

JUDGMENT ENTRY RECEIVED
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IN THE CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

TRACIE BESS

DATE: MAY 6, 1997

Plaintiff(s)

-VS-

CASE NO: 96-CVH-1586

MICHAEL MCBRIDE

Defendant(s)

JUDGMENT ENTRY
AND OPINION

The plaintiff/tenant, Tracie Bess, seeks a restraining order mandating that water service be restored and maintained at the rental premises she occupies at 2560 West Ninth Street, Cleveland, Ohio.

Defendant/landlord Michael McBride is the owner of the residential rental premises described above. The premises consists of a single family home, which is the only building on that lot of land.

In February 1995, Bess and McBride entered into a rental agreement governing Bess' occupancy of the premises. This agreement was signed by McBride, but not by Bess. Pursuant to the agreement, Bess was to pay \$435. per month, as well as "all utilities." The words water/sewer were handwritten in the margin and then lined out.

The gas and electric bills are in Bess' name. The water bill is in McBride's name. At no time did Bess go to the City of Cleveland, Division of Water (hereinafter Division of Water), to have the bills converted into her name, pursuant to the procedures of the Division of Water.

In November 1995, the Division of Water terminated water service to the premises based upon nonpayment of the water bill. At that time, Ms. Bess paid \$150. to the Division of Water. Subsequently, water service was restored to the premises, at the request of this Court. As of February 6, 1996, \$661.95 was owed to the Division of Water for water charges at the premises.

The Landlord Tenant Act sets forth the rights and responsibilities of landlords and tenants. Specifically, R.C. 5321.04(A) provides that a landlord who is a party to a rental agreement shall "supply running water, reasonable amounts of hot water and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for the purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection." R.C. 5321.04(A)(6).

This statute is ambiguous as to what constitutes a landlord's obligation to "supply running water." The statute does not define or explain the term "supply".

R.C. 5321.04 also imposes an obligation upon a landlord to comply with local building, housing, health and safety codes that materially affect health and safety. It requires a landlord who is a party to a rental agreement to "comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety." R.C. 5321.04(A)(1).

The Landlord/Tenant Act recognizes that each community can establish health and safety standards applicable to that particular community and that those standards become part of the landlord's obligations.

In the case of Cleveland, the Cleveland Codified Ordinances impose upon a landlord the primary obligation to see that water is available on a continuing basis to any occupied residential facility. The Cleveland Codified Ordinances provide that "[a]ll plumbing fixtures in a dwelling structure shall be supplied with running water from the Municipal water supply system," and that "[e]very dwelling unit shall have an adequate supply of running hot water properly connected to all plumbing fixtures requiring hot water." Cleveland Codified Ordinance 369.07(a), (b). Further, the Ordinances mandate that "[a]ny owner of real-estate premises to which water is supplied shall be deemed primarily liable for all water and service charges to such premises, whether or not the premises is occupied by the owner, tenant or other persons, and whether or not the account has been established in the name of some other person or entity." Cleveland Codified Ordinance 535.15

The decision in the instant case turns not on the language of R.C. 5321.04(A)(6), but rather upon the language of R.C. 5321.04(A)(1), which incorporates what is required by local ordinance into the Landlord/Tenant Act. Different communities may approach this issue with different legislative enactments giving rise to different results. The Landlord/Tenant Act recognizes the importance of each community being able to establish its own standards given local conditions. Cleveland, as the largest urban community in the State, has recognized that ongoing access to water is essential for health and safety, not only for the individual, but for the extended community as well.

To resolve the issues posed by plaintiff's request for injunctive relief, the Court need not determine the consequences of an arrangement wherein the landlord and tenant have agreed that the tenant will bear the costs of water and sewer service. The contractual "burden shifting" relates only to the relationship as between the parties themselves. Even if a contractual term exists which shifts the burden of payment for water services, a landlord in the City of Cleveland cannot escape his obligation to third parties: the Division of Water and the community in general. Out of concerns for health and safety, the Codified Ordinances place upon the landlord the ultimate responsibility for fulfilling that obligation. Whether the tenant has paid for the water or not, the landlord remains primarily liable for assuring that the water remains flowing.

As a practical matter, the landlord is not without his remedies. If his tenant agrees to pay the water bill and then defaults, the landlord has ready access to the summary process of forcible entry and detainer. The landlord could, similarly, bring a claim for money damages. But until that tenant has vacated the premises, either voluntarily or by Court order, the landlord will have a continuing obligation to keep the water running for reasons of health and safety—and because the City Code requires it. For the foregoing reasons, Bess' request for permanent injunctive relief is granted. McBride must take all necessary steps, including payment, to maintain water service at the premises during the remainder of Bess' occupancy.

Under this decision, a landlord will remain subject to claims for equitable relief in the event that the water is terminated while the tenant remains in occupancy. Nonpayment of the water bill by the tenant will not be a defense available to the landlord, any more than nonpayment of rent is a defense to a landlord's failure to abide by other Code obligations affecting health and safety.

This Court notes that there is nothing in the Landlord Tenant Act which prohibits a landlord and tenant, as between themselves, from entering into a contractual arrangement such that the tenant agrees to pay for the water. Cleveland Codified Ordinance 535.15 speaks to the landlord's obligation as "primary" which suggests that, as between the landlord and tenant, the obligation may be shifted. Indeed, there have been situations where tenants go to the Division of Water, pay a deposit, and have the bill placed in their names—although the landlord remains primarily responsible if the bill is not paid.

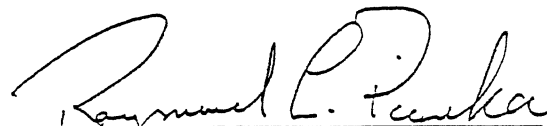
If it is the intention of the parties to enter into an agreement for the tenant to pay for water service, the contractual arrangement shifting the obligation to pay water from the landlord to the tenant must be explicit and unambiguous. Any contract will be interpreted in the context of common business practice. Within the City of Cleveland, the term "utilities" in the context of residential landlord/tenant relationships consistently has meant utilities such as gas and electricity, but excluding water and

sewer charges. In the overwhelming number of residential lease arrangements in the City of Cleveland today, the landlord routinely pays the water and sewer charges. While the parties may shift that burden—as between themselves—to be valid, that shifting must be free of any ambiguity given how “utility” is routinely defined in the context of local business practice. The contract agreed upon by the parties must be specific enough so that the Court will be able to conclude that there was a meeting of the minds between the landlord and tenant with respect to the issue of utilities.

As the drafter of the lease in most landlord-tenant relationships, the landlord is in the position to state clearly in the lease that the tenant is to pay the water bill. For example, in addition to the phrase “all utilities,” a rental agreement may include another phrase that indicates that the tenant is to pay for water and sewer, what the meter reading is at the time the tenant moves into the premises, and what the charge is per thousand cubic feet of water. By calling the Division of Water, the owner of the premises can ascertain this information. If the information is included in the lease it will indicate that the tenant knew that they were to be responsible for the water bill, and that the tenant had some control as to how much water was used.

Applying these legal principles to the facts in this case, there is ambiguity as to whether the McBride and Bess agreed to shift the burden of paying for water from the landlord to the tenant. The lease purporting to shift the burden is unsigned by the Bess. The lease as originally drafted stated that Bess was responsible for “all utilities,” with the phrase “water/sewer” written in next to “all utilities.” The parties scratched out “water/sewer” leaving only “all utilities” remaining. In this case, there is no clear language shifting the burden from McBride to Bess. As a result, McBride has a continuing responsibility to pay for the water and sewer charges.

Bess’ request for permanent injunctive relief is granted. McBride must take all necessary steps, including payment, to maintain water service at the premises as long as the Bess occupies the unit.


JUDGE RAYMOND L. PIANKA
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION

CLEVELAND MUNICIPAL COURT
DIVISION OF HOUSING
CUYAHOGA COUNTY, OHIO

TRACIE BESS)	CASE NO. 96 CVH 1586
)	
Plaintiff,)	
)	
vs.)	<u>AMENDED JUDGMENT ENTRY</u>
)	<u>AND OPINION</u>
)	
MICHAEL MCBRIDE)	
)	
Defendant,)	

The decision in the captioned case was journalized May 6, 1997. The Court, sua sponte, corrects one element of that decision.

The last paragraph of the decision stated as follows:

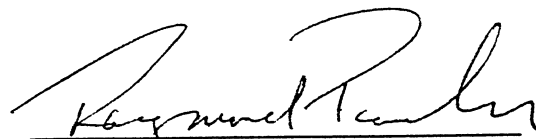
Bess' request for permanent injunctive relief is granted. McBride must take all necessary steps, including payment, to maintain water service at the premises as long as the Bess occupies the unit (emphasis added).

The decision in the captioned case acknowledged that landlords and tenants are free to negotiate a contractual relationship wherein, as between themselves, the tenant bears the cost of utilities that include sewer and water charges. The Court concluded, however, that given routine business practice in the Cleveland community, the shifting of the burden for water and sewer charges from landlord to tenant must be supported by clear and unambiguous language to that effect. In the captioned case, the parties entered into a rental agreement in February 1995. Submitted in support of that agreement was a document signed solely by the landlord, which provided the term of lease would be from February 9, 1995 through February 28, 1996. The document provided, further, "that this Agreement shall become a month-

to-month agreement ONLY if Owners accept rent from Tenants.' Accordingly, the February 1995 agreement -- if it survives at all -- survives presently as a month to month tenancy.

The Court concluded that the language of the February 1995 agreement did not clearly shift the burden for water and sewer charges from landlord to tenant. Such a determination should not, however, be seen as casting in concrete for all perpetuity the legal relationship of the parties. Upon the expiration of the instant lease or any subsequent month to month renewal thereof, the parties were and are free to negotiate an alternative relationship. The landlord may, at its option, also simply elect not to renew a month to month tenancy provided the tenant is afforded thirty days notice in advance of the periodic rental date. O.R.C. 5321.17. Accordingly, the last paragraph of the Court's Judgement Entry and Opinion journalized May 6, 1997 (journal 231, page 010) is revised nunc pro tunc to read as follows:

Bess' request for permanent injunctive relief is granted. McBride must take all necessary steps, including payment, to maintain water service at the premises so long as the February 1995 lease or any month to month renewal thereof remains in effect.



JUDGE RAYMOND PIANKA
HOUSING DIVISION
CLEVELAND MUNICIPAL COURT

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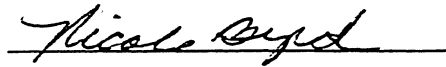
A copy of this Entry was served by regular U.S. mail upon the following parties September ^{15th}, 1997:

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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.