

IN THE MUNICIPAL COURT OF DAYTON, OHIO
CIVIL DIVISION

DAYTON METROPOLITAN
HOUSING AUTHORITY
Plaintiff,

CASE NO: 09 CVG 7378

Vs.

MAGISTRATE'S
DECISION

JOHN JEFFREY,
Defendant,

2010 JAN -4 PM 10:28
CLEAR

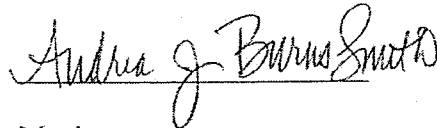
This matter came before the Court for trial December 10, 2009 on Plaintiff's complaint for restitution of the premises pursuant to Section 1923.06 O.R.C. and Rule 5.00 of the Dayton Municipal Court Civil Rules. The Plaintiff and Defendant both appeared represented by counsel. The Court heard testimony in the case and took the matter under advisement. Both parties were requested to file additional supplemental briefs. Both parties filed their briefs on December 21, 2009.

After a review of the record and the supplemental briefs filed by the parties the Court finds the Plaintiff's conduct has established a pattern and practice of accepting late rent upon which the Defendant could rely. Defendant had previously tendered his rent late more than 8 times since June of 2008. In multiple occasions the payment was more than one month late and included two or three months of rent. It was undisputed from the testimony presented that the Plaintiff never supplied to the Defendant a written notice stating that his late rent would no longer be accepted and that Defendant must adhere to the written lease terms. Therefore, Plaintiff cannot refuse to accept late rent because it was not timely tendered and then validly proceed with a request for restitution of the property due to non-payment of rent.

Additionally based upon the circumstances of the Defendant equity would require the Plaintiff's request for restitution of the premises be dismissed in this situation.

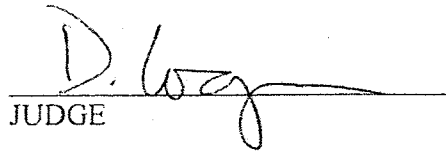
WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the first cause is dismissed, costs paid. Defendant must tender all past due rent and late fees by January 6, 2010; or Plaintiffs may proceed with a new eviction action for past due rent for October, November, and December 2009.

APPROVED.


Magistrate

JUDGMENT ENTRY

THE COURT HAS INDEPENDENTLY REVIEWED AND HEREBY ADOPTS THE MAGISTRATE'S DECISION AND AWARDS DAMAGES IN THE AMOUNT DETERMINED BY THE MAGISTRATE:


JUDGE

A party shall not assign as error on appeal the Court's adoption of any factual finding or legal conclusion in the Magistrate's Decision, whether or not specifically designated as a Finding of Fact or Conclusion of Law, unless the party timely and specifically objects in writing to that factual finding or legal conclusion within fourteen (14) days of the filing of the Decision, as required by Civil Rule 53(D)(3)(b).

Cc:

Debra Lavey, Legal Aid of Western Ohio, Inc., 333 W. First Street, Suite 500A, Dayton, Ohio 45402-3042,

Christopher C. Green, 400 Wayne Ave., P.O. Box 8750, Dayton, Ohio 45401-8750