

CANTON MUNICIPAL COURT
STARK COUNTY, OHIO

INSIGNIA MANAGEMENT GROUP
MANAGING AGENT FOR CHIPS
APT I, LTD,

Plaintiff

vs.

NINA McCRAE,

Defendant

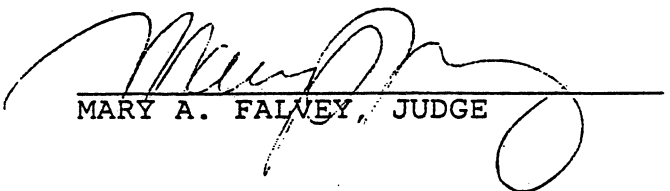
CASE NO.: 94-CVG-4696

JUDGE MARY A. FALVEY

JUDGMENT ENTRY

The Court, having reviewed the evidence herein, and
recommendation of the Referee filed in his Report of Referee
filed on October 11, 1994, hereby approves and confirms the
same.

DATED: 10/20/94


MARY A. FALVEY, JUDGE

cc: Jon M. Hollingsworth, Counsel for Plaintiff
Ivan L. Redinger, Jr., Counsel for Defendant

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tenant's tenancy, and specifically affirms that the tenant has in all other respect been a very responsible tenant, kept her unit in nice condition and paid rent on a timely basis.

4. The Plaintiff has sought Writ of Restitution of the premises on the grounds of illegal activities on the premises based on a drug arrest involving the daughter of the tenant (who was not a member of the tenant's household, except to the extent set forth herein below).

5. On May 17, 1994 Canton city police observed drug activity at the subject property. Specifically a plastic vial with fifteen (15) "crack" cocaine rocks was observed on the property, and upon entering the apartment marijuana was found, together with Mona Lisa McCrae Barrino, (the Defendant's daughter) and at least one other individual.

6. At the time of this incident the Defendant was in Chicago for the weekend and did not have actual knowledge of the presence on her property of her daughter.

7. Tenant's daughter, Mona Lisa Barrino, was known to both the tenant and the plaintiff as a drug user and perhaps dealer. She had earlier been evicted from her own apartment at the apartment development and warned off the premises; and the Defendant had been warned by the property owner against permitting her on the premises.

8. At the time of the May incident the daughter was temporarily here from her home in Ozark, Alabama where she had moved four months ago. During her presence in Stark County the Defendant had permitted her to keep her suitcase and personal belongings in her apartment but had not permitted her to sleep there or stay there otherwise.

9. During the daughter's stay here, the tenant had not given her a key to the apartment. The Tenant had had a deadbolt lock installed on the property to secure it, but its operation was uncertain inasmuch as the slot in the doorjamb for the deadbolt did not align properly and sometimes the door would not lock with the deadbolt. The apartment was also accessible from the kitchen window.

10. During her absence in Chicago, the Tenant had asked her sister, also a resident of the apartment complex, to keep an eye on the apartment. The sister did in fact do so and on the May 17, 1994 incident had observed people in

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the apartment unknown to her, and it was in fact the Tenant's sister who called the authorities to report suspicious activities; and that call resulted in the observations set forth above.

CONCLUSIONS OF LAW:

1. The duty of care imposed on a Tenant by statute (Revised Code Section 5321.05A6), although referring to persons on the property damaging the property, sets forth that a tenant is not required to predict and prevent all possible acts of a guest and does not require a landlord to physically restrain a visitor but rather requires only verbal warning to a visitor. Ohio Casualty Insurance Co. vs. Wills, 29 Ohio App. 3rd 219 (1985).

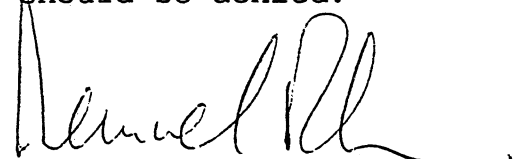
2. Some degree of participation in the claimed illegal activity by the Tenant is necessary to render her subject to eviction. Stark Metropolitan Housing Authority vs. Curtis, 5th Dist. Court of App. Case No. CA9462 (1994). The tenant took reasonable steps to prevent use of her apartment by her daughter for criminal activity, and as such should not be held responsible for the resulting illegal activity which took place during her absence from the city.

3. The Writ of Restitution should be denied.

RECOMMENDATION OF THE REFEREE:

The Writ of Restitution should be denied.

DATED: October 7, 1994



REFEREE LEMUEL R. GREEN

cc: Jon M. Hollingsworth, Counsel for Plaintiff
Ivan L. Redinger, Jr., Counsel for Defendant