

IN THE NEW PHILADELPHIA MUNICIPAL COURT

NEW PHILADELPHIA, OHIO
MUNICIPAL COURT

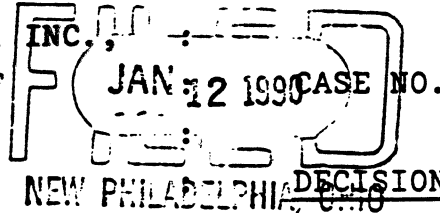
SUPERIOR MOBILE HOMES, INC.,

PLAINTIFF

v.

DONNA RUSSELL,

DEFENDANT



INTRODUCTION & STATEMENT OF THE CASE

This matter was considered by Edward Emmett O'Farrell, Judge, New Philadelphia Municipal Court, New Philadelphia, Ohio on January 5, 1990 relative to the "Amended and Supplemental Second Claim for Relief" filed on August 18, 1989 wherein the Plaintiff seeks money damages from the Defendant in the amount of Five Hundred Five Dollars (\$505.00) plus late charges pertaining to a written rental agreement between the Plaintiff and the Defendant and pertaining to the occupation of a lot by the manufactured home of the Plaintiff in the Plaintiff's manufactured home park lot in Dover, Ohio. The relevant months are April, May, June, July and August 1989. The evidence was presented in support of the Amended and Supplemental Second Claim for Relief as well as evidence presented in opposition thereto. Upon completion of the evidence the undersigned heard the legal arguments of the attorneys and comes now to decide the issue.

FINDINGS OF FACT & CONCLUSIONS OF LAW

On January 1, 1988, Donna M. Russell signed a "rental agreement" (Plaintiff's Exhibit A) pertaining to Lot # 48, Charles Drive in the manufactured home part lot owned by the Plaintiff corporation. The term of the rental agreement was a periodic month to month tenancy with a monthly rental rate of One Hundred Dollars (\$100.00) payable on the first day of each month. A provision for a One Dollar (\$1.00) per day late charge appears in the rental agreement. By agreement of the parties the stated "in the agreement" monthly rental figure of One Hun-

dred Dollars (\$100.00) was modified to a monthly rental figure of Ninety-Five Dollars (\$95.00) and Plaintiff, for the months of April, May and June 1989, seeks Ninety-Five Dollars (\$95.00) per month unpaid rent and for the months of July and August 1989 seeks One Hundred Ten Dollars (\$110.00) per month based upon Plaintiff's claim that a "special notice" dated May 4, 1989 and admitted into evidence as Plaintiff's Exhibit C had the legal effect, upon delivery to the Defendant, of increasing the monthly rental amount to One Hundred Ten Dollars (\$110.00) commencing July 1, 1989 and for each month thereafter. Defendant agrees that rent for the months of April, May, June, July and August has not been paid. Defendant further agrees and concedes that for the months of April, May, June, July and August, a rental amount of Four Hundred Seventy-Five Dollars (\$475.00) is owed but argues that the attempt to increase rent from July 1, 1989 until the end of the year is improper, not founded in law and should be disallowed. Additionally Defendant argues that the overage paid to the Plaintiff by the Defendant pertaining to rent for the months of September, October, November and December 1989 (\$60.00 total) should be applied as a credit to the Four Hundred Seventy-Five Dollar (\$475.00) rental for the months of April, May, June, July and August which Defendant concedes are months where rent was not paid to the Plaintiff by the Defendant. The Defendant argues two legal positions supporting her claim that the monthly increase proposed by the Plaintiff and effective July 1, 1989 should be disallowed and the consequent rebate of rent overpaid in the months of September, October, November and December to be credited against that amount of rent the Court finds to be owing for the months of April, May, June, July and August 1989. They are as follows:

- 1.) That the Defendant did not receive actual notice of the proposed rent increase and, as a consequence, it is ineffective as to her.
- 2.) That the Plaintiff failed to comply with Section 3733.11(A)(1) and (2), Ohio Revised Code. Section 3733.11, Ohio Revised Code reads in relevant part:

Section 3733.11

Rental Agreement; Disclosure of Rules and Charges; Prohibitions.

(A)(1) The park operator shall offer each manufactured home owner a written rental agreement for manufactured home park lot for a term of one year or more that contains terms essentially the same as any alternative month-to-month rental agreement offered to current and prospective tenants and owners. The park operator shall offer the minimum one-year rental agreement to the owner prior to installation of the owner's manufactured home in the manufactured home park or, if the owner's manufactured home is in the manufactured home park, prior to the expiration of the owner's existing rental agreement.

(2) The park operator shall deliver the offer to the owner by certified mail, return receipt requested, or in person. If the park operator delivers the offer to the owner in person, the owner shall complete a return showing the receipt of the offer. If the owner does not accept the offer, the park operator is discharged from any obligation to make any further such offers. If the owner accepts the offer, the park operator shall, at the expiration of each successive rental agreement, offer the owner another rental agreement, for a term that is mutually agreed upon, and that contains terms essentially the same as the alternative month-to-month agreement.

The Court finds that the first argument of the Defendant is not persuasive. Actual notice of the increased monthly rental amount (Plaintiff's Exhibit C) was in fact delivered to Defendant's adult son who immediately crumpled the notice and discarded it on the ground. The Court has no doubt that the Plaintiff did not receive actual notice because of the son's actions, but service of the notice upon the son is constructive service of the notice upon the Defendant. However the Court's findings relative to the actual receipt of the notice issue is rendered academic by virtue of its finding that the Plaintiff did not comply with the provisions of Section 3733.11(A)(1) and (2), Ohio Revised Code inasmuch as Plaintiff's Exhibit A which contains an option for a "one-year" or "thirty-days" rental agreement does not have either option check marked, as it should

have, and the greater weight of the evidence supports the Defendant's position that she was never "offered" a one-year rental agreement as is her right by virtue of Section 3733.11, Ohio Revised Code. As a consequence of this finding, the Defendant must be considered to stand in the same posture or position as other owners of manufactured homes in Plaintiff's manufactured home park lot who have one-year written rental agreements. Consequently, the "in term" attempt to increase rent is in derogation of the very terms of the rental agreement when that attempt to increase rent occurs during the life of the rental agreement, as is the case here.

Further evidence that the Plaintiff did not properly "offer" the Defendant a written rental agreement for a manufactured home park lot for a term of one-year or more that contained the terms essentially the same as any alternative month-to-month rental agreement offered to current and prospective tenants and owners is that no evidence was presented by the Plaintiff that his rental agent, Mr. Overholt, did not obtain a return showing receipt of the offer.

CONCLUSIONS

Plaintiff should recover the sum of Four Hundred Fifteen Dollars (\$415.00) from the Defendant which reflects unpaid rent at the rate of Ninety-Five Dollars (\$95.00) for the months of April, May, June, July and August 1989 with the application of a credit in the favor of the Defendant against that figure in the amount of Sixty Dollars (\$60.00) which represents the overpaid rent by the Defendant to the Plaintiff for the months of September, October, November and December 1989.


Edward Emmett O'Farrell, Judge

cc: Atty. Barnhouse
Atty. Renner

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JAN 12 1990

CASE NO. 7-89-CVG-336

NEW PHILADELPHIA, OHIO JUDGMENT ENTRY

This matter was considered by Edward Emmett O'Farrell, Judge, New Philadelphia Municipal Court, New Philadelphia, Ohio on January 5, 1990. The Plaintiff was represented by James Barnhouse, Sani & Barnhouse Co., L.P.A., Attorneys at Law, New Philadelphia, Ohio. The President of the Plaintiff corporation, Charles Matthews, was present in the Courtroom. Defendant Donna Russell was present in Court and represented by Richard Renner, Attorney at Law, Southeastern Ohio Legal Services, New Philadelphia, Ohio.

The Court

FINDS that for the reasons contained in the Decision authored under separate cover the Plaintiff should recover the sum of Four Hundred Fifteen Dollars (\$415.00) as and for unpaid rent and stemming from the Amended and Supplemental Second Claim for Relief filed on August 18, 1989.

It is therefore

ORDERED, ADJUDGED, AND DECREED that Judgment is awarded to the Plaintiff Superior Mobile Homes, Inc. and against the Defendant Donna Russell in the amount of Four Hundred Fifteen Dollars (\$415.00) to bear interest at the rate of Ten Percent (10%) per annum from the date of Judgment. All Court costs are assessed to the Defendant, are to be deducted from the deposit and Judgment is awarded to the Plaintiff and against the Defendant for a like amount for which execution shall issue.

IT IS SO ORDERED.

Edward Emmett O'Farrell
Edward Emmett O'Farrell, Judge