

IN THE COUNTY COURT OF MORGAN COUNTY, OHIO

McConnelsville Associates : Case No. 92-CV-G-56
PLAINTIFF :
vs. : JOURNAL ENTRY SEP 28 1992
Fay Gladden :
DEFENDANT :

This matter came before the Court on the Motion For Summary Judgment filed by the Defendant on July 2, 1992.

A preliminary matter has arisen as the Plaintiff failed to file its memorandum with affidavits in accordance with Civil Rule 56(C)(6). The parties have been given ample opportunity to present their respective positions to the Court. As only the Plaintiff (i.e. client not its attorney) would be penalized by not considering its Memorandum filed on August 24, 1992, this Court will consider said Memorandum in its decision on the aforesaid Motion For Summary Judgment.

Turning to the Motion For Summary Judgment filed by the Defendant on July 2, 1992, it has three (3) branches:

- I. Plaintiff waived the effect of any alleged eviction by accepting rent for the month of June 1992.
- II. Plaintiff has not served on the Defendant a notice to leave the premises as required by O.R.C. 1923.04.
- III. Plaintiff has not served on Defendant a Termination Of Tenancy Notice which meets the requirements of paragraph 24 of the rental agreement or the regulations which govern terminations.

BRANCH I

With respect to Branch I, the Court finds that the Defendant paid her rent to the Citizens National Bank of McConnelsville on May 26, 1992 (for June 1992) although being directed to pay it to the Court as contained in the Ohio Termination Notice-non-payment of rent dated May 12, 1992. The Court advised the attorneys for each party by telephone on May 21, 1992 that the Defendant's prior Motion For Summary Judgment (in Case No. 92-CV-G-26) was granted. An Entry embodying this ruling was filed on May 29, 1992. Secondly, as represented by Plaintiff's counsel to the Court, the Plaintiff never instructed Citizens National Bank to not accept rent of the Defendant. Thirdly, the rent paid was accepted by the Plaintiff by the act of the bank accepting and negotiating it. Subsequent acts by the Plaintiff cannot and did not undo such acceptance. This may be *deja vu* for the Plaintiff, but the law and this Court's position with respect to it is clear from the prior order granting Summary Judgment in McConnelsville Associates vs. Fay Gladden, Case No. 92-CV-G-26, filed on May 29, 1992. Accordingly, Defendant's Motion For Summary Judgment is granted on Branch I.

BRANCH II

With respect to Branch II, the Court finds that the Plaintiff combined the termination of tenancy required by federal regulation (as this being a H.U.D. subsidized rental unit) with the Ohio 3-day notice to vacate being dated May 26, 1992. According to Oppmann Properties vs. Jackson, Cleveland Municipal Court Case No. 90-CV-G-9118 and other cases cited by the Defendant in her brief filed on September 14, 1992, the tenancy of the Defendant is not terminated until the expiration of said time period (10 days). The R.C. 1923.04 notice to vacate may not be served until after the termination or expiration of the tenancy. Accordingly, said notice to vacate was improper both as to timing and service on the Defendant. Therefore, Defendant's Motion For Summary Judgment is granted on Branch II.


Branch III

With respect to Branch III, the Court finds that the 10-day notice of termination does not comply with the federal rules and regulations applicable to this matter. The cases cited by the Defendant in her brief filed on September 14, 1992 plus the Associated Estates Corporation vs. Bartell, 24 Ohio App3d 6 (1985) (which parenthetically is equally applicable to Branches I and II of Defendant's motion) all state that the notice must state the grounds for termination with specificity to enable the tenant to prepare a defense according to federal regulations. Items 1-4 contained in Plaintiff's notice are blanketed in broad language and do not refer to specific instances or times or dates sufficient for the Defendant to prepare a meaningful rebuttal. Accordingly, said notice was inadequate and denied the tenant procedural due process.

Therefore, Defendant's Motion For Summary Judgment is granted on Branch III.

It is hereby ORDERED that upon consideration of Defendant's Motion For Summary Judgment and the briefs, memorandum and affidavits filed herein by both parties, there is no genuine issue as to any material fact. The Defendant is entitled to judgment as a matter of law, and the evidence demonstrates that reasonable minds can come to but one conclusion and that conclusion is adverse to the party opposing the motion. The complaint of the Plaintiff is hereby dismissed at its cost.

The Clerk of this Court is instructed to release the rents held in escrow deposit to the landlord, without prejudice to any of its rights. The Clerk is further ordered to return the deposit for jury costs.


EDWARD B. BUONOPANE, JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Journal Entry was sent by ordinary U.S. Mail to Arthur B. Cunningham, Attorney At Law, 132 Fair Ave. N.W., New Philadelphia, Ohio 44663 and to Dennis Harrington, Attorney At Law, 427 Second Street, Marietta, Ohio 45759 on this 30TH day of September, 1992.


ALMA J. TENNENT, DEPUTY CLERK