

CAMBRIDGE MUNICIPAL COURT
GUERNSEY COUNTY, OHIO
CIVIL DIVISION

DAN NAVICKY
PLAINTIFF,

CASE # 97CVG00295

-vs-

JULY 03, 1997

1997 JUL 03 11:00 AM
JAMES H. ...
CAMBRIDGE MUNICIPAL COURT

DAVE COPAS & KIM STOCKTON
DEFENDANTS.

DOCKET & JOURNAL ENTRY

This case came on for hearing on June 10, 1997 on the Plaintiff's complaint in forcible entry and detainer, for the first cause of action. All parties were present. The Defendants were represented by Robert Romaker, Southeastern Ohio Legal Services.

Evidence was presented. Based on the evidence, the Court finds that the Court has jurisdiction, both Defendants were properly served, and the Plaintiff is the owner of the premises in question. The "notice to vacate premises" was properly served on the Defendants.

Both Defendants violated the terms of the rental by being in default in payment of rent. The Defendant David Copas vacated the premises in April, 1997.

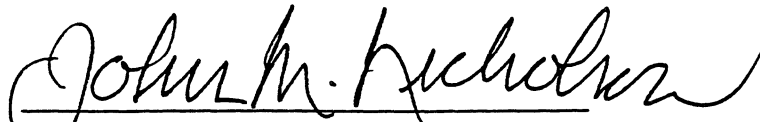
As to the Defendant David Copas, judgment is entered against the Defendant and in favor of the Plaintiff for restitution of the premises, and for costs of the suit.

After a through explanation of his right to a second hearing on the issue of damages, the Plaintiff waived his right to the normal time frame for the second cause of action, and confessed judgment in favor of the Plaintiff in the amount of \$390.00 for back rent. On that confession, judgment is rendered then in favor of the Plaintiff and against the Defendant David Copas in the amount of \$390.00 along with the costs mentioned above.

In regard to the Defendant Kim Stockton, on the issue of restitution of the premises, judgment must be in favor of Kim Stockton.

Based on the evidence presented, even though the Defendant Stockton was in default of payments by being late or making partial payments during the winter months of 1997, the Plaintiff, with knowledge of that breach, and prior to taking this action to forfeit the tenancy, accepted rent from Stockton, which rent had accrued after the breach. According to the holding in Quinn v Cardinal Foods, Inc. (1984) 20 App 3d 194, the Plaintiff essentially waived his right to seek forfeiture of the premises, and cannot now use those breaches for late payment as the basis for restitution of the premises.

Nothing in this decision precludes the Plaintiff from seeking restitution of the premises by a new cause of action.


John Mark Nicholson, Judge

pc: Dan Navicky, Plaintiff, 1546 N 11st Street, Cambridge OH 43725
Bob Romaker, 27 North Sixth Street, Suite B, Zanesville OH 43701

JMN/jlb