

1 IN THE FRANKLIN COUNTY MUNICIPAL COURT

2 COLUMBUS, OHIO

3 CIVIL DIVISION

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5 Evergreen Terrace Properties, :

6 Plaintiff, :

7 -vs- :

Case No. 011775

8 Charles E. Stephenson and :

9 Shelia A. Green, et al., :

10 Defendants. :

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12 PARTIAL TRANSCRIPT OF PROCEEDINGS

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14 HONORABLE JULIUS NEMETH,
Referee, presiding.

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16 APPEARANCES:

17 KEMP, SCHAFFER & ROWE CO., L.P.A.
88 West Mound Street, Columbus, Ohio,
18 By: Rosemarie Newman-Coleman, Attorney at Law,

19 On behalf of the Plaintiff.

20 THE LEGAL AID SOCIETY OF COLUMBUS,
40 West Gay Street, Columbus, Ohio,
21 By: Janice R. Franke, Attorney at Law,

22 On behalf of the Defendants.

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24 Irma A. Blank,
Official Court Reporter.

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1 BE IT REMEMBERED THAT, on the 22d day of
2 April, 1988, this cause came on for a forcible entry and
3 detainer hearing before the Honorable Julius Nemeth,
4 Referee. And the parties appearing in person and/or by
5 counsel, as herein set forth, the following proceedings
6 were had:

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8 The following is the ruling by the referee:

9 THE REFEREE: The motion made by the defense
10 is sustained, and I would like to put into the record the
11 reasons why.

12 The testimony in this case does indicate a
13 pattern of late payments; and by permitting that pattern
14 of late payments to exist, the landlord, in effect, waived
15 the provisions of the rules and regulations concerning
16 the time of payment and also its right to insist on the
17 \$25 late payment charge and a \$5 per diem until the time
18 that strict compliance was again requested. And in this
19 particular instance, strict compliance was never requested
20 in that many words or in those words.

21 The management representatives and tenants
22 did have conversations concerning the fact that the rent
23 was due on Thursday, and the tenants were told that the
24 management would like to have payment on Thursdays in the
25 future; but there never was a written demand for strict

1 compliance made upon the tenants in this case.

2 And I think, under Ohio law, once a pattern
3 of late payment has been established, strict compliance,
4 with the payment provisions, does require a writing.

5 Furthermore, after the demand for strict
6 compliance is made, the tenant has to be -- or tenants have
7 to be given a reasonable time to come into compliance.

8 What is reasonable, I think, would depend
9 in each case on the particular lease involved.

10 In this instance, we have an oral week-to-week
11 lease. And I think a minimum time for a reasonable time to
12 expect and demand compliance would be one week. And the
13 testimony that was produced here this morning indicates that
14 that never happened here.

15 In summary, I believe that what did happen
16 here was that there was a waiver of the strict compliance
17 provisions by permitting a pattern of late payments. I
18 think the testimony indicates specifically that the most
19 popular payment day, if I may use that expression, was
20 Friday and not on Thursday.

21 And I find that strict compliance was -- all
22 the way, was orally demanded at the end of the tenancy just
23 before this action was instituted, was never requested in
24 writing; and in my opinion, it's required to be under the
25 Ohio law.

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For that reason, the motion is sustained.

And I'm going to recommend to the Court that this case be dismissed at the plaintiff's costs.

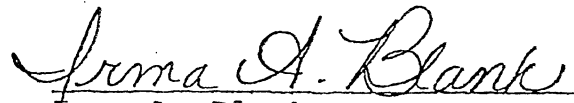
The record is there. If you wish to file an objection, of course, you are perfectly free to do that.

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C E R T I F I C A T E

I do hereby certify that the foregoing is
a true, correct, and partial written transcript of the
proceedings in this matter, taken by me on April 22, 1988,
and transcribed from my stenographic notes.


Irma A. Blank,
Official Court Reporter.