

FREMONT MUNICIPAL COURT
FREMONT, OHIO

VISTULA MANAGEMENT COMPANY, *
Plaintiff, *
vs. *
JUANITA SCOTT, *
Defendant. *

Case No. 91 CVG

JUDGMENT ENTRY

LOUISE S. BUNTING
CLERK

1991 MAY 23 PM 4: 16

FREMONT MUNICIPAL COURT
FREMONT, OHIO
FILED

This matter came on for hearing on the 13th day of May, 1991, upon the complaint of the plaintiff for restitution of the premises at 713 South Buchanan Street, Apartment D, Fremont, Ohio, owned by Delaware Acres, Incorporated from the Defendant, Juanita Scott.

Plaintiff's complaint is based upon the defendant's failure to pay monthly rent for the month of April, 1991 in the amount of \$101.00 as required per a lease agreement marked as Exhibit A and attached to plaintiff's complaint under an approved HUD apartment lease for a Section 8 unit. Paragraph numbered 3 of said lease indicates that tenant agrees to pay rent of \$101.00 per month. This amount is due on the first day of each month at the Delaware Acre's office and is to paid during regular business hours.

Defendant, Juanita Scott was served with a notice to leave the premises and termination of lease document on April 10, 1991, asking her to vacate the premises on or before April 13, 1991 for failure to pay the rent as stated above for April, 1991. The complaint was filed April 22, 1991 and service was had on the defendant May 3, 1991 with trial set for May 13, 1991.

The plaintiff's office manager testified at the hearing as well as the defendant. Subsequent to hearing, the Court received memorandums from counsel for both parties.

The Court finds that the rent was due April 1, 1991 and was not paid on that date. Defendant, in early April, within the grace period to pay rent, reported to plaintiff her inability to pay at that particular time, claiming problems with her spouse taking her money. Plaintiff acknowledges receiving the telephone call from defendant, but not the reason defendant claims she gave the manager for not being able to pay April's rent on time. On or about May 1, 1991, defendant attempted to tender both April and May's rent. The Court further finds that the defendant was not current in rent over the past year of defendant's lease with plaintiff. The defendant has been a tenant of the plaintiff for a period of approximately four and one-half years under annual lease agreements.

The Court further finds the defendant is unmarried and has five children from the ages of four to ten living with her in the unit. Her income is basically derived from A.D.C. and Food Stamps and further, the defendant has had prior problems with her husband from whom she is now separated.


In deciding this case, the Court finds persuasive the testimony of plaintiff's witness, Kathy Zaborney, indicating that the defendant called on or about April 5th to discuss the rent situation. Further, upon cross-examination, the witness indicated that the payment in June 1990, July 1990, September 1990, and January of 1991, that is, at least four other monthly payments had been in arrears in the last eleven months and on every occasion a notice was given to tenant and eventually the tenant did pay, and that prior to April of 1991, the witness indicated that there was a policy of accepting late rent payments from this defendant.

Further, plaintiff's witness testified that the plaintiff had paid the rent for June, July and August 1990, all at one time in August after she did not receive an income check in June of 1990 due to having surgery.

The Court does find a past pattern and practice of accepting late rent and that on several occasions the rent was accepted substantially later than the due dates. The Court further finds that rent having been accepted late on at least four occasions between June, 1990 until January, 1991 does constitute a course of dealing that rent had been accepted late. The Court finds that the landlord must give advance notice that such existing pattern will no longer be continued or allowed before the plaintiff can enforce a current complaint for late payment of rent.

A landlord is never under a continuing obligation to accept late rental payments; therefore, if a landlord advised a tenant in a reasonable and timely fashion that the original deadline for the payment of rent will not be waived, then late rental payments may be used as the basis for the prosecution of a successful forcible entry and detainer action by the landlord against the tenant.

Thus, the Court hereby denies plaintiff's request for writ of restitution for return of 713 South Buchanan Street, Apartment D. This holding does not preclude the landlord from filing a future forcible entry and detainer action after informing the tenant that subsequent late rental payments will not be accepted and the tenant not thereafter complying with the rental payment obligation in a timely manner. The Court further finds Defendant shall pay the April and May rent to plaintiff within a reasonable time not to exceed ten (10) days from the date of this entry.



MICHAEL L. BURKETT, JUDGE

cc: Douglas A. Wilkins, Attorney for Plaintiff
Steve Robins, Attorney for Defendant