

FILED
AUG 10 1992

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

RALPH H. RAGAN)	CASE NO. 92 CVG 7027
FILED)	
PLAINTIFF)	
)	REFEREE LYNETT
v.)	
)	
CARL SITZLER, DONNA SITZLER AND)	<u>REFEREE'S REPORT</u>
OCCUPANTS)	
)	
DEFENDANT)	

This matter was scheduled for hearing before Referee Thomas F. Lynett on the 30th day of July, 1992. Plaintiff was present in court. The defendants were present in court with counsel.

From the evidence presented by the parties the Referee finds the facts to indicate that the defendants were tenants of plaintiff since 1986 Pursuant to a Section 8 lease. The total rent for the 380 South Arlington Street premises was \$355.00 per month of which the defendant was obligated to pay \$71.00 per month.

Plaintiff served his three day notice to leave the premises on June 30, 1992 alleging non payment of rent for June and July, poor housekeeping and damage to the property and for permitting pets on the premises. Plaintiff filed his action on July 9, 1992. Plaintiff alleges that his payment from Section 8 was abated for failure to make repairs. Plaintiff claims defendant is responsible for the damages and that the defendant refused admission to plaintiff's repairman. Plaintiff is asking for a Writ of Restitution.

Defendant testified that when the plaintiff came for the rent she didn't refuse to pay the rent, but said that she had to call Section 8. She was told by Section 8 to go ahead and pay the rent. Defendant claims she offered the rent for June and July, but it was refused.

On cross examination, plaintiff testified that he didn't refuse the rent, but that the reason he is evicting is to get out of the Section 8 program. Plaintiff states his rent was abated for June and July. Plaintiff stated that every year his Section 8 inspection required repairs which were tenant caused. Defendant's witness, Tom Baugher, a Section 8 inspector, testified that his inspection did not assess responsibility for the damages.

The defendant claims a timely tender of the rent and further that if poor housekeeping and damage to the property is claimed, plaintiff should have given the defendant a 30 day notice to comply before terminating the lease.

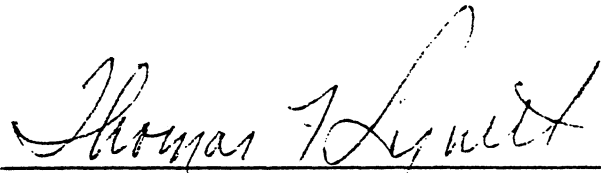
The Referee finds that by failing to make the necessary repairs, plaintiff lost his rental subsidy for defendant's unit. The Referee finds insufficient evidence submitted to show that the plaintiff's workers were prohibited entrance by the defendant.

The Referee further finds that there was an attempt on defendant's part to pay the rent and it was refused. The Referee finds that when a landlord refuses a timely tender of rent, he can not base an eviction action on the lessee's failure to pay rent (Caringi v. 2819 Howard Inc., Cuyahoga County 3-12-87 unreported)

The Referee further finds that the plaintiff can not evict for poor housekeeping and damages without serving a 30 day notice to the

defendant. There was no evidence presented to show such 30 day notice was given.

At the close of both the plaintiff's case and the defendant's case, the defendant moved to dismiss. Accordingly, defendant's motion to dismiss is granted and it is the recommendation of the Referee that a writ of restitution not be allowed.



Thomas F. Lynett, Referee

JUDGMENT ENTRY

The report of the Referee is hereby approved.

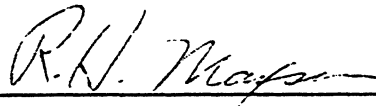
It is the judgment of the Court that a writ of restitution MAY
NOT issue.

Costs to be paid by PLAINTIFF/DEFENDANT.

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AKRON MUNICIPAL COURT
COURT CLERK



Judge, Akron Municipal Court