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VALLIE BOWMAN – ENGLISH
CLERK OF COURT
TOLEDO MUNICIPAL COURT
www.tmc-clerk.com



Notification

To: ALICIA KINGSTON, Attorney

525 JEFFERSON
TOLEDO, OH 43604

RE: Civil case CVG-21-05045
BUCKEYE NORTHWEST REALTY VS. THOMAS STIGALL

This is a final appealable order.

The following is an order journalized on 6/22/2021 12:00:00 AM.



Vallie Bowman English

Clerk
6/22/2021 12:00:00 AM

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CVG-21-05045



FILED
TOLEDO MUNICIPAL COURT
2021 JUN 22 A 11:31
CLERK
VALLIE BOWMAN-ENGLISH

IN THE MUNICIPAL COURT OF TOLEDO, LUCAS COUNTY, OHIO
HOUSING DIVISION

Buckeye Northwest Realty
for Tahoe Blue, LLC ,

Plaintiff,

v.

Thomas Stigall,

Defendant.

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Case No. CVG-21-05045

JUDGMENT ENTRY

Judge Joseph J. Howe

This matter first came before this court in a Forcible Entry and Detainer (FED) hearing on May 14, 2021. Plaintiff initiated the action for non-payment of rent, and judgment was rendered by the presiding Magistrate in favor of Plaintiff on May 14, 2021. This matter now comes before this court in Defendant's Objections and Supplemental Objections (filed after the full transcript of the FED hearing was completed), and in Plaintiff's Memorandum in Opposition to Defendant's Objections.

The core issue of this matter is if Defendant's testimony that he was able to pay the full amount in question plus costs to Plaintiff at the hearing, and indeed that he had the money on his person at the time (*See* Tr:22 2-8) constitutes tender of rent under Toledo Municipal Code (TMC) 1770.03, and if Plaintiff's willingness to continue the path of the first cause of action constitutes refusal of the tender. TMC 1770.3 holds that

If the Tenant tenders all past due rent with reasonable late fees and court costs to the landlord prior to a judgment and the landlord refuses the tender, the Tenant's tender of all past due rent,

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reasonable late fees and court costs shall be a defense to the eviction action filed by the landlord against the Tenant for nonpayment of rent.

It is clear that whatever Plaintiff's arguments during the FED hearing and in Plaintiff's Memorandum are, the complaint and subsequent cause of action resulted directly from what Plaintiff perceived as non-payment of rent (*See* Plaintiff's Complaint journalized April 21, Paragraph 7). It appears that Defendant paid his entire lease's worth of rent in advance in a single lump sum, and whatever charges occurred during the tenancy were subtracted from that sum, leaving, in Plaintiff's eyes, a deficit in the total paid rent for the period of the tenancy. While the nuances of this agreement may be points of contention between the two parties, it is clear to the court that this is not an action resulting in a lease violation (aside from the inherent quality of rent being a part of the lease) but rather an action initiated specifically on what Plaintiff perceives as a non-payment of rent.

This being established, it is additionally clear that court records reflect that Defendant testified that he had brought all monies owed to Plaintiff to the FED hearing and was willing to tender that payment immediately, the sum being on his person (Tr:22 2-8). This clearly fulfills the first half of tenant's pay-to-stay defense under TMC 1770.03, which is the tendering of rent before judgment is rendered.

As to the arguments offered by Plaintiff, the court is not satisfied with Plaintiff's argument that Defendant "would have come forward before the hearing occurred and offered to tender payment" (*See* Plaintiff's Memorandum pg. 4) as this assigns a parameter to 1770.03 which does not exist in the plain language of the code. Additionally, this court finds that Plaintiff's willingness to move forward in seeking a Writ of Restitution and furthering the eviction action against Defendant to be sufficient enough to qualify as rejection of Defendant's tender of payment at the FED hearing.

With the requirements of TMC 1770.03 fulfilled, Defendant is well within his right to invoke the Pay-To-Stay defense, and as such, the court finds Defendant's Objections WELL-TAKEN.

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Magistrate's decision of May 14, 2021 is hereby **REJECTED**, and judgment is to be entered in favor of Defendant. Defendant shall pay to Plaintiff all monies needed to become current on rent, in addition to reasonable court costs and whatever reasonable late fees are assessed to Defendant's account. Parties shall, upon Defendant's payment, be held to the terms dictated in the lease agreement between Parties. Plaintiff is not barred from subsequent eviction proceedings against Defendant as per TMC 1770.05. However, such proceedings require initiation of completely new and separate eviction actions.

CLERK TO NOTIFY ALL PARTIES.

THIS IS A FINAL AND APPEALABLE ORDER.

6/22/21
Date



Judge Joseph J. Howe