

IN THE CLEVELAND MUNICIPAL COURT

CUYAHOGA COUNTY, OHIO

JOHNNIE SCOTT,)
) Civil Action No.
 Plaintiff,) 76 CU H 7676
 -vs-)
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) ORDER AND OPINION
 PARK CENTRAL ASSOCIATES,)
 Defendant.)
 _____)

This action comes before this Court upon Complaint and Motion for Temporary Restraining Order filed by the Plaintiff, Johnnie Scott, who has since January 24, 1976 resided in Suite 14L of Park Centre, a large multi-unit complex located in downtown Cleveland. He seeks emergency relief under the "Anti-Lock-out" provision, O. R. C. §5321.15, of the new Ohio Landlord/Tenant Act, O. R. C. §§5321.01, et seq., on the grounds that the Defendant, its agents, employees and others have initiated an act of changing the lock on his suite for the purpose of recovering possession.

Jurisdiction is invoked pursuant to O. R. C. §1901.18(1)(3). Plaintiff has complied with Rule 65 of the Ohio Rules of Civil Procedure by advising the Defendant, through its counsel, of his intention to seek relief.

Furthermore, pursuant to Rule 65, plaintiff has filed a verification with his complaint.

The Court considers at this time simply the request for a temporary restraining order and will consider at a later time whether or not the plaintiff is entitled to damages and attorney fees as provided for under this section of the law.

The facts which the Court must consider here are relatively simple: (a) whether or not the plaintiff has a right of possession to Suite 14L, and (b) whether or not the defendant or its agents changed locks on his door which barred the plaintiff access to his suite. Plaintiff testified that he has been residing in Suite 14L and produced into evidence his lease reflecting his right of possession. He further testified that various agents of the defendant advised him and a friend that he would not be permitted back in the building. Finally, the plaintiff explained that he still has no key for the new lock and continues to need alternative housing until possession is restored and that he has received neither process nor a decree cancelling his right of possession.

In general, consideration of whether or not injunctive relief will be granted rests within the sound discretion of the trial court. United States v. Corrick, 289 U. S. 435 (1936). The factors to be considered are axiomatic: (1) that the plaintiff is likely to prevail on the merits; (2) that the plaintiff is likely to suffer irrep-

arable injury unless relief pendente lite is granted; (3) that the defendant is not likely to suffer substantial harm if such relief is granted; and (4) that the public interest considerations favor the plaintiff.

Accordingly, based on the evidence before the Court, we examine these factors. First, the plaintiff at this hearing proved by a preponderance of the evidence that the right of possession vested with him and that there was indeed a change in the locks of his apartment which barred him from entering. Accordingly, it appears likely that the plaintiff may very well prevail in proving his "lock-out" case on the merits. Secondly, there is no doubt that the plaintiff has and continues to suffer irreparably from the action of the defendant and has no access to his home, his personal possessions and the rightful facilities for which he is obliged to pay rent to the defendant. Thirdly, by removing the new lock and replacing the old for which the plaintiff has a key or by simply providing the plaintiff with a key to the new lock, defendant in no way can suffer substantial harm. Finally, the new Ohio Landlord/Tenant Statute, while having received little treatment by the courts to date, is one which has sought to reform many of the abuses arising out of a landlord/tenant relationship. Certainly, the anti-lock-out provision of the statute was included because the legislature was concerned about the possible violent consequences of the exercise of "self-help."

As the Cleveland Heights Municipal Court recently wrote about the landlord/tenant law:

In order to give vitality to this law, its language should be construed broadly in order to effectuate the objectives the legislature intended it to have. Rose v. King (1892), 49 Ohio St. 213, Slip Opinion at 2.

Josselson v. Rowland, No. 75-CV-G-1574, Cleve. Hts. Mun. Ct. (October 3, 1975).

It is consistent with this opinion and what the legislature intended as an important reform measure in Ohio to characterize this law as one of great public interest. Here, based on the facts this Court has heard, the public interest seems to favor the plaintiff.

With respect to the requirement of Rule 65(C), the plaintiff will not be required to give a bond executing same on the grounds that, for the relief sought here, such bond is unnecessary.

THEREFORE IT IS ORDERED THAT:

(1. Plaintiff's Motion for a Temporary Restraining

Order is hereby GRANTED;

(2) Defendant, its agents, servants, employees and attorneys shall forthwith either return the previous lock in which the plaintiff's key fits or forthwith provide plaintiff with keys to the new lock to maintain in his possession;

(3) Defendant, its agents, servants, employees and attorneys shall in no fashion or manner interfere, obstruct, prohibit access to or otherwise deny plaintiff and his guests possession of Suite 14L and the facilities available to all other tenants who

otherwise lawfully use them in and around the Park Centre complex;

(4) This Order shall remain in effect through March 31, 1976, and shall be extended through April 14, 1976, or until such a shorter time as a hearing may be scheduled;

~~(5) Hearing shall be preliminary scheduled at:~~

~~in the Cleveland Municipal Court.~~

IT IS SO ORDERED.

E. F. Katelinas

Judge

THE STATE OF OHIO
CUYAHOGA COUNTY }
CITY OF CLEVELAND }

ss. DENNIS J. KUCINICH
I, ~~XXXXXXXXXX~~, Clerk of Cleveland Municipal Court

and in whose custody the Files, Journals, and Records of said Court are required by the laws of the State of Ohio, to be kept, hereby certify that the foregoing is taken and copied from ~~XXXXXXXXXX~~ No. 87 Page..... of the proceedings of the said Municipal Court, and that said foregoing copy has been compared by me with the original entries on said ~~XXXXXXXXXX~~ and that the same is a correct transcript thereof.

In Witness Whereof, I do hereto subscribe my name officially.

and affix the seal of said Court, at Cleveland,

this 18th day of March A.D. 1976

DENNIS J. KUCINICH Clerk.

By *[Signature]* Deputy Clerk.

No. 76 CV H 7676

CLEVELAND MUNICIPAL COURT

Johnnie Scott

VS.

Park Central Associates

TRANSCRIPT

COPY OF DOCKET ENTRIES