

IN THE CLEVELAND MUNICIPAL COURT

CUYAHOGA COUNTY, OHIO

CASE NO. B 101,837

D. C. HUGHES MANAGEMENT COMPANY X
7621 Euclid Avenue X
Cleveland, Ohio 44106 X

Plaintiff X

MEMORANDUM TO ATTORNEYS

-vs-

GRACE WEBSTER X
Park Village Apartment X
9211 Hough Avenue #2 X
Cleveland, Ohio 44106 X

Defendant X

The important facts in this case are simple and uncontroverted.

The plaintiff is the landlord who served a three day notice upon the defendant tenant to leave the premises on or about the 20th day of November. The tenant was not in default of her rent and proffered to the landlord the rent due in ^{December} ~~November~~ but the landlord refused to accept it.

On or about the 9th day of November, 1974 tenant had discharged a firearm in the air and had made some remarks to the custodian about getting some "son of a bitch first." The tenant admits discharging a "blank gun." The testimony further is that there are a large number of children in the complex of which the defendant is a tenant.

Further, the manager testified that a few days after the incident occurred he had requested her by phone to leave the premises.

The defendant invokes the newly enacted Landlord-Tenant Bill as a defense. While the Court understands the logic and the abuses which brought this law into being, it has presented some very practical procedural

difficulties and problem areas which the legislature in its anxiety may have overlooked. This seems to be one of those areas.

The tenant invokes the safeguards of R.C. 5321.05 and insists that since she has breached one of those obligations then she is entitled to the 30 day notice required by R.C. 5321.11 wherein "the landlord may deliver a written notice to the tenant specifying the act and omission that constitute noncompliance...and that the rental agreement will terminate upon a date specified therein not less than thirty days after receipt of the notice. If the tenant fails to remedy the condition contained in the notice, the rental agreement shall then terminate as provided in the notice."

The Court finds no provision of 5321.05 which gives to the tenant the right to the 30 day notice required by 5321.11. The act of which the plaintiff complains was a criminal act - the discharge of a firearm which is a violation of Section 13.0902 of the Codified Ordinances of the City of Cleveland and the mere possession of a pistol without a permit which is in violation of Section 13.0903.

This Court cannot believe that when the legislature stated that the tenant shall "conduct himself in a manner that will not disturb his neighbor's peaceful enjoyment of the premises" of which condition he would have at least 30 days to remedy (R.C. 5321.11) that it contemplated a criminal act. If we say "yes" to that then we can see to what absurd conclusions we may wander.

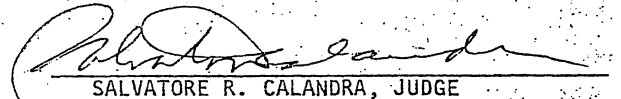
Therefore it is this Court's opinion that the tenant's obligations set forth in 5321.05, the breach of which requires a 30 day notice, do not contemplate the type of activity which occurred in this case.

The tenant states further if she is not entitled to the 30 day notice of 5321.11 then she is entitled to the 30 day notice of R.C. 5321.17(B). If, as the Court has found, the act complained of was serious enough - a criminal act to take it out of the safeguards of 5321.05 which were enacted to protect the interests of the tenant against an arbitrary determination by a landlord to regain his premises, then it obviously is a

serious enough exception to remove it from the broad language of 5321.17(B) which gives the tenants no safeguard at all.

Once again the Court bows to the wisdom of the legislature. The Court knows that the legislature did not intend that a tenant, who commits a criminal act on the premises of the landlord which act could and does endanger lives of a large number of children, is entitled by law to the protection of a 30 day notice during which 30 day period he may repeat the same act. Nothing in the act shortens the 30 day period even though the tenant may repeat daily the act complained of or never attempt to remedy the act or the condition which is the basis for the notice. The fact that in this case there was but one instance (although there was testimony of other and previous problems) does not satisfy the Court ^{THAT} by dismissing it in that manner we would not be placing ourselves in the position of condoning and even enlarging the scope of acts of a tenant protected by this legislation.

It is therefore, this Court's opinion that the facts in this case do not come within the scope of Chapter 5321, that the action was properly brought under the provision of Section 1923.02, that the defendant is guilty and that a writ of restitution shall issue.



SALVATORE R. CALANDRA, JUDGE
CLEVELAND MUNICIPAL COURT
Courtroom #11, City Hall
Cleveland, Ohio 44114
621-6345