

IN THE NEWTON FALLS MUNICIPAL COURT
TRUMBULL COUNTY, OHIO

ROBERT POLSON)
AND)
JEANNETTE POLSON)
PLAINTIFFS)

CASE NO. 91 CV G 55

VS)

JOURNAL ENTRY

LERROY PETERSON)
AND)
MRS. LEROY PETERSON)
DEFENDANTS)

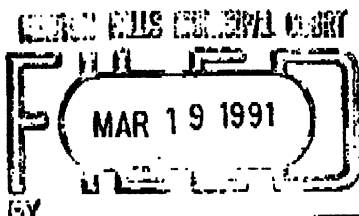
This matter came on for hearing on Plaintiff's First Cause of Action seeking restitution of certain residential premises. The parties stipulated that a 30-day notice to terminate the month to month tenancy was served in late December, effective February 1, 1991, and a proper notice to leave pursuant to 1923.04 O.R.C. was served prior to filing. Ownership was also stipulated.

It should also be noted that the parties were involved in a Landlord-Tenant action (rental escrow) which was dismissed in December, 1990, after repairs were accomplished by the Plaintiff/Landlord. Defendant maintains that this action amounts to prohibited retaliatory action under 5321.02 O.R.C.

Plaintiff, absent any retaliatory conduct is clearly entitled to possession, having properly terminated the periodic tenancy. Plaintiff seeks possession for several reasons. First, he objects to Defendant covering windows with cardboard, despite a number of objections on his part. Second, he wishes to refurbish the apartment which would require complete possession and third, he believes he has properly requested possession because the Defendant is "holding over his term" under 5321.03 O.R.C., thereby avoiding any issue under 5321.02 O.R.C.

Although the time frame between the escrow action and notice to terminate may raise an issue, it does not create a presumption in favor of the Defendant Karas v. Floyd, 2 O. App. 3d 4. Defendant still must meet his burden of proof. In this matter there did not appear to be reticence on the part of the Landlord in compliance with repairs. The Defendant appears to rely solely on the proximity of the two actions. Defendant has not, therefore, met the burden of proof.

It is therefore Ordered, Adjudged and Decreed that Plaintiff accept all rent tendered to date (February and March) and that Defendant vacate on or before March 31, 1991. Second Cause continued.



THOMAS L. OLD, JUDGE
NEWTON FALLS MUNICIPAL COURT