

IN THE PORTSMOUTH MUNICIPAL COURT
SCIOTO COUNTY, OHIO

Rebecca E. Hawkins

Plaintiff

vs.

Mr. and Mrs. Eugene Collier

Defendant

No. 87-CVG-884

FILED
IN MUNICIPAL COURT
PORTSMOUTH, OHIO

JOURNAL ENTRY

SEP 10 1987

Connie Gulley, Clerk

This cause came on for hearing on the 20th day of August, 1987 and after due consideration of the same, it is hereby ordered that judgment be entered for the plaintiff and a writ of restitution issue.

cc: Jack D. Young
✓ Kenneth W. Porter

Charles F. Hultine

Attorney for Plaintiff
Defendant

Judge

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REBECCA E. HAWKINS,

Plaintiff

vs.

MR. AND MRS. EUGENE COLLIER,

Defendants

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Case No. 87-CVG-884

SEP 08 1987

REPORT OF REFEREE

Connie Gulley, Clerk

PRELIMINARY PROCEDURAL MOTION

The defendant Deanna Collier, through her attorney, moved to dismiss this action on the grounds that the Notice to Leave the Premises (Defendant's Exhibit A) does not state grounds for seeking to evict the defendants. An examination of Ohio Revised Code Section 1923.04 reveals that it does not require that the landlord state in this notice the grounds for his action and there appears to be no reported cases which require this. While the standard printed form sold by legal publishers has a space for grounds it appears that this is not required by law since the grounds would be stated in the complaint filed in the action. Accordingly this motion to dismiss is overruled.

FACTS

The facts in this forcible entry and detainer action are unusual. The defendants, Mr. and Mrs. Eugene Collier, rented a house from the plaintiff on July 26th or 27th of 1986. The defendants are now separated and Mrs. Deanna Collier is the only person living in the house and the only defendant appearing for trial.

The plaintiff's testimony is that she gave the defendants two months free rent to clean up the premises.

It then appears that the defendants proceeded to make extensive repairs and improvements to the premises. The defendants submitted receipts for materials purchased to the plaintiff landlord in lieu of paying rent.

No cash rent was ever paid by the defendants.

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The defendants claim they have invested \$1,982.83 in repairs to the premises. Using this figure the claim of the defendants is that the rent would be paid through November, 1987, and a part of December, 1987. Therefore they would not be in default of rent payments at this time and since that is the only grounds that plaintiff asserts they are entitled to judgment dismissing this action. It also appears that there were some negotiations for the defendants to purchase the premises. See Defendant's Exhibit C, a letter from the plaintiff's attorney containing an offer to sell. However it is not claimed by anyone that any land installment contract was ever entered into.

Connie Gulley, Clerk

TESTIMONY

The plaintiff in her testimony does not deny that the defendants made repairs to the house. She admits receiving receipts for \$30.00 and \$150.00. She disputes the claimed amount spent of over \$1,900.00 and offers in evidence a letter, Plaintiff's Exhibit 2, in which the defendant state that they have receipts for \$690.03.

Plaintiff testified that she asked the defendants why they were putting money into rental property they did not own but never got a direct answer.

James Griffin, brother of the plaintiff, testified that he acted as agent for the plaintiff in renting the house. He said he never collected the rent and knows of no agreement that the defendants were to be given credit for money spent on improvements.

On cross-examination he stated he had only one contact in renting the premises. He does not know when the defendants moved in. He was aware of improvements made by the defendants, carpeting, walls plastered and painting. He stated that there were holes in the wall and ceiling before the defendants moved in that needed repairs.

The defendant Deanna Collier testified that she dealt with James Griffin. She says he told her to go ahead and make repairs after \$300.00 was expended. Her husband called Griffin on the telephone-she did not hear what Griffin said. She stated repairs made included: hanging sheetrock and plastering; carpet on living room and dining room; wallpaper and paneling in dining room and kitchen; textured ceilings; a new commode and repairing walls in bathroom; refinishing woodwork and painting part of outside of the house. She testified that she sent receipts for \$30.00 and \$150.00 and then sent all receipts. There was no inspection by the plaintiff landlord. Her testimony is that although the premises were rented in July of 1986, they did not move in until September of 1986. She claims the free rent was not to start until they moved in.

She testified that there was talk about the defendants buying the property but no contract was ever entered into. She testified that the plaintiff never made any demand for payment of rent.

On cross-examination she stated that she is now separated from her husband. Her husband took care of all the negotiations. She again admitted that they have never paid any cash rent.

CONCLUSION

There is a clear conflict in the testimony as to what credit the defendants are entitled to for improvements to the property. It is noted that there was no written lease in this case and that no land contract for the purchase of the property was ever entered into. The defendants at all times were only month-to-month tenants, a status which they understood and agreed to.

In view of the undersigned the key evidence in this case is the letter, Plaintiff's Exhibit 2. In this letter the defendant give a figure of \$690.03 as the amount they have expended on the premises. In view of the fact that the defendants now claim a figure of \$1,982.83 this letter must be considered an admission against interest and is entitled to considerable weight.

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**IN MUNICIPAL COURT
PORTSMOUTH, OHIO**

If this figure of \$690.03 is accepted the defendants are now in default of
payment of rent.

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RECOMMENDATION

Connie Gulley, Clerk

It is recommended that judgment be entered for the plaintiff
and a writ of restitution issue.

Respectfully submitted,



Harry T. Herdman
Referee

Appearances:

Jack D. Young
Attorney for Plaintiff

Kenneth W. Porter
Attorney for Defendant