

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO

|                  |   |                                     |
|------------------|---|-------------------------------------|
| PORTER BAKER JR. | ) | DATE: OCTOBER 1, 2002               |
|                  | ) |                                     |
| Plaintiff        | ) | CASE NO. 2002 CVG 15892             |
|                  | ) |                                     |
| vs.              | ) | JUDGE RAYMOND L. PIANKA             |
|                  | ) |                                     |
| WALLACE WADE     | ) | <b><u>MAGISTRATE'S DECISION</u></b> |
|                  | ) |                                     |
| Defendant        | ) |                                     |

This case came for trial on September 23, 2002, before Magistrate Myra Torain Embry to whom it was referred by Judge Raymond L. Pianka, pursuant to Civ. Rule 53 to take evidence on all issues of law and fact regarding plaintiff's first and second cause of action. Plaintiff was present, pro se. Defendant was present with counsel.

**FINDINGS OF FACT**

1. Plaintiff is the owner of the residential property located at 11702 St. Clair Ave, Cleveland, Ohio, hereinafter, "the premises." Plaintiff was the owner at all times relevant to this action.
2. On or about the spring of 1998, defendant entered into possession of unit #1 of the subject premises pursuant to a written lease agreement.
3. During defendant's tenancy, defendant qualified for, and plaintiff received a rental subsidy through Eden Corporation's Shelter Plus Care Tenant Based Assistance Program. Pursuant to the Housing Assistance Payment Contract, hereinafter "HAP contract," admitted as plaintiff's exhibit B, the total contract rent for the subject premises was \$350.00. Shelter Plus Care's portion of the rent to plaintiff was \$286.00.
4. Plaintiff testified that defendant's portion of the rent was \$58.00. Plaintiff last received rent from defendant for the month of June 2002 in the amount of \$58.00.
5. Plaintiff testified that he has received and cashed Shelter Plus Care's portion of the rent for each month through September 2002.
6. Plaintiff did not receive a security deposit from or on behalf of defendant for the subject premises.
7. On July 17, 2002, plaintiff served on defendant a notice to vacate premises, admitted as plaintiff's exhibit A.

## **CONCLUSIONS OF LAW**

Plaintiff asserts that he is entitled to judgment on his first cause of action due to defendant's failure to pay his portion of the rent. During his case in chief, plaintiff testified that although he has not received defendant's portion of the rent since June 2002, he has received and cashed the rent subsidy from Shelter Plus for each month through September 2002. Plaintiff testified that he cashed the rent subsidy checks because he needed the money. Plaintiff further testified that he served defendant with the notice to vacate on or about July 17, 2002. Upon the completion of plaintiff's evidence and at the close of plaintiff's case in chief, defendant moved to dismiss plaintiff's first cause of action on the basis that plaintiff has continued to accept the rental subsidy subsequent to service of the notice to vacate.

A landlord's acceptance of a federal rent subsidy payment, after the landlord has served the tenant with a notice to vacate, voids the notice to vacate. **Orlosky v. Adams**, No 95 CVG 981 (Mun. Ct. Painesville, Sept. 21, 1995); **Wright v. Rash**, No. 93 CVG 10748 (Mun. Ct. Cleveland, June 29, 1993). Without a properly served notice to vacate, the trial court lacks subject matter jurisdiction over the eviction action. **Associated Estates Corp. v. Bartell**, 24 Ohio App. 3d 6, 8-9. Therefore, based upon plaintiff's testimony regarding his acceptance of the Federal rent subsidy and the reason thereto, the court found that under the facts and law presented, plaintiff was not entitled to relief and defendant's oral motion to dismiss was granted as to the first cause of action.

In his second cause of action, plaintiff seeks \$58.00 per month from July 2002 through September 2002. Plaintiff further seeks the cost to replace several windows and steps allegedly broken and/or damaged by defendant. Although plaintiff did not provide a receipt or evidence of the cost to repair the windows, plaintiff thinks the cost will be around \$1000.00. Plaintiff did not offer any testimony or evidence as the cost to repair the steps. Based on plaintiff's uncontested testimony that defendant owes his portion of the rent from July 2002 through September 2002 in the amount of \$58.00 per month, the court finds that plaintiff is entitled to recover rent in the amount of \$174.00 (\$58.00 each month from July 2002 through September 2002.)


With regards to plaintiff's claims for property damage, said damages must be shown with certainty and not be left to conjecture and speculation. **James H. Washington Ins. Agency v. Nationwide Mut. Ins. Co.** (8<sup>th</sup> District 1993), 94 OA3d 577. Although plaintiff claims to have suffered damages in the amount of \$1000.00 for broken windows, plaintiff failed to produce estimates, receipts or testimony to justify how he arrived at the above amount. Nor did plaintiff provide testimony or evidence as to the cost to repair the steps allegedly broken by defendant. Therefore, plaintiff's claim for property damage is denied.

## **RECOMMENDED JUDGMENT**

Plaintiff having failed to meet his burden as to the first cause of action, the first cause of action is hereby dismissed without prejudice. With regards to the second cause of action,

judgment is for plaintiff in the amount of \$174.00 (\$58.00 each month from July 2002 through September 2002.)

Recommended:




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MAG. MYRA TORAIN EMBRY

**JUDGMENT**

Plaintiff having failed to meet his burden as to the first cause of action, the first cause of action is hereby dismissed without prejudice. With regards to the second cause of action, judgment is for plaintiff in the amount of \$174.00.



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JUDGE RAYMOND L. PIANKA

A copy of this entry was served on parties/counsel by regular U.S. mail on  
10/21/02