

CLEVELAND HEIGHTS MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO

James Greene et al.  
Plaintiffs

vs.

Julius Edwards, et al.  
Defendants

MAGISTRATE'S DECISION  
FORCIBLE ENTRY AND DETAINER

CASE NO. CVG 0301061

FILED  
JOURNALIZED  
03 SEP 10 PM 12:00  
CLEVELAND HEIGHTS  
MUNICIPAL COURT  
NINA F. HALLABRIN, CLERK

This matter came on for hearing on September 9, 2003, before George Schmidt, duly appointed Magistrate, to whom this matter was referred. Plaintiffs appeared pro se. Defendants appeared through counsel.

FINDING OF FACTS:

Plaintiffs James and Lolita Greene (a.k.a. Lolita Bryant) are the owners of a residential property located at 3394 Sylvanhurst Road in Cleveland Heights, Ohio. Defendant Keyatta Brown (a.k.a. Keyatta Brown Edwards) is the tenant pursuant to a written HUD Section 8 rental agreement entered into on or about February 7, 2003.

Plaintiffs, in their complaint, allege that the tenant failed to pay rent and they ask that possession of the premises be restored to them.

Prior to the tenant taking possession of the premises she entered into a one year written lease dated January 17, 2003. That lease calls for rent to be paid in the amount of \$1,250.00 per month. Thereafter, the tenant contacted Section 8 for assistance and approached her landlord about accepting a Section 8 lease. The landlord agreed. On 2/7/03 a HUD Section 8 contract was entered into between the landlord and the tenant. HUD lease provided for payment of \$167.00 to be paid by the tenant with the balance of \$686.00 paid by the PHA. Pursuant to the terms of the lease agreement Part C paragraph 4c(1) the owner may not charge rent that exceeds the reasonable rent for the unit as determined by the PHA. The HUD lease called for a one year term between 2/01/03 to 1/31/04 at a monthly rent of \$853.00. The

The PHA paid the landlord \$686.00 each month from February through and including September 2003. The tenant paid the landlord \$564.00 per month between February and June 2003, a total of \$2,820.00. The amount of rent to be paid by the tenant February through September is \$1,484.00.

Therefore, the magistrate finds that pursuant to the controlling lease agreement the tenant is not delinquent in her rent payments. Plaintiffs are not entitled to judgment on the right of possession of the premises.

Plaintiff's second cause of action for damage to the property will be continued.

**CONCLUSIONS OF LAW:**

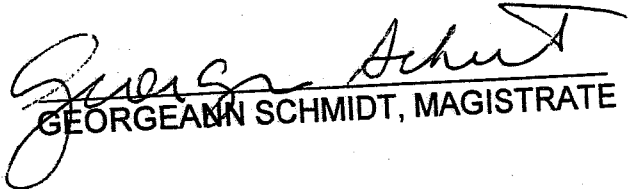
Revised Code 1923.02 § (A) provided that tenants are subject to forcible entry and detainer action for

- Non payment of rent,
- Holding over beyond the rental term
- Breach of an obligation that is imposed by RC § 5321.05 that materially affects health and safety (provided the landlord has complied with the termination provisions set forth in R.C. § 5321.11)
- Breach of an obligation imposed by a written rental agreement (in subsidized housing context, violations of the agreement must be material and should good cause.)

The parties to a valid rental agreement are bound by the terms of that agreement unless the terms of the agreement are contrary to law. An agreement that purports to require additional rent from a Section 8 tenant beyond the approved rental amount set forth in the HUD lease is unenforceable.

**DECISION:**

The Magistrate finds in favor of the defendant on the first cause of action. The second cause of action is continued.

  
GEORGEANN SCHMIDT, MAGISTRATE

**IF NO OBJECTIONS TO THIS DECISION ARE FILED WITH THIS COURT, WITHIN 14 DAYS, THE DECISION MAY BE ADOPTED BY THE COURT AND A JUDGMENT MAY BE RENDERED. FAILURE TO TIMELY FILE OBJECTIONS IS A WAIVER OF YOUR RIGHT TO APPEAL THE COURT'S ADOPTION OF THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW. IF OBJECTIONS ARE FILED, A COPY OF THE OBJECTIONS MUST BE SERVED UPON THE OPPOSING PARTY.**

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