

ED

IN THE CHILLICOTHE MUNICIPAL COURT
ROSS COUNTY, OHIO '89 MAR 17 P4:48

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| HERITAGE HILLS, LTD., | : | TAMMY TYLER, CLERK |
| Plaintiff, | : | MUNICIPAL COURT |
| | : | CHILLICOTHE, OHIO |
| -vs- | : | Case No. 89 CVG 85 |
| TAMMY TYLER, et al., | : | Judge CUTRIGHT |
| Defendants. | : | <u>JUDGMENT ENTRY</u> |

This case came for hearing on March 8, 1989 on the Complaint in Forcible Entry and Detainer filed by the Plaintiff and the Answer filed by Defendants. Present for Plaintiff were company representative Judy Woods and James M. Schottenstein, counsel for plaintiff. Also present were Defendant Tammy Tyler and counsel for Defendants, Linda Kowieski and James Buchanan. At the close of plaintiff's evidence, Defendant's counsel made a Motion for Directed Verdict pursuant to O.R.C.P. 50. Upon this Motion the court rules.

The court finds that the evidence showed Defendant Tyler was a tenant at residential premises of plaintiff landlord under a lease stipulated to by all parties. Defendant initially had a negative rent of (-\$19.00) which was recertified to \$113.00 after Defendant obtained employment. Defendant worked from August 1988 to January 5, 1989 receiving \$136 take home pay per week for weeks she worked a full 40 hours.

The court further finds that on December 23, 1988 Defendant received a check for \$136 and on December 30, 1988 she received a check for only two days work because she was laid off over the holidays. Defendant was then permanently laid off from

her job January 5, 1989 and reported this to plaintiff's agent on January 6, 1989 at which time she indicated she could not pay her January rent. After contacting Ross County Community Action Council for payment of her rent under their emergency rent program Defendant requested that plaintiff issue her a Notice to Leave the Premises prior to January 10th because this was one of the program requirements for them to pay her rent.

The court further finds that while Defendant made an effort to have the rent paid for January 1989, Plaintiff, for policy reasons, chose not to go along with Defendant's efforts, and thus she was unable to pay the rent. Finally the court finds that the actions of Defendant were not willful or malicious.

The court feels that the equities in this case lie with Defendant and sustains the Motion for Directed Verdict, granting judgment to Defendant pursuant to O.R.C.P. 41(B)(2). In support of this finding the court cites Judge Gray's opinion in Heritage Hills v. Nusser (1986) Case No. 1183 (Ross Co. App., 4th District) which states:

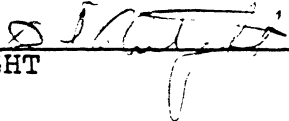
A lease will not be forfeited for mere nonpayment of rent where the equities of the parties can be otherwise adjusted. [citations omitted]. The situation here could have been easily remedied by Heritage Hills' acceptance of Nusser's rental payment plus late charges when tendered. Rather, Heritage Hills sought restitution of the premises. It is only where the conduct of the defendant is willful or malicious or where plaintiff cannot be made whole otherwise than by forfeiture that equity will not relieve a forfeiture. There is no evidence in the record that Nusser acted maliciously or willfully by her failure to pay rent on time.

Therefore the court renders judgment in this case for the Defendant.

IT IS SO ORDERED.

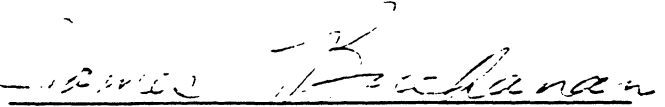
MAR. 17 1989

Dated


Judge CUTRIGHT

Approved:

SOUTHEASTERN OHIO LEGAL SERVICES


LINDA KOWIESKI
JAMES DANIELS
JAMES BUCHANAN
Attorneys for Defendants

The Clerk of this Court shall serve upon all parties, ~~whom~~ not in default, notice of this judgment and the date of its entry upon the journal, within three days of such date.

Submitted but not approved
JAMES M. SCHOTTENSTEIN
Attorney for Plaintiff


Judge