

BARBERTON MUNICIPAL COURT
BARBERTON, OHIO
FEB 3 9 10 AM '93

STATE OF OHIO)
) SS: IN THE BARBERTON MUNICIPAL COURT
SUMMIT COUNTY)

OWNERS MANAGEMENT COMPANY,) CASE NO. 91 CV G 774
)
Plaintiff) JUDGMENT ENTRY
)
VS.) January 23, 1993
)
TAMMY S. OSBORNE,)
)
Defendant)

On the 11th day of October, 1991, this Court vacated its prior judgment granting a writ of restitution and dismissed the Forcible Entry and Detainer (FED) action.


That decision was appealed to the Ninth District Court of Appeals which held on July 22, 1992, that vacating the writ of restitution was proper; however, the Court should not have dismissed the FED action.

Pursuant to the Ninth District Court of Appeals mandate this case was set down for an additional hearing on the merits of the FED on September 2, 1992. Based on the evidence presented at hearings on July 25, 1991, August 23, 1991 and September 2, 1992 the Court finds:

1. The plaintiff duly served upon the defendant on the 31st day of May, 1991 a ten (10) day notice in writing to leave the premises.
2. This action was filed on June 21, 1991 at which time the defendant was several months in arrears in her rent payments.

3. Gregory Matthews, the apartment manager for the plaintiff, advised the defendant that if the arrearage payments were received prior to the hearing date in Court, of July 10, 1991, the plaintiff would dismiss its forcible entry and detainer action and she would not be required to appear.
4. Tenants of the plaintiff are offered various ways to make their periodic rent payments; i.e. a preprinted envelope is given to tenants once a month and they are to put their rent in that envelope with the billing and forward it to Society National Bank, P.O. Box 9298, Cleveland, Ohio. If invoice enclosed, Society National Bank posts said payment to plaintiff's account and provides them with a daily transaction sheet. If no invoice is included with payment, Society Bank sends the payment to the plaintiff's office at 25250 Rockside Road, Bedford Heights, Ohio 44146 or the tenant may also send or take the payment directly to plaintiff at 25250 Rockside Road, Bedford Heights, Ohio 44146.
5. Defendant testified that on July 8, 1991 she got a money order for \$8.00 and she mailed it on July 8, 1991 in the envelope provided by Landlord/Plaintiff.
6. The plaintiff acknowledges receipt of the \$8.00 payment but was unable to present evidence as to when they received it.

Therefore, the Court denies plaintiff's request for a writ of restitution.



MICHAEL L. WEIGAND, JUDGE

cc: Atty. Ted Friedman
Atty. Gregory Sain

forfeiture where the equities can otherwise be adjusted. *Nagy v. Wargo*, 7 Ohio L.Abs. 457 (1929); *Southern Hotel v. Miscott*, 44 Ohio App.2d 217 (1975); *Akron Metropolitan Housing Authority v. Speegle*, No. 12757 (C.A. Summit County, 1987).


3. The Plaintiff waived the ORC 1923.04 notice to vacate by its acceptance of future rent in July, 1992, and subsequent months. *Marchioni v. Wilson*, 20 Ohio Misc. 2d 10, 485 N.E.2d 1073 (1984); *Associated Estates Corp. v. Bartell*, 24 Ohio App.3d 6, 492 N.E.2d 841 (1985); *Presidential Park v. Colston*, 17 Ohio Ops.3d 220 (1980).

4. The Plaintiff's acceptance of future rent in July, 1992 and subsequent months with knowledge of a prior breach of the lease agreement is conduct which acknowledges the continuing existence of the tenancy. *Quinn v. Cardinal Foods, Inc.*, 20 Ohio App.3d 194, 196, 485 N.E.2d 741,744 (1984).

5. The Plaintiff's unconditional acceptance of monies tendered in settlement of a lawsuit amounts to a compromise, settlement, accord and satisfaction or the like. *The Seeds, Grain & Hay Co. v. Conger*, 83 Ohio St. 169, 93 N.E. 892 (1910); *Inger Interiors v. Peralta*, 30 Ohio App.3d 94, 506 N.E. 1199 (1986); *First National Bank & Trust Co. v. Fireproof Warehouse & Storage*, 8 Ohio App.3d 253, 456 N.E.2d 1336 (1983). See also 15 O.Jur.3d, "Compromise, Accord and Release".

6. The Plaintiff's unconditional acceptance of monies which include future rental monies which could have otherwise been utilized by the Defendant to move to and/or to rent another

premises amounts to conduct which constitutes an estoppel. See
42 Ohio Jur.3d, "Estoppel and Waiver", Section 25.



MICHAEL L. WEIGAND, JUDGE

cc: Atty. Gregory Sain ✓
Atty. Ted Friedman