

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

Jerry Edwards dba J & B Properties, :
Plaintiff, :
-vs- : Case No. M'8711CVG 37183
Cathy Smith and all other occupants, :
Defendants. :

This matter came for hearing before Referee Kathleen E. Graham on November 25, 1987. Plaintiff represented himself. Defendant was represented by attorney Donna C. Mayer. All witnesses were sworn. Based upon the evidence presented, the referee makes the following Findings of Fact, Conclusions of Law and Recommendation.

FINDINGS OF FACT

1. In January 1987, defendant rented an apartment located at 275 Martin Avenue from the plaintiff under the terms of an oral month-to-month agreement. The monthly rental was \$260.00 per month which was due on the first day of the month with a four day grace period.

2. Defendant was instructed by plaintiff's agent to mail the rent directly to the plaintiff at P.O. Box 158, Reynoldsburg, Ohio, 43068. Since January 1987, defendant hand delivered the rent on two occasions and on the remaining months, the rent was mailed directly to the plaintiff.

3. On October 1, 1987, defendant received her government checks and purchased two money orders, one of which was for \$260.00 for the October 1987 rent. The defendant signed the money order, made it payable to

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1987 DEC-8 AM 3:00
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plaintiff and mailed it by ordinary mail in an envelope addressed to the plaintiff on October 1, 1987.

4. Plaintiff never received the October rental payment from the defendant. The letter was not returned to the defendant.

5. Defendant became aware that the rent had not been received when she was notified by an agent of plaintiff on October 7, 1987. On October 7, 1987, plaintiff served defendant with a notice to vacate the premises.

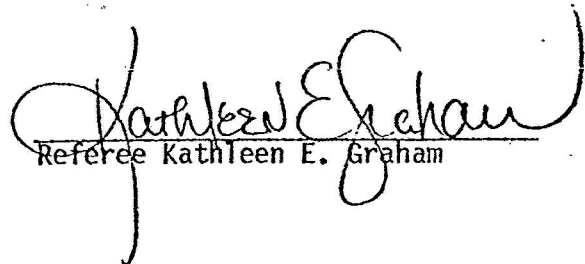
CONCLUSIONS OF LAW

This case comes down to the question of credibility of the defendant's testimony. The referee has concluded the defendant's testimony that she purchased a money order for the rent and mailed in a timely manner to the plaintiff in a manner prescribed by the plaintiff, is credible. Defendant followed the instructions of the plaintiff to use the mail to pay her rent and therefore the plaintiff bears the risk of loss in this situation.

Accordingly the referee concludes that the defendant did not fail to pay the rent as of October 7, 1987, and has failed to prove by a preponderance of the evidence grounds for eviction.

REFeree'S RECOMMENDATION

That plaintiff's first cause of action be dismissed at plaintiff's costs.


Referee Kathleen E. Graham

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Copies to:

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December 7, 1987