

CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO

CESSA WILLIAMS	:	CASE NO. 78 CVG-24893
Plaintiff	:	JUDGE FLEMING
-vs-	:	<u>MEMORANDUM OF LAW</u>
MARIE TERRY	:	
Defendant	:	

The pertinent facts in this case are as follows. At all times relevant to this action, defendant resided at 10933 Columbia Avenue, Apartment 8, Cleveland, Ohio (hereinafter "subject premises) pursuant to a month-to-month tenancy she had entered into with plaintiff. The terms of this tenancy included a monthly rental obligation of \$35.00, and a periodic rental date of the tenth day of each month.

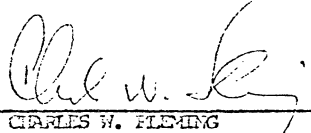
Prior to June 10, 1978, defendant was current in her rental obligation to plaintiff. For the period of June 10, 1978 to July 10, 1978 defendant tendered to plaintiff a rent payment of \$40.00 and said amount was accepted by plaintiff. For the period of July 10, 1978 to August 10, 1978, defendant tendered to plaintiff a rent payment of \$35.00 and said amount was accepted by plaintiff.

A periodic tenancy, e.g. month-to-month tenancy, is a tenancy under which no definite term is agreed upon, but the rent is fixed at a certain amount per a specified time period, e.g. \$100.00 per month. 49 Am. Jur. 2d

Landlord and Tenant, 570. A month-to-month tenancy is renewed each month a tenant tenders a rent payment and it is accepted by the landlord. This is true regardless of whether the tenant has tendered the agreed upon rental obligation or some lesser amount. Polk v. Gray, Cleveland Municipal Court, Case No. 75 CVG 25383, July 29, 1975; Eibler v. Oliver, Cleveland Municipal Court, Case No. B12243, July 14, 1972. While the landlord's acceptance of a partial payment of rent renews the month-to-month tenancy, nevertheless, the tenant remains liable to the landlord in an action for money damages for the unpaid portion of the rental obligation provided the landlord has not breached any of his obligations under Chapter 5321 of the Ohio Revised Code.

By accepting defendant's partial payment of rent (i.e. \$40.00) for the period of June 10, 1978 to July 10, 1978, plaintiff renewed the month-to-month tenancy and, accordingly, was precluded from bringing an action in forcible entry and detainer on the basis of nonpayment of rent for that period. Plaintiff's acceptance of defendant's full rental payment (i.e. \$85.00) for the period of July 10, 1978 to August 10, 1978 again renewed the month-to-month tenancy; and would have renewed the tenancy even if defendant had failed to pay the rental obligation, in whole or in part, for one or more of the prior months.

10-20-78  
DATE

  
JUDGE CHARLES W. FLEMING