

IN THE BARBERTON MUNICIPAL COURT
SUMMIT COUNTY, OHIO

FILED

20 AUG 26 PM 1:58

GMS MANAGEMENT CO., INC.

Case No.: CVG 2001087

Plaintiff

Magistrate Andrew Peck

CLERK

vs.

MAGISTRATE'S ORDER

MARK SKOWRONSKI

Defendant

This matter came before the Court for a first cause hearing for eviction on August 24, 2020 at 1:00 p.m. The case was called at 1:15 p.m. and Plaintiff was present without counsel, James R. Ogden, and Defendant was present with counsel, James Yskamp.

The Court heard the testimony of the parties, weighed their credibility, and reviewed the exhibits submitted by the parties and attached to the complaint. The Court finds that Defendant leased Plaintiff's premises for approximately 20 years at 2763 Glenhaven Ave., Apt. H in Copley Township, Ohio, pursuant to a written 12 month lease for \$1,099.00 per month due on or before the first of every month. Further, the Court finds that Defendant did pay partial rent (balance of \$100.00 in late fees still due) for June, 2020 and Plaintiffs served a statutory 3 day Notice to Vacate on July 10, 2020 by posting it to the premises, then the complaint was filed on July 31, 2020. The Court also finds that beginning with the April, 2020 rental payment Defendant started making two payments per month in the amount of one-half of the rent due around the 15th and 30th of each month. Further, the Court finds that Defendant did tender a check in the amount of \$591.50 on or about July 10, 2020 to Plaintiff for one-half of his July rent, but Plaintiff refused the payment and returned the check to Defendant by mail on July 31, 2020. The Court also finds that the parties established a course of conduct by Plaintiff accepting late rental payments beginning in April, 2020 and continuing through June, 2020. Further, the Court finds Defendant tendered one-half of his rent on July 10, 2020, pursuant to the parties' course of conduct and Plaintiff cannot refuse the late payment of rent by

Defendant unless Plaintiff gives Defendant written notice that late rental payments will no longer be accepted and that Plaintiff intends to require strict compliance with the terms of the lease (See *Fairborn Apartments v. Herman*, 1991 WL 10962 (Ohio Ct. App. 2nd Dist. Greene County 1991). Thus, Defendant tendered his rent according to the establish course of conduct, which Plaintiff should have accepted since it did not notify Defendant in writing that it would no longer accept late payments and that the terms of the lease would be strictly adhered to. Therefore, a writ of restitution will not be issued in this case.

THEREFORE, IT IS ORDERED that a writ of restitution will not be issued in this case and the second cause of Plaintiff's complaint shall be continued for further proceedings.

Any party may file an Objection to the Magistrate's Order, along with a \$35.00 filing fee, within ten days of the filing of this Order. A party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law contained in this decision unless the party timely and specifically objects to that finding or conclusion as required by Civ. R. 53 (D)(3)(b).


Andrew F. Peck, Magistrate

cc: Atty. James R. Ogden
Atty. James Yskamp
Mark Skowronski