

HAMILTON COUNTY MUNICIPAL COURT

HAMILTON COUNTY, OHIO

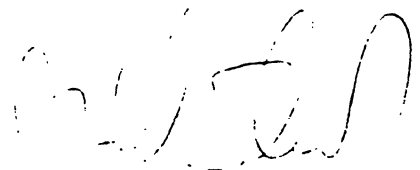
DR. AND MRS. SELNICK : Case No: 86 CV 21282
Plaintiff :
vs : O P I N I O N
LISA BAKER :
Defendant :

The facts in this case are set out in the agreed statement of facts duly entered in the record. The defendant was late approximately six (6) times with her rent, after which the rent was accepted by the plaintiff. The next time the defendant was late the rent was not accepted and a forcible entry and detainer action was begun. It is admitted that no written notice was given to the defendant of a change in policy by the plaintiff.

It is clear that the standard rule in Ohio is that if a landlord accepts continued late payments they waive their right to timely payments and can only rid themselves of this waiver by notice in writing to the tenant. The question in this case is does the language on page 13 of the lease in question supercede the common law and eliminate any need for the landlord to provide written notice of the change of policy.

The lease defines material non-compliance as repeated late payment of rent. After having had an opportunity to review all of the material provided as well as reviewing some of the cases cited it is my opinion that the landlord did in fact waive his right to timely payment. This lease is more detailed than a standard lease that would simply require payment on a

month but the law is the same in regard to both leases. The combination of repeated acceptances of late payment as well as the failure to notify the tenant in writing of a change in policy resulted in the landlord waiving the appropriate portions of paragraph 22 of the lease. This matter is therefore resolved in favor of the defendant with costs to the plaintiff.



J. HOWARD SUNDERMANN, Jr., Judge
November 30, 1987

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