

HAMILTON COUNTY MUNICIPAL COURT

HAMILTON COUNTY, OHIO

DOROTHY E. JAMIESON : Case No: 85 CV 39131
Plaintiff :
vs : O P I N I O N
TED HARRIS :
Defendant :

FACTS

On September 1, 1985, defendant Theodore Harris signed a rental agreement with the I.M.O. Company for the rooms located at 820 Elm Street. The agreement contains a clause that provides for the exception from formal court procedure in the event of an eviction. Upon acceptance of the rental agreement, defendant Harris was given the exclusive use and control of the rented rooms.

On October 27, 1985, defendant Harris was served with notice to leave by plaintiff Dorothy E. Jamieson, doing business as I.M.O. Company. On December 2, 1985, plaintiff Jamieson instituted this action by filing a complaint in forcible entry and detainer. On February 26, 1985, plaintiff Jamieson moved for summary judgment against defendant Harris.

OPINION

Plaintiff's rental agreement provides for an exception to the use of formal court procedures to be used in an eviction proceeding. If any option to except exists, plaintiff has waived her opportunity to do so by initiating this formal court proceeding.

It is inappropriate to use the phrase transient occupancy to describe circumstances such as defendant's. The chief distinction between a tenant and a lodger is whether the lessee is put into exclusive use and possession. The tenant has exclusive use and possession of his rooms. Linwood Park Co. v. Van Dusen, 63 O.S. 183, 58 N.E. 576; Branham v. Fordyce, 103 O. App. 379, 3 O. Ops. 2d 408; 145 N.E. 2d 471. Moreover, any building of which rooms are let for residential purposes to separate individuals such that each tenant occupies his own rooms, sustains the landlord tenant relation. Rose v. King, 49 O.S. 213, 30 N.E. 267; Linwood Park Co. v. Van Dusen, 67 O.S. 183, 58 N.E. 576.

The only saving construction of the clause in plaintiff's agreement is that it is intended to apply only to those lessees who occupy rooms for less than thirty consecutive days for purposes of complying with the Cincinnati Municipal Code Section 312. Defendant is not a lessee for less than 30 days. Any other construction of the clause would have the effect of making it exculpatory from the governing Ohio law. Obviously, exculpatory clauses are prohibited by Chapter 5321 of the Ohio Revised Code and are unenforceable. Section 5321.13. A landlord cannot attempt to waive any of his obligations by inserting clauses that are inconsistent with the law. Laster v. Bowman, 52 O. App. 2d 379, 6 O. Ops. 3d 428, 370 N.E. 2d 767; Colquett v. Byrd, 59 O. Misc. 45, 13 O. Ops. 3d 220, 392 N.E. 2d 1328; Riding Club Apts. v. Sargent, 2 O. App. 3d 146, 2 O.B.R. 161, 440 N.E. 2d 1368; Albrecht v. Chen, 17 O. App. 3d 79; Thomas v. Papodilis, 16 O. App. 3d 359.

Plaintiff's agreement, therefore, does not except her from the applicable Ohio law, Chapter 5321 of the Ohio Revised Code. The effect of plaintiff's notice on October 27, 1985 to defendant was to trigger Section 5321.07 and to put defendant on notice to remedy conditions.

As there are material issues of fact as to whether defendant cured his conditions and as plaintiff is not entitled to judgment as a matter of law, plaintiff's motion is denied.



DEIDRA L. HAIR, Judge
April 14, 1986