

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

FIRST MERIT VENTURE, d.b.a.
ASHWOOD APARTMENTS
ASSOCIATES, LTD.,

Plaintiff-Appellant,

vs.

KEIONNA STRINGER,

Defendant-Appellee.

APPEAL NO. C-050238
TRIAL NO. 04CV-31362

JUDGMENT ENTRY.

This appeal is considered on the accelerated calendar under App.R. 11.1(E) and Loc.R. 12, and this Judgment Entry shall not be considered an Opinion of the Court pursuant to S.Ct.R.Rep.Op. 3(A).

Plaintiff-appellant, First Merit Venture, d.b.a. Ashwood Apartments Associates, Ltd., appeals the judgment of the Hamilton County Municipal Court dismissing an eviction action against defendant-appellee, Keionna Stringer.

Stringer was a resident in a federally subsidized housing unit that First Merit owned and operated. In 2004, First Merit filed an eviction action, claiming that Stringer had violated a clause in the lease that provided the following: "This property is operated under the guidelines of the *Drug Free Housing Act of 1988*. Tenants and/or their guests must not

allow illegal drugs to be present, used or sold anywhere within the boundaries of this property. Any violation of this policy will result in eviction.” (Italics sic.)

The case proceeded to a bench trial. The evidence at trial indicated that a guest in Stringer’s apartment had been arrested on an open warrant and then charged with possessing crack cocaine. At the close of the First Merit’s case, the court found in favor of Stringer.

In two related assignments of error, First Merit argues that the court erred in denying a writ of restitution.

In a bench trial, a motion for judgment at the close of the plaintiff’s case is one for dismissal under Ohio Civ.R. 41(B)(2), not a motion for a directed verdict under Civ.R. 50.¹ The distinction is important because, under Civ.R. 41(B)(2), the test is whether the plaintiff has proved his case by a preponderance of the evidence, and the court as trier of fact is entitled to weigh the plaintiff’s evidence.² A court’s decision with respect to dismissal will not be overturned unless it is erroneous as a matter of law or against the manifest weight of the evidence; the fact that the plaintiff may have presented a prima facie case is irrelevant.³

Here, the trial court based its decision, in part, on First Merit’s failure to prove that drug-related activity had occurred on the rented premises. We cannot say that the court’s decision in that respect was erroneous as a matter of law or was against the weight of the evidence.

On cross-examination, Stringer testified that she believed the guest had been convicted of possessing cocaine, but there was no basis for that belief except for what she had been told. Similarly, the manager of the apartment complex conceded that she had no

¹ *In re Hughes* (June 23, 2000), 1st Dist. No. C-990346, citing *Johnson v. McQueen* (Aug. 27, 1986), 1st Dist. No. C-850742 and *The Commons, Inc., v. Cioffi* (July 19, 1995), 1st Dist. Nos. C-940137 and C-940399.

² *Id.*

³ *Id.*

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knowledge of drug activity at Stringer's apartment other than what the police had told her. Finally, the documentary evidence that First Merit presented to the trial court contained allegations of drug activity but did not contain any proof that the allegations were correct.⁴ Under these circumstances, the trial court, in weighing the evidence, could have reasonably concluded that First Merit had failed to prove a breach of the lease.

First Merit cites a United States Supreme Court decision, *Dept. of Hous. and Urban Dev. v. Rucker*,⁵ for the proposition that a breach of a lease may be established under federal law even if a tenant was not aware of drug activity.⁶ We emphasize that our holding in no way abrogates the rule that a landlord need not prove a tenant's knowledge of drug activity to prove a breach of the lease.⁷ But because First Merit failed to establish that drug activity had occurred, the issue of Stringer's knowledge need not be reached. The assignments of error are overruled, and the judgment of the trial court is affirmed.

Further, 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., GORMAN and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 14, 2005

per order of the Court


Presiding Judge

⁴ An uncertified copy of a judgment entered by the Hamilton County Court of Common Pleas indicated that the guest had been convicted of drug possession, but there was no testimony or other evidence to suggest that the conviction was related to activity at Stringer's apartment.

⁵ (2002), 535 U.S. 125, 122 S.Ct. 1230.

⁶ See, also, *Cincinnati Metro. Hous. Auth. v. Browning*, 1st Dist. No. C-010055, 2002-Ohio-190.

⁷ See *Rucker*, supra, and *Browning*, supra.