord came over, once or twice he did deliver rent to landlord. Right after hearing he took \$3.00 to PMHA on advice of attorney. Slipped money in mail slot, but money returned to him the following Monday.

11/29/90
DATE

Ed P. Mill
REFEREE

RAVENNA BRANCHJONES

PLAINTIFF

CASE NUMBER R90CV5-2776

VS

FINDINGS AND REPORT

BURNS

DEFENDANT

OF REFEREE

Defendant - moved in April, 1990. Landlord generally come to house, but he took to landlord twice. Landlord request rent on time refused, believes he tendered September rent also. Eviction hearing on 9/29. Believed that pl. would be around to get the rent, writing for plaintiff to come and get. Advised of refusal & findings by attorney. Dropped off \$4.00 check for Aug - Nov. in month of October.

Debra Burns - offered August rent, did not offer September because pl. did not come around to get. October - tried to call plaintiff twice, could not reach. Case - took rent to pl. in first few months. Knew where house was. Has not seen any notes from pl. Telephone turned off in mid-October. Offered rent for August, he refused, figured he would not come by for other months due to eviction being filed. Refs. Refused - once or twice, landlord came to house for rent. May, June and July - delivered rent.

11/29/90
DATE

John P. Neill
REFEREE

RAVENNA BRANCHJONES

PLAINTIFF

CASE NUMBER R90CV62776

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Findings:

1. Plaintiff is the landlord and defendant the tenant under a written residential lease, under section 8 Existing Housing Certification Program.

The lease provides that tenant is to pay monthly rent of \$1.00, due on or before the first of each month. Portage Metropolitan Housing Authority pays the balance of the monthly rent of \$399.00.

2. The legal grounds for the requested writ of restitution in this case is non-payment of rent for the months of August, September and October, 1990. During most of that time, however, these parties were involved in another eviction action on other grounds. The complaint in the prior eviction action was filed on August 16, 1990, the hearing before the referee occurred on September 24, 1990, and the referee filed his findings on October 10, 1990. That complaint was solely on the basis of other alleged violations of the lease and the rules. Referee recommended that the writ be denied. On October 13, 1990, the statutory Notice to Vacate for the current eviction action was served.

DATE

11/29/90

REFEREE

Ed P. Meil

RAVENNA BRANCHJONES

PLAINTIFF

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OF REFEREE

3. The parties are in agreement that the tenant's share of the rent, \$1.00 per month, has not been paid for the months of August through November, 1990. However, they agree on little else. The evidence does indicate that, sometime between 10/10/90, the date of filing of the referee's findings in the prior written action, and 10/31/90, the date of filing of the complaint herein, defendant did tender the sum of \$4.00, for August, September, October and November rent, to plaintiff and plaintiff refused to accept the rent. It is obvious that the \$1.00 per month is of no importance to landlord, except as a means by which to terminate the tenancy if it is not tendered on a timely basis.

4. The first complaint filed in August 1990 makes no mention of unpaid rent, even though August was in default at that time. On the due dates of the September and October payments, the first case was in litigation, so landlord would not have accepted the rent anyway. By the due date of the November payment, this case had been filed, so landlord again refused the rent tendered. Throughout this time, however, landlord has

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Bob P. Mail

RAVENNA BRANCHJONES

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continued to receive the monthly \$399.00 payments from PMHA. Referee mentions that fact for the sole purpose of showing that landlord has not been significantly damaged by not receiving the tenant's portion of the rent. Landlord could have requested that the \$1.00 per month be placed in escrow during the pendency of the pica action, if landlord considered that amount to be important. It is obvious, however, that the \$1.00 per month was of no significance to landlord until non-payment became a possible ground for eviction.

5. Referee agrees that, all things considered, this tenancy ought to be terminated and the parties go their separate ways. The court, however, has not yet been presented with grounds sufficient to free such a separation. The writ must be denied. Tenant is cautioned, however, that the amount in default should be brought up-to-date forthwith, and tenant should make all future payments timely.

DATE

11/29/90

REFEREE

Del P. Meill