IN THE CUYAHOGA FALLS MUNICIPAL COURT

SUMMIT COUNTY, OHIO

PETROS KAMVOURIS	)	CASE NO. 00 CVG 1586
PLAINTIFF	)	
vs	)	MAGISTRATE JOHN W. CLARK
CHERIE L. BANKS	)	
DEFENDANT	)	MAGISTRATE'S DECISION

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This matter was scheduled before the Magistrate for hearing on July 18, 2000. Plaintiff was present with counsel, Bruce J. May. Defendant was present with counsel, Joann Sahl.

Plaintiff was found to have a possessory interest in the premises set forth in the complaint, as owner. A three-day statutory notice was served on the defendant on June 10, 2000, which was at least three (3) days before the complaint was filed. Defendant asserts that the three (3) day notice is deficient in that the statutory language contained therein is not legible and/or conspicuous as it is sloppily handwritten. The Magistrate finds that while the handwritten statutory language is indeed sloppily written, the printing is legible and complies with the statute.

Plaintiff testified that Defendant informed him on May 31, 2000 that her June rent would be late and that Department of Human Services (DHS) would pay the rent in two or three days. Subsequent thereto, Plaintiff wrote Defendant a letter giving her until

June 10, 2000 to pay the rent. Plaintiff further testified that Defendant's rent has also been timely paid since 1996, that he received the DHS application for his approval on June 9, 2000, and that he spoke to a DHS representative.

Barb Wilson, an Assessment Interviewer from DHS, testified on behalf of Defendant. Ms. Wilson met with Defendant on May 19, 2000 to discuss her need for June 2000 rent assistance. Defendant was given documentation to complete, but could not meet again with Ms. Wilson until June 8, 2000 due to DHS's heavy workload. The application could not be obtained until June 2, 2000 as the rent would not be in arrears until then. According to Ms. Wilson, Plaintiff would receive payment within two (2) to four (4) weeks of his approval of the application. Ms. Wilson spoke with Plaintiff on June 8, 200, informed him that payment would take a couple of weeks, and Plaintiff never indicated his intention not to accept the payment, but inquired as to whether he would have it by the weekend.

Defendant testified that she lives at the property with her six month old disabled son. In May, Defendant broke her toe and as a result, missed a significant amount of work. When it became apparent that she would have trouble paying the June rent, she met with Ms. Wilson on May 19th and contacted Plaintiff. According to Defendant, she told Plaintiff that DHS would pay the June rent, but that processing the payment would take some time. Defendant could not get another appointment with Ms. Wilson until June 8, 2000. According to Plaintiff, she then dropped the application at the address for Plaintiff contained in the telephone book. Defendant acknowledged receiving the application on June 9, 2000. According to Defendant, Plaintiff never stated that he would not accept the DHS payment and if he would have so indicated, she would have

obtained the rent monies from family. As to Defendant's correspondence setting the June 10, 2000 date, Defendant believed Plaintiff would not proceed on June 10th based upon his indication that he would accept the DHS payment and his conversation with Ms. Wilson.

Defendant asserts that a writ of restitution should not be issued based upon principles of estoppel and equity. Essentially, Defendant asserts that Plaintiff induced Defendant by indicating a willingness to accept the DHS payment, and that Defendant relied on Plaintiff by not obtaining the rent monies elsewhere. In addition, Defendant asserts that it would be contrary to equity to evict a tenant who has made timely rent payments for approximately four years when the cause of the arrearage was beyond her control and the money remains available from DHS.

The doctrine of estoppel may be used when one party induces another to believe certain facts exist and the other party changes their position to their detriment in reasonable reliance on those facts. See, State, ex rel. Madden v. Windham Exempted Village School Dist. Bd. of Edn. (1989), 42 Ohio St. 3d 86. In the case at bar, the Magistrate finds that Defendant was induced by Plaintiff's actions to forebear from seeking other sources from which to obtain the rent monies. Further, a lease will not be forfeited for mere non-payment of rent where the equities of the parties can be otherwise adjusted. Heritage Hills, Ltd. v. Nusser (July 3, 1986), Ross App. 1103, unreported, citing Zanetos v. Sparks (1984), 13 Ohio App. 3d 242. It is only where the conduct of the Defendant is willful or malicious or where a Plaintiff cannot be made whole otherwise, than by forfeiture that equity will not relieve a forfeiture. Id. In the case at bar, the rent delinquency was the result of Plaintiff's breaking her toe, not a

willful or malicious act, and Plaintiff can be made whole by payment of the DHS monies for the June rent and those escrowed by Western Reserve Legal Services for the Judgment.

RECOMMENDATION

I recommend that a writ not be allowed.

7/24/00
DATE

J. W. Clark
MAGISTRATE

JUDGMENT ENTRY

The decision of the Magistrate is hereby approved.

It is the Judgment of the Court that a writ of restitution may not issue.

Costs to be paid by Plaintiff.

Linda Quinn Gordon
JUDGE