

IN THE MUNICIPAL COURT OF EATON, OHIO

WEST ALEX VILLAGE

Plaintiff

Case No. 88-CVG-179

vs.

TERESA GOODWIN, et al.

Defendant

ENTRY

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This matter came before the court on the 5th day of October, 1988 pursuant to Plaintiff's Amended Complaint and Defendant's Answer. Plaintiff was present in court and represented by Attorney Vanessa Guenther, Keener and Guenther; Defendant was present in court and represented by Attorney Mary Ann Thinnes, Rural Legal Aid Society.

Based upon the record, the evidence presented, and relevant law, the court finds as follows:

1. Paragraph 23 of the lease herein provides for termination of tenancy for material noncompliance which includes, but is not limited to, nonpayment of rent beyond a 10 day grace period. There can be no material noncompliance until after this grace period expires. Therefore, notice of termination of lease issued before the grace period expires is ineffective as a matter of law.

2. Where there has been a continued practice of accepting rent after the grace period, a tenant may rely on this practice as a change in the terms of the lease. Acceptance of rent after the grace period on numerous occasions constitutes a waiver and the landlord is estopped from asserting material noncompliance for nonpayment of rent under the circumstances herein.

3. The landlord's conduct of accepting the Salvation Army rent voucher after serving notice of termination of the lease amounted to a waiver of such notice. Such conduct voids the original notice and the landlord must serve a new notice of termination of lease in a subsequent eviction action.

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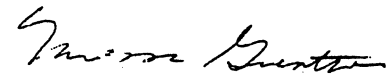
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there has been no material noncompliance on the part of Defendant and therefore Plaintiff's claim for restitution of the premises is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that insofar as there is no breach on which to proceed, Plaintiff's second cause of action for damages is hereby dismissed. The court makes no finding as to how much rent, if any, Defendant owes for the months of August, September, or October.

Costs of this action shall be taxed to Plaintiff.

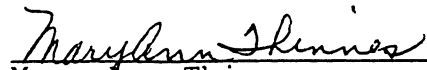
THOMAS J. JOURNELL, JUDGE

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