IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

ROY H. SMITH 6201 Meadowbrook Avenue Cleveland, Ohio Plaintiff -vs- LILLIE LEWIS 1591 Crawford Avenue, #6 Cleveland, Ohio LYNNE MOSLEY 1591 Crawford Avenue, #3 Cleveland, Ohio ROSEBUD PERRY 1591 Crawford Avenue, #4 Cleveland, Ohio and SELEMA PERRY 1591 Crawford Avenue, #12 Cleveland, Ohio Defendants	X X X X X X X X X X X X X X X X	CASE NOS. B93544 B93545 B93546 B93547 FINDINGS OF FACT AND CONCLUSIONS OF LAW

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FINDINGS OF FACT

The Court finds that the Defendants are each in default of rent payments for the month of September, 1974.

The Court finds that the subject building and apartments therein are poorly maintained by plaintiff.

The Court further finds that proper 3 day notice was given to Defendants, and summonses properly served, as provided in ORC 1923 et seq.

The Court finds that Plaintiff, Roy H. Smith, is the lessor of the subject premises and that said premises are under the control of the said Plaintiff.

The Court further finds that an oral lease contract between the

parties were in effect at the initiation of this action; that said agreement encompasses express covenants by the Defendants to pay rent, and implied covenants by the Plaintiff to maintain the premises (a) in habitable condition, (b) in accordance with the provisions of the Codified Ordinances of the City of Cleveland, and (c) in such a manner that the tenants' rights to quiet enjoyment would not be infringed.

The Court finds that the subject building and apartments therein are poorly maintained by Plaintiff, and are in violation of the Codified Ordinances of the City of Cleveland, to wit:

Section 6.0513--General Maintenance Requirements--(a) All dwelling structures and all parts thereof, both exterior and interior, shall be maintained in good repair and shall be capable of performing the function for which such structure or part or any feature thereof was designed or intended to be used.

(b) All equipment and facilities appurtenant to a dwelling structure or dwelling unit shall be maintained in good and safe working order.

Section 6.0710--Owner Responsibilities--(a) The owner of every dwelling structure or premises rented or leased for residential occupancy of his appointed agent, shall be responsible for maintaining in a clean and sanitary condition the shared or common areas thereof.

Section 6.1101--Certificate of Occupancy Required--It shall be unlawful for the owner of any dwelling structure used or designed or intended to be used as a multiple dwelling...to rent or lease such structure or any part thereof for residential occupancy unless the owner thereof obtains a Certificate of Occupancy issued by the Commissioner of Housing for such structure.

The Court takes judicial notice of the fact that these provisions of the Cleveland Housing Code were in effect at all times relevant herein

and finds that said Code is for the benefit of the general public and in particular for the protection of the lessee.

The Court further finds that these violations have caused and will continue to cause a threat to the health, safety and well-being of Defendants and their families.

CONCLUSIONS OF LAW

Under Ohio Law a lease is a contract and should be interpreted and construed like any other contract. Sigler-Bach Co. v. Wurlitzer Co. 8 Ohio Law Abs. 267 (1929), Cook v. Village of Paulding, 33 Ops. 165, 207 NE 2d. 405, Glyco v. Schultz, 350 Misc. 25, 289 N.E. 2d 219 (1972).

The covenant on the part of the tenant to pay rent, and the covenant, whether express or implied, on the part of the landlord to maintain the premises in a habitable condition, are for all purposes mutually dependent. Lable and Company v. Brooks, Cleveland Municipal Court, #89208 Cuyahoga County, Ohio, August 16, 1974, Lable and Company v. Brown, Cleveland Municipal Court, #89207 Cuyahoga County, Ohio, August 16, 1974; see also Berzito v. Gambino, 63 N.J. 460, 308 A.2d 17 (1973). See Frankel v. Stemon, 92 Ohio St. 197 (1951).

Having concluded that a lease is a contract, a breach of the covenants of quiet enjoyment and habitability occurs when the lessor (a) is in violation of the Housing Code, City of Cleveland, (b) fails to repair, replace or remedy leaking plumbing fixtures, inoperative heating radiators, broken door locks, loose electrical wires, or other conditions which materially affect the habitability of the premises or (c) fails to obtain a Certificate of Occupancy. Since the covenants contained in the lease are mutually dependent, such violations and conditions may not only be raised as a defense to an action in Forcible Entry and Detainer, but if proved must bar a lessor from obtaining redress through the Court in an action in Forcible Entry and Detainer. [1] Lable and Company v. Brooks, supra: Lable and Company v. Brown, supra; Glyco v. Schultz, supra: see Frankel v. Stemon, 92 Ohio St. 197 (1915), also see ORC 1923.061 (A) eff. November 4, 1974.

Standards established by local building, housing, or health codes, in existence at the time of the making of a lease contract enter into and become a part of the contract, Glyco v. Schultz, supra. Also see Rose v. King, 49 O.S. 213, 30 N.E. 267 (1892), Stackhouse v. Close, 83 O.S. 339 (1911), and Illinois Surety v. O'Brien, 223 F. 933 (6th Cir. 1915). The City of Cleveland has enacted such provisions in its Codified Ordinances, and the failure on the part of the lessor to maintain the premises in accord with those Ordinances constitutes a breach by the landlord of the

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1/ The Court notes that while no definitive ruling on this question has as yet been made by the Ohio Supreme Court, its conclusions of law institute the application of principles found in holdings of analagous cases decided by Courts in the State of Ohio. Furthermore in the last few years the highest courts in at least seven states and the District of Columbia have ruled that a certain level of habitability (determined either by the housing code or another measure) is implied in a lease for a dwelling unit. Mease v. Fox, 200 N.W. 2d 791 (Iowa Sup. Ct. 1972); Pines v. Peisson, 14 Wis. 2d 590, 111 N.W. 2d 409 (Wis. Sup. Ct.1961); Javins v. First National Realty Corp; 428 F. 2d 1071 (D.C. Cir.), cert. denied 400 U.S. 925 (1970); Lemle v. Breeden, 51 Hawaii 426, 462, P. 2d 470 Haw. Supt. Ct. 1969); Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E. 2d 208 (Ill. Supt. Ct. 1972); Kline v. Burns, 111 N.H. 87, 276, A. 2d 248 (N.H. Sup. Ct. 1971); Foisy v. Wyman, 83 Wash. 2d 22, 515, P. 2d 160 (Wash. Sup. Ct. 1973) (en banc); Berzito v. Gambino 63 N.J. 460, 308 A. 2d 17 (N.J. Sup. Ct. 1973). In addition, appelate courts in at lease five other states have adopted the ruling. Boston Housing Authority v. Hemingway, 293 N.E. 2d 831 (Sup. Jud. Ct. of Mass, Suffolk Co. 1973); Piesson v. Mountain States Properties, Inc. 18 Ariz. App. 176, 501 F. 2d 17 (Ariz. Ct. App. Div. 1 1972); King v. Moorhead, 495 S.W. 2d 65 (Mo. Ct. App. K.C. Distr. 1973); Gable v. Silver, 258 So. 2d 11, (Fla. Ct. App. 1972); (dicta), cert. discharged 264 So. 2d 418 (Fla. Sup. Ct. 1972). See also "Modern Status of Rule as to Existence of Implied Warranty of Habitability or Fitness for Use of Leased Premise," 40 A.L.R. 646 (1971).

implied warranty to maintain said premises in accordance with the code. Glyco v. Schultz, supra, Lable and Company v. Brooks, supra, Lable and Company v. Brown, supra. See e.g. Javins v. First National Realty Company, 428 F. 2d 1071 (D.C. Cir. 1970) cert. denied, 400 U.S. 925, 40 A.L.R. 3d. 646 (1971).

Where a lease contract is entered into for premises for which no Certificate of Occupancy has been issued, there exists a violation of the Cleveland Housing Code, (Sec. 6.1101) which prohibits the leasing of an apartment without a Certificate of Occupancy, and the lease contract is therefore void and illegal and confers no rights upon the wrongdoer. Glyco v. Schultz, supra, Lable and Company v. Brooks, supra. Lable and Company v. Brown, supra, 11 O. Jur 2d, Contracts Section 93-331-33, Restatement of Contracts Section 580 (1933).

Since the Cleveland Housing Code is for the benefit of the general community, and in particular for the protection of the lessee, and because of the unavailability of decent housing, the lessee has no real choice but to acquiesce in this illegality, the lessee is not in pari delicto and the Court is unable to permit the lessor to recover in an action for Forcible Entry and Detainer. Thomas v. City of Richmond, 79 U.S. 439 (1870); Marthey v. Tinpen, 75 N.E. 2d 716. (1947), Beverage Sales Inc. v. Burger Brewing Co., 110 Ohio App. 492, 165 N.E. 2d 812 (1899), and Buchanon Bridge Co.v. Campbell et al Commissioners, 60 O.S. 406 (1899).

For the foregoing reasons and as a matter of public policy, the Plaintiff-lessor is not entitled to recovery under the lease as such judgment would be a condonation of the wilful evasion of the Cleveland Housing Code, and,

The Court finds that Defendants not guilty as charged and renders judgment for Defendants and for costs. Lable and Co. v. Brooks, supra, Lable and Co. v. Brown, supra; Glyco v. Schultz, supra.

ANN McMANAMON, JUDGE
Cleveland Municipal Court
Courtroom #3
Cleveland City Hall