IN THE LICKING COUNTY MUNICIPAL COURT

2007 OCT 23 PM 2-27

Showe Management,

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Case No. 07 CVG 02191

Judge W. David Branstoo!

Mary Malores,

Dulendant

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DECISION AND ENTRY GRANTING DEFENDANT'S WOTION FOR RELIEF FROM JUDGMENT AND TO DISMISS

This matter came before the Court on the Defendant's Motion for Relief from Judgment and to Dismiss. For the reasons set forth below, the Defendant's Motion is heroby granied.

Plaintiff, Showe Management, initiated this action by filing a Complaint in Porcible i. Each Entry and Dotainer on August 1, 2007. The Complaint alleged that the Defendant had falled to pay rent for the month of July 2007. Attached to Plaintiff's Complaint was a copy of the Notice to Leave Premises Plaintiff had served on the Defendant in accordance with R.C 1923.04. That notice stated that the reason tenancy was being terminated was because of the Defendant's "failure to pay rent in a timely manner in the amount of \$675.00 for the month of July, which was due July 1, 2007." The hearing on the Plaintiff's First Cause of Action was scheduled for August 17, 2007.

On August 17, 2007, Plaintiff's representative, Plaintiff's counsel, and fra Defendant appeared in court for the eviction hearing. When the case was called, the parties appeared before the Court and presented the Court with an Agreed Judgment Entry. The Agreed Judgment Entry had been signed by Plaintiff's counsel, and by the Defancient. According to the torms of the Agreed Judgment Entry, Plaintiff was granted judgment for restilution of the premises and had the right to enforce the judgment at any time within the next 45 days by filing a praecipe with the Clerk of Courts for a Writ of Restilution. The agreement also stated that the Plaintiff could accept any money tendered by the Defendant without prejudice to, and without waiving, Plaintiff's right to enforce judgment for restitution of the premises.

When the parties appeared before the Court, the Court questioned the Defendant about the agreement. The Court also asked the Defendant whether she had signed the agreement. Che indicated she had. The Court also asked the Defendant whether she mailized that by signing the agreement, she would need to find a new place to live. At that time, the Defendant and Plaintiff's counsel both indicated to the Court that that was not the case because the parties had reached an agreement to allow her to continue residing at the residence. Based on these representations, the Court approved the Agreed Judgment Entry, even though the term of the agreement allowing the Defendant to remain at the premises was not reduced to writing and contained in the Agreed Judgment Entry presented to the Court.

On September 27, 2007, approximately 40 days after the eviction hearing, Plaintiff filed a praccipe for Writ of Restitution to evict the Defendant. The Writ was issued on September 28, 2007. Prior to a set out, however, the Defendant obtained counsel and Defendant's counsel filed a Motion to Stay Execution of the Writ of Restitution on October 4, 2007. In this motion, Defendant alleged that since the eviction bearing, on not only had paid for July rent, but she had also paid August and September cent to the Plaintiff. Based on these allegations, the Court granted the

Deforchat's Motion to Stay Execution of the Writ of Restitution pending a hearing. A hearing on this motion was scheduled the following day, October 5, 2007. Prior to the hearing, the Defendant filed a Motion for Relief from Judgment and to Dismiss the case. Specifically, the Defendant alleged that she had paid her rent for July, August, and September. She further alleged that just prior to appearing in front of the Court on August 17, 2007, the Plaintiff, either through Plaintiff's representative or counsel, told her that if she riid not sign the agreement that she would be evicted that day.

In support of her Motion for Relief from Judgment and to Dismiss, the Defendant presented the testimony of the Plaintiff's representative, Jackie Henry, and the testimony of the Defendant herself. Based on that testimony, the Court finds that the Defendant did, in fact, pay her July rent and also the rent of August and September and, at the time the praecipe was filed for the Writ of Restitution, she was current in her rental paymonts to the Plaintiff. The Court also finds that her statements that she had been told by either the Plaintiff's attorney or the Plaintiff's representative that if she did not agree to sign the Agreed Judgment Entry that she would be evicted that day were not disputed.

II. Analysia

In Shimoo v. Marks (1993), 91 Ohio App.3d 458, the Fifth District Court of Appenis hold that a landlord's acceptance of future rental payments from the Defendant emounted to a waiver of the Notice to Vacate. In this case, the Court finds that the Defendant's payment of August and September rent constituted future payments of rent. Therefore, by accepting these rental payments, the Plaintiff walved its right to proceed on the Notice to Vacate that was served on the Defendant in accordance with R.C 1923.04. That notice specifically contained the statement that the Defendant was being evicted because she had failed to pay her July rent. While the Plaintiff may have had every right to proceed on that basis, and to have the Defendant evicted on that basis, the fact that Plaintiff continued to allow her to live there and accepted future rent payments created a new tenancy. Thus, the Agreed Entry not withstanding, Plaintiff's attempt to evict the Defendant after having accepted future rent payments is not permissible under the Ohio Landford Tenant Act. Accordingly, the Defendant's Motion for Relief from Judgment and to Dismiss the action is hereby granted.

IT IS SO ORDERED.

Judge W. David Branstool