

CLEVELAND MUNICIPAL COURT
DIVISION OF HOUSING
CUYAHOGA COUNTY, OHIO

CLEVELAND HOUSING NETWORK)	CASE NO. 96 CVG 10871
LIMITED PARTNERSHIP X)	
)	
Plaintiff,)	
)	<u>MAGISTRATE'S REPORT AND</u>
vs.)	<u>RECOMMENDATION</u>
)	
LODYBELL SALGADO)	
)	
Defendant.)	

This case was heard and submitted for decision on June 25, 1996 evidence having been taken June 18, 1996 and June 25, 1996 Plaintiff's representative and counsel were present. Defendant and counsel were present. The hearing was conducted by Magistrate C. David Witt, to whom this case was assigned pursuant to Ohio Civil Rule 53, to take evidence on all issues of law and fact regarding Plaintiff's Cause of Action for Possession

FINDINGS OF FACT:

1. Plaintiff and Defendant entered into a written lease for property located at 3118 W. 18th Place, Cleveland, Ohio
2. The monthly rental obligation was \$185.00 during 1996. Rent was due on the first with a late charge of \$10.00 incurred if not paid by the tenth. Defendant owed \$320.00 in rent and late charges as of April 10, 1996.
3. On or about April 10, 1996 the Defendant tendered \$310.00 to Plaintiff which amount in the form of a money order was retained uncashed by Plaintiff until on or about May 13, 1996 at which time it was mailed back to the Defendant because of a pending eviction proceeding. A payment for May 1996 was also subsequently returned
4. On April 10, 1996, Plaintiff served on Defendant a notice to leave premises. The instant action was subsequently brought for non-payment of rent

5. During the period April 1995 through February 1996, an eleven month period, the Defendant paid her rent to the Plaintiff after the tenth of the month on eleven occasions. During this period, on one occasion the Defendant made a bulk payment of \$370.00 on the current obligation and arrearage; on another occasion the Defendant paid \$555.00 on the current obligation and arrearage.

CONCLUSION OF LAW AND FACT:

6. In the case, sub judice, the Plaintiff, repeatedly accepted the late payment of rent on a continuing and consistent basis for one year, only to summarily assert a claimed right to evict for late payment of rent. Ohio law recognizes that an established course of conduct of accepting late rent payments remains in effect until and unless the landlord provides the tenant with advance notice that the course of conduct will no longer be continued or permitted. Bates & Springer, Inc. v. Nay, 91 Ohio L. Abs. at 427, 187 N.E.2d at 416.

7. The Court concludes there is insufficient evidence that, prior to issuance of the notice to vacate, advance notice was forwarded by Plaintiff to the Defendant that late payments would no longer be accepted; rather it appears by the conduct of the parties that Defendant was entitled to rely upon Plaintiff's continuing relaxed policy regarding the payment of rent. To rule otherwise would be an affront to established case law, Bates v. Springer, Inc., supra, and to general principles of equity.

8. Additionally, the Court concludes the Plaintiff failed to timely tender back to the Defendant the April payment; that, accordingly, the notice to leave premises served in April was compromised by the landlord's retention of the April payment well into May 1996.

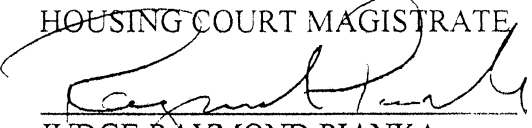
JUDGMENT:

Judgment for the Defendant on Plaintiffs' action for possession.

RECOMMENDED:

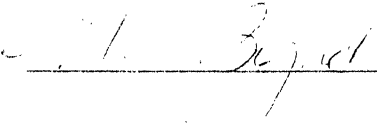

C. DAVID WITT
HOUSING COURT MAGISTRATE

APPROVED:


JUDGE RAYMOND PIANKA
HOUSING DIVISION
CLEVELAND MUNICIPAL COURT

SERVICE

A copy of the Magistrate's Report was sent by ordinary U.S. mail to the Plaintiffs' attorney, William H. Armstrong, 8228 Mayfield Road, Chesterland, Ohio 44026 and to the Defendant's attorney, Ed Gregory, 3408 Lorain Avenue, Cleveland, Ohio this 15th day of July, 1996.



IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE REFEREE'S REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS OF FILING AND MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.