

with
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7/18/91

HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO

M.T.I. MANAGEMENT, : Case No. 89-CV-05464
Plaintiff : Judge Hair (Schott)
-vs- :
TRACY BELL, : ENTRY GRANTING DEFENDANT'S
Defendant : MOTION FOR SUMMARY JUDGMENT
: AND DENYING PLAINTIFF'S MOTION
: FOR SUMMARY JUDGMENT
:

Plaintiff and Defendant filed cross-motions for summary judgment. Upon consideration of the evidence, memoranda, and oral argument, this Court holds that there are no genuine issues of material fact. Viewing the evidence in the light most favorable to the non-moving parties, this Court holds that Defendant is entitled to judgment on Plaintiff's claim for possession as a matter of law.

The evidence is undisputed that Defendant paid January 1989 rent on January 6, with late fees. The lease between the parties allowed Defendant to pay rent on the sixth day of the month as long as late fees were paid. Therefore, Plaintiff cannot evict Defendant for nonpayment of rent under these circumstances.

In addition, equity abhors a forfeiture. Where Plaintiff has received the government subsidy, and will receive the rent bond that has accumulated while the case was pending, and where Defendant will lose a substantial interest in subsidized housing, Defendant is entitled to possession.

IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion for summary Judgment is denied;
2. Defendant's Motion for summary Judgment is granted;
3. Defendant is entitled to judgment on Plaintiff's claim for possession;
4. Plaintiff's second claim for money is continued for trial.