

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

Demetrius C. Lovett)	CASE NO. 97 CVG 5586
)	
Plaintiff)	
v.)	Magistrate: Thomas F. Lynett
)	
Delores Brown, et al)	MAGISTRATE'S DECISION WITH
)	FINDINGS OF FACT AND CONCLUSION
Defendant)	OF LAW

FILED
MAY 20 8:17
MUNICIPAL COURT

This matter was scheduled for hearing before Magistrate Thomas F. Lynett on he 18th day of July 1997. Plaintiff was present in court. Defendant was present in court with counsel.

From the evidence presented by the parties the court finds the facts to be that Plaintiff was the owner of premises located at 776 Bellevue Avenue Akron, Ohio and is a tenant there. On or about December 5, 1996, the parties entered into a written agreement known as Section 8 Certificate Program and Defendant's monthly obligation was zero.

On or about May 15, 1997, Plaintiff served a 30 day notice on Defendant to leave the premises due to non-payment of the water bill. Subsequently, on June 16, 1997, Plaintiff served his 3 day notice on the Defendant again alleging non-payment of the water bill.

Defendant claims that neither the Akron Public Utilities Bureau nor anyone else sued Plaintiff for the water bill. Defendant claims that due to a constantly running toilet, the water bills are exceptionally high. Defendant alleges that the water was shut off in May for four days, but that she has paid all of her bills to date and as of the date of hearing, there is no balance due and owing.

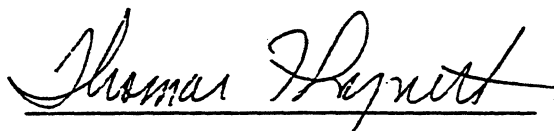
Defendant argues that Plaintiff's notice fails to be specific as to the reason for the eviction, fails to list a specific date when the lease would terminate and failed to give the tenant a period in which to cure the alleged breach.

The court permitted both parties to file post hearing briefs. Defendant, through her attorney, filed his brief. As of the date of this finding. Plaintiff had not responded.

The court finds a number of reasons to deny the issuance of the writ of restitution. First and foremost, the termination notice, although is specific at the act of omission, does not list the specific date for termination of the lease and makes no allowance for the curing of the act of omission.

The court finds the 30 day notice failed for lack of specificity as required by Ohio Revised Code Section 5321.11 as well as the Code of Federal Regulations. Another reason for denying the issuance of the writ would be that "Equity abhors a forfeiture". Here we have a minor infraction which was cured before the end of the 30 day notice. The court finds that the forfeiture of the leasehold and loss of subsidy for the Defendant that would go with it would be extremely inequitable to the Defendant.

Based on the testimony and the evidence it is the decision of the Magistrate that a writ of restitution not be issued.


Magistrate Thomas F. Lynett

JUDGMENT ENTRY

The decision of the Magistrate is approved.
It is the judgment of the Court that a writ of restitution MAY NOT issue.
Costs to be paid by the Plaintiff / Defendant.

Date : 8/19/97

JUDGE: 

FILED
1997 AUG 20 A 8:17
AKRON JUDICIAL COURT
JIM ARIA
CLERK