

IN THE CLEVELAND HEIGHTS MUNICIPAL COURT

MAXWELL JESSIE M
Plaintiff(s),

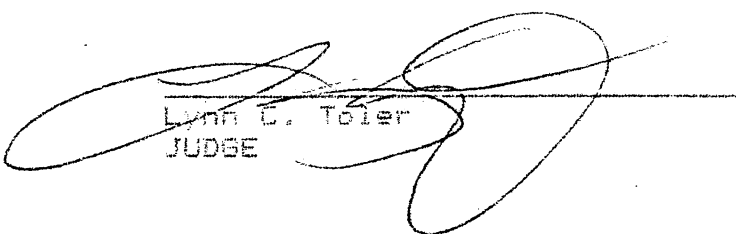
vs.

PARKER NIKOLIA
Defendant(s).

Case No.: CV6 951631

JOURNAL ENTRY

Magistrate's Report having been reviewed is hereby approved and entered as a matter of record by the Court. Judgment for Defendant is ORDERED, ADJUDGED and DECREED, with costs to be paid by Plaintiff.


Lynn C. Tolier
JUDGE

MARIA F. HALLABRIN, CLERK
MUNICIPAL COURT
CLEVELAND HEIGHTS

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IN THE CLEVELAND HEIGHTS MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

JESSIE M. MAXWELL

CASE NO. CVG 951631

-vs-

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)

NIKOLIA PARKER

MAGISTRATE DECISION

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This matter came on for hearing on January 3, 1995 before Magistrate Dale E. Lefferts to whom it was referred. Plaintiff was present with her attorney Gary N. Bakst. Defendant was present with attorney Sheila Tew. Based upon the testimony, the evidence and the law, the Magistrate makes the following findings of fact:

FINDING OF FACT:

Plaintiff rented premises to Defendant for a number of years pursuant to C.M.H.A. Section 8 housing contract. Section 8 paid the majority of the rent until July of 1995 when Defendant became responsible for payment of \$395.00 of the monthly rent. The parties orally agreed to have the rent payment due on the 7th of each month. The rent was paid late each month beginning in July, 1995, but was always accepted late by the Plaintiff. Defendant attempted to tender rent for November, 1995 on November 11, but the rent was refused by the Plaintiff and a three day notice to leave the premises was served upon the Defendant and this cause of action was filed thereafter.

The Magistrate concludes that rent had been accepted late by the Plaintiff during the entire course of tenancy during which Defendant was required to pay rent. Case law holds that the only way to cure the course of dealing of the parties in accepting late rent is to put the tenant on notice, in writing, that future late rent payments would be considered to be a breach of the rental agreement between the parties and no further acceptance of late rent takes place. The required notice was not perfected upon the Defendant by the Plaintiff and Plaintiff cannot prevail on this cause of action based upon a breach for late payment of rent.

DECISION: Judgment in favor of the Defendant. Costs taxed to the Plaintiff.

January 3, 1996


Dale E. Lefferts, Magistrate

Any objections to the Magistrate Decision must be filed with the Court and a copy must be mailed to the other party within 14 days from the date of the Decision.

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CLEVELAND HEIGHTS
MUNICIPAL COURT
MARIA F. HILLBORN, CLERK