

IN THE ALLIANCE MUNICIPAL COURT
ALLIANCE, OHIO

2002 MAR 18 PM 3 35

STARK METROPOLITAN
HOUSING AUTHORITY

CASE NO. 2002-CVG-0039
ALLIANCE MUNICIPAL COURT
ALLIANCE, OHIO

Plaintiff

vs.

JUDGE ROBERT G. LAVERY

VERNON L. HAWKINS, JR., et al.

Defendant

JUDGMENT ENTRY

The following matter was heard on February 26, 2002. Defendant's Motion to Dismiss was filed the same. Plaintiff and Defendant subsequently filed proposed Findings of Fact and Conclusions of Law. The Court makes the following findings of fact:

1. Plaintiff Stark Metropolitan Housing Authority (SMHA) sought to evict Defendant, Vernon Hawkins, from his apartment operated by SMHA and located at 404 South Freedom Avenue, Alliance, Ohio, for a violation of Section 10 of the Lease between Plaintiff and Defendant.

2. On or about September 28, 2001 Defendant was arrested by police for possession of marijuana.

3. Manager for SMHA, Patricia McClary, testified that she had knowledge of the Defendant's arrest on or about October 1, 2001.

4. SMHA accepted rent from Defendant for the months of September and October, after having knowledge of the Defendant's breach.

5. SMHA did not serve notice of termination to Defendant until December 19, 2001.

The Court makes the following conclusions of law:

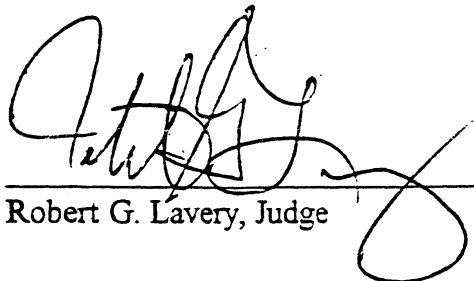
6. By accepting future rent from Defendant with knowledge of Defendant's breach, Plaintiff waived the right to forfeiture. (Quinn v. Cardinal Foods, Inc. (1984), 20 Ohio App.3d 194, 485 N.E.2d 741; Brokamp v. Linneman (1923), 20 Ohio App. 199, 153

N.E. 130).

7. Thus, pursuant to the above cited law provided by Defendant, and no contrary authority cited by Plaintiff, the Plaintiff's acceptance of rent constituted a waiver of Defendant's alleged breach, thus Plaintiff is not entitled to restitution for the premises.

It is ORDERED, ADJUDGED AND DECREED that the Plaintiff's case is dismissed with costs to the Plaintiff.

DATED: March 18, 2002



Robert G. Lavery, Judge

SERVICE

Copies of this judgment entry were sent by ordinary U.S. mail this 18th day of March, 2002, to Tony M. Alexander, Attorney for Plaintiff, 200 Market Avenue North, P.O. Box 24213, Canton, Ohio 44701-4213, and to Darlene B. Bonta, Attorney for Defendant, 306 Market Avenue North, Suite 730, Canton, Ohio 44702.



Deputy Clerk