

CLEVELAND MUNICIPAL COURT JUDGMENT ENTRY RECEIVED
HOUSING DIVISION FOR JOURNALIZATION
CUYAHOGA COUNTY, OHIO
RAYMOND L. PIANKA, JUDGE
NOV 30 2012
EARLE B. TURNER, CLERK.

CMHA
Plaintiff (s)

Date: November 20, 2012

-VS-

2012 CVG 007158

JAMES HAWTHORNE
Defendant (s)

JUDGMENT ENTRY

This case is before the Court on the plaintiff's objections to the magistrate's decision. For the following reasons, the plaintiff's objections are overruled, and the Court's prior decision is affirmed.

Plaintiff initiated this action in forcible entry and detainer against the defendant for breach of his lease, specifically as a result of drug activity that allegedly occurred on the premises. On December 30, 2011, according to plaintiff, CMHA police recovered marijuana from defendant's unit. Plaintiff served defendant with a thirty-day notice on March 7, 2012, and a three day notice on April 10, 2012. Plaintiff then filed this action, proceeded to first cause hearing, and was granted judgment. Defendant subsequently filed a motion for relief from judgment. The Court set that motion for hearing, advising that the parties that they were expected to address at the hearing the issue of whether plaintiff, through its conduct, had waived defendant's alleged breach of the lease.

The magistrate, after hearing, granted the defendant's motion for relief from judgment, vacated the judgment initially entered against defendant, and dismissed plaintiff's first cause of action with prejudice, finding that plaintiff's delay in initiating action against the defendant, coupled with its acceptance of defendant's rent, waived plaintiff's right to pursue the eviction action against defendant.

Plaintiff objects to the magistrate's decision, arguing that: 1) the time between the incident and the issuance of notices was not unreasonable; 2) plaintiff did not accept defendant's rent, because plaintiff returned the payment after it discovered that it had been made, through the usual process, to plaintiff by way of a third party (the bank).

With respect to the time between the incident and the issuance of the notices, the alleged incident serving as the basis for this action occurred on December 30, 2011; the first notice was served on March 7, 2012. Plaintiff argues that "[t]he Magistrate's decision makes it sound like the Court believes that the time between the incident and the service of the notices should somehow be almost instantaneous." Plaintiff goes on to explain the size of its business venture: "CMHA is not the landlord [of] two or three units, it is [sic] thousands of units and the estate managers are responsible for a myriad of issues faced on a daily basis. Since its estates are so large and spread out CMHA also

has a need for its own Police Department, which needless to say is kept very busy.” Requiring an action to be filed sooner, plaintiff argues, “would put an unreasonable burden on CMHA.”

This argument is not persuasive. Certainly CMHA manages a large number of rental units, and the managers have multiple responsibilities. Plaintiff does not identify, however, the responsibilities that take priority over addressing the alleged illegal conduct of residents or their guests. Nor is the Court persuaded by CMHA’s need for its own Police Department; indeed, that the police activity in this case was performed by the plaintiff’s own Police Department signifies to the Court that the information necessary to initiate the eviction action was in plaintiff’s own hands – the delay in initiating the action cannot be attributed to the delay of some third party in forwarding information to plaintiff. Nor does the geographic size of the plaintiff’s holdings persuade the Court that a more than two month delay in initiating the eviction action was reasonable – there is nothing in the record to indicate that *every* manager is responsible for *all* units – rather, each manager has an assigned estate, or number of estates, to ensure that management performs its duties efficiently and effectively.

Requiring plaintiff to process and act on information regarding alleged criminal conduct *observed by its own employees* in fewer than the sixty-eight days it took in this case may require the plaintiff to re-examine some of its business processes; it may require plaintiff to shift some of its priorities. The Court is not persuaded, however, that it imposes an undue burden on the plaintiff.

With respect to the acceptance of rent post-incident, plaintiff argues that the magistrate erred in concluding that plaintiff accepted defendant’s April 2012 rent, and in finding that the acceptance by plaintiff of the April 2012 rent after service of the three day notice was inconsistent with its termination of the defendant’s tenancy.

The Court notes at the outset that with respect to this issue, plaintiff’s objections contain an extensive recitation of the facts regarding the processing of payments by plaintiff in general, as well as the payments made by defendant in this case. This recitation is supported by neither a transcript of all the evidence submitted to the magistrate relevant to those issues, nor an affidavit of that evidence. Civ. R. 53(D)(3)(b)(iii). The Court, then, cannot determine whether the information plaintiff now submits was before the magistrate when he issued his decision, or even whether the information, submitted in the form of argument in a brief, is accurate.

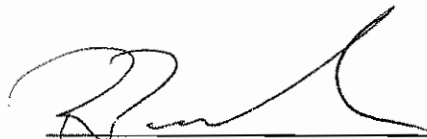
Examining the underlying argument, however, assuming the facts as alleged by plaintiff are true, does not alter the Court’s conclusion. Plaintiff argues that it did not accept defendant’s April 2012 rent, because it was unaware that defendant made a payment for April 2012, and plaintiff returned the payment to defendant as soon as plaintiff became aware it had been made. In support of this argument, plaintiff attaches copies of defendant’s rent statement, and the check issued by plaintiff returning defendant’s rent to him. Plaintiff’s argument that it was unaware that a rent payment was made is not persuasive, in light of the fact that plaintiff issued defendant the rent statement which defendant used to pay his rent. Exhibit D, attached to plaintiff’s

objections, clearly shows that rent was paid for March 2012, and that defendant received a statement to pay the April 2012 rent, which defendant did on April 9, 2012. Having solicited defendant's rent through the issuance of a rent statement, plaintiff cannot now plausibly argue that it was unaware that the rent had been paid.

A common thread running throughout plaintiff's objection: plaintiff cannot be held responsible for delays or errors in its management of its estates, because of the size of its operation, and its use of third parties to process payments. Plaintiff's obligations are established by statute, federal regulation, and by contract. Few of the landlord's obligations vary with the size of the landlord's holdings, and none are obligations at issue herein.¹ Plaintiff has an obligation to manage its rental premises consistent with the statutory duties of all other landlords. Its management procedures, including the process through which payments are collected and credited, are largely within its own control. Plaintiff cannot disassociate itself from its management decisions based upon the number of units or tenants or geographic area within its control.

The Court does not condone defendant's conduct; nor does it intend, through this ruling, to establish a bright line rule for the number of days within which the plaintiff must commence all evictions actions. The decision of whether a landlord has waived an alleged breach of lease is based upon a review of all the relevant facts. Examining all the facts in this case, the Court does conclude that plaintiff's actions in waiting more than two months before serving notices, and continuing to accept defendant's rent after service of the notices, is inconsistent with its stated intention of proceeding with an eviction action against the defendant. The plaintiff has failed to demonstrate an error in the magistrate's decision, and the Court finds no error of law on its face. Accordingly, **plaintiff's objections are overruled, and the Court's prior decision is affirmed.**

Defendant having filed an answer to plaintiff's complaint, this case is set for pretrial on the plaintiff's claims for money damages on **January 2, 2013**, at **2:30 p.m.** on the **13th floor**. Failure to appear may result in an ex parte trial, dismissal of the remaining claims or such other relief as this Court deems appropriate.



Judge Raymond L. Pianka
Housing Division

A copy of this judgment entry was sent by regular U.S. mail to parties/counsel on _____/_____/_____, by_____.

¹ For example, the requirement that a landlord provide and arrange for the removal of trash receptacles applies only to landlords who are parties to rental agreements that cover four or more dwelling units in the same structure. R. C. 5321.04(A)(5).