

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CINCINNATI METROPOLITAN HOUSING AUTHORITY,	:	APPEAL NO. C-070647 TRIAL NO. 07CV-01320
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
DONALD COCKRELL,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a bench trial, defendant-appellant Donald Cockrell appeals from the trial court's entry of judgment in favor of plaintiff-appellee, the Cincinnati Metropolitan Housing Authority ("CMHA"), on its complaint for forcible entry and detainer. Cockrell had failed to pay his rent within the mandated seven-day period in December 2006 and had offered no credible excuse.

Cockrell was a tenant at the San Marco Apartments, a public-housing development operated by CHMA. Cockrell was disabled and received \$603 per month in Supplemental Security Income benefits. Pursuant to federal subsidized-housing guidelines, his rent was set at \$171 per month.

In April 2006, Cockrell was late in paying his rent. He alleged that his rent had been stolen by a person he had invited into his apartment. Cockrell had had several

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

previous late payments. To remedy the late-payment issue, CHMA and Cockrell entered into a "Seventh Day Agreement" that modified his original lease. The agreement conditioned Cockrell's continued tenancy upon timely payment of rent. Cockrell agreed to make rent payments in the apartment management office on or before the seventh calendar day of each month. Cockrell acknowledged that CHMA would refuse to accept rent submitted after the seventh day. And CHMA could proceed with eviction proceedings after that period had expired.

The agreement also provided that Cockrell could be excused from payment within the seven-day period for "circumstances beyond his control" if he promptly reported the matter to the management office. An accompanying letter from CHMA warned Cockrell that losing rent payments by his "negligence or negligent judgment, such as letting someone you barely know stay in your apartment and watch you handle money that is later allegedly stolen, would not constitute a reason beyond your control."

In December 2006, Cockrell tendered rent on December 11—four days beyond the seventh calendar day of that month. Cockrell alleged that the money order with which he had intended to pay his rent had been stolen on December 1. CHMA served Cockrell with a notice of termination and filed this complaint on January 16, 2007. Cockrell and Douglas Conner, a CMHA property manager, testified at trial. The trial court entered judgment in favor of CHMA, ordering Cockrell's eviction and awarding \$1,469 in damages. The trial court granted a stay of the judgment pending appeal.

In his sole assignment of error, Cockrell asserts that the trial court erred by ordering eviction where Cockrell's rent had been stolen by friends he had invited into his apartment, and where he had tendered his rent only four days after the end of the seven-day period.

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Rent payment is a fundamental element of the landlord-tenant relationship.² The failure to pay rent is a serious and material violation of a public-housing agreement.³ Nonpayment of rent to a housing authority like CMHA, operating under the United States Housing Act,⁴ establishes a prima facie case and provides sufficient cause to terminate the lease and to evict the tenant.⁵ But in *Cincinnati Metropolitan Housing Auth. v. Green*, this court suggested that nonpayment of rent caused by circumstances beyond the tenant's control "might be" a valid defense where "the tenant promptly informed the landlord of the circumstances, and * * * the tenant made reasonably diligent efforts to pay the landlord as soon as possible."⁶

An appellate court will not reverse a judgment of the trial court if it is supported by some competent, credible evidence going to all the essential elements of the case or defense.⁷ In reviewing the evidence adduced at trial, an appellate court is bound by the credibility determinations made by the trial court sitting as the trier of fact.⁸

Here, the trial court simply did not believe Cockrell's testimony that the rent payment had been stolen. It found that he had failed to pay rent within the seven-day period and that he had not advanced a valid excuse for his failure to do so. Cockrell had offered several conflicting reasons to his property manager for the failure to pay rent. In his initial meeting with Conner, Cockrell informed him that he would not be able to pay rent due to "trouble over his child support payment." Later, Cockrell changed his excuse, maintaining, as he had in April 2006, that he could not pay his rent because his "money

² See R.C. 1923.06 and 5321.03.

³ See Section 966.4(l), Title 24, C.F.R.

⁴ See Section 1437 et seq., Title 42, U.S.Code.

⁵ See *Cincinnati Metropolitan Housing Auth. v. Green* (1987), 41 Ohio App.3d 365, 536 N.E.2d 1.

⁶ Id. at 370, 536 N.E.2d 1.

⁷ See *Myers v. Garson*, 66 Ohio St.3d 610, 1993-Ohio-9, 614 N.E.2d 742; *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus; see, also, *Stand Energy Corp. v. Cinergy Serv.* (2001), 144 Ohio App.3d 410, 417, 760 N.E.2d 453.

⁸ See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

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and money orders were taken out of his apartment.” Cockrell claimed that on December 1 he had invited two friends, identified only as Bill and Diane, into his apartment. During their visit, Cockrell testified, he had filled out his rent money order and had left it on his bedroom dresser. He alleged that Diane had taken the money order while he was distracted. Cockrell did not file a police report of the theft until January 22, 2007, a week after CHMA had sought his eviction.

Cockrell admitted that while he was unable to pay his rent, he had been able to pay all his other monthly bills, including those for his telephone and cable-television service.

Since there was competent, credible evidence, including the testimony of the parties, supporting the trial court’s finding that Cockrell had failed to pay rent within the seven-day period, that the nonpayment of rent had not been caused by circumstances beyond his control, and that he had not promptly informed the landlord of the actual circumstances, the assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and CUNNINGHAM, J.J.

To the Clerk:

Enter upon the Journal of the Court on December 17, 2008
per order of the Court _____.

Presiding Judge