

IN THE MANSFIELD MUNICIPAL COURT, MANSFIELD, OHIO

LYNNETTE BROWN)
)
 Plaintiff)
)
 -vs.-)
)
 THE BALLIETT GROUP)
)
 Defendant)

CASE NO. ~~98-CV-0042~~
98-RE-6

MAGISTRATE'S DECISION
AND JUDGMENT ENTRY

This matter came on for hearing on July 7, 1998, continued from June 30, 1998, on Plaintiff's Application to Release Rent to Tenant. Plaintiff was present, represented by counsel; Defendant did not appear. On June 30, Plaintiff informed the Court that the tenancy between the parties had been terminated by the City of Mansfield, which had condemned the rental premises and ordered Plaintiff to vacate. Defendant's representative stated that he did not object to the return of the rent deposited in escrow to Plaintiff, provided that rubbish remaining at the rented premises was removed. The hearing was continued for one week to enable Plaintiff to remove the rubbish from the premises.

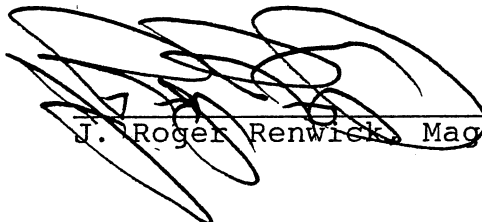
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The magistrate finds that in the case of Robinson v. Meyer (5th Dist. Aug. 14, 1989), No. CA-7735, 1989 WL 94378, the Fifth District Court of Appeals found that escrowed rent could not be released to a tenant in the situation in that case. In that case, a new landlord had taken over after the escrowed funds had been deposited, but the tenancy with respect to the premises at issue in that case continued.

On July 7, Plaintiff moved the Court to dismiss this action pursuant to Civ.R. 41(A)(2) and, incident thereto, to release the excrowed funds to her, on the grounds that there is no longer any

tenancy to which the rental escrow could apply, Plaintiff resides elsewhere, and the rubbish has been removed from the premises.

The granting of an oral motion to dismiss under Civ.R. 41(A)(2) constitutes a voluntary dismissal. Abrams v. Elsoffer (1988), 46 Ohio App.3d 11, 12. The rule provides that an action shall not be dismissed "except ... upon such terms and conditions as the court deems proper." Id. The rule thus permits a court to structure a dismissal which prevents prejudice to a party. Id. There being no tenancy to which the escrowed funds can apply, and in light of Plaintiff's ejection due to the condemnation of the rental premises, it is recommended that this action be dismissed pursuant to Civ.R. 41(A)(2) and the escrowed funds returned to Plaintiff, without prejudice to Defendant's right to file a separate claim for any money he believes is due him.

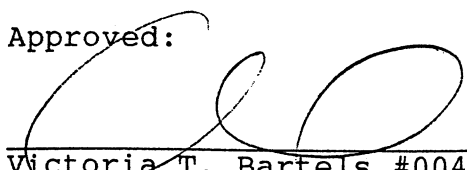


J. Roger Renwick, Magistrate

The Court having fully considered the Proposed Decision of the Magistrate and all appropriate pleadings and proceedings pursuant hereto, adopts the Proposed Decision of the Magistrate, confirms the same and enters judgment thereon as the order of this Court.

Donald E. Hoover, Judge

Approved:



Victoria T. Bartels #0040625
Attorney for Plaintiff