IN THE LORAIN MUNICIPAL COURT
LORAIN COUNTY, OHIO

LORAIN METROPOLITAN H.A.	:	**CASE NO.** 05 CVG 01669
Plaintiff,	:	**MAGISTRATE** D. CHRIS COOK
v.	:	**MAGISTRATE'S DECISION**
KEITH JENNINGS	:	
Defendant.	:	

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Pursuant to Civil Rule 53, the Honorable Judges of the Lorain Municipal Court referred this matter to D. Chris Cook, MAGISTRATE, for hearing and decision. The parties to this matter will take note of the compliance requirements of Civ.R 53(E)(1), (2), and (3).

This matter came on for contested hearing on September 6, 2006. Both parties were present: Plaintiff was represented by Attorney Jon D. Clark; Defendant was represented by Attorney William D. Taylor. Based upon the pleadings, motions, affidavits, testimony, and other evidence submitted, the Court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

This matter is before the Court on Plaintiffs' complaint in first cause of Forcible Entry and Detainer. After opening statements, Vikki Shackelford testified on behalf of

Plaintiff, Lorain Metropolitan Housing Authority (hereinafter, "LMHA"), as follows: that she is employed by LMHA as a housing manager; that the unit at issue is located at 1730 Broadway, #815; that Defendant, Keith Jennings (hereinafter, "Jennings") rental obligation is $8.00 per month and began June 4, 2004; that on March 1, 2005, after the annual re-certification, Jennings' rent remained $8.00 per month; that Jennings' brother gives him $25.00 per month; that the statement indicating Jennings receives these funds from his brother is notarized; that based upon his affidavit, rent was calculated at $8.00 per month; that in May, 2005, LMHA sent Jennings a rent statement for $153.15 that included a $145.15 fee due to a repayment agreement Jennings entered into with LMHA and his $8.00 rent; that rent was due on the 8th of each month; that Jennings agreed to pay the sum of $145.15 per month for fire damage; that the total damage from the fire was $3,483.52; that the first payment was due on May 1, 2005; that the repayment agreement was signed on April 1, 2005, for a 24-month term; that the rent was not paid on May 1, 2005; that Jennings slid a money order under the door on May 23, 2005, for his rent in the amount of $8.00; that the rental payment was not accepted and mailed back to Jennings, because it was sent after the 8th of the month, was a partial payment (which are not accepted), and it did not contain the fire damage payment; that she wrote a letter for Jennings to the Board of LMHA requesting an extension for him on his repayment agreement; that she had no indication that the $25.00 Jennings received from his brother was a loan so she treated these funds as income, per HUD regulations; that on May 17, 2005, she executed a Termination Notice for Jennings lease; that on June 21, 2005, she served Jennings with a statutory 3-Day Notice to Vacate; that the total due and owing LMHA from Jennings is

$1,433.00; that an adjustment occurred in December, 2005, to Jennings rent as a result of income he began to receive from SSI; and, that as a result of the adjustment, the new rent was $164.00.

On cross examination, Shackelford testified that: she does not recall discussions with Jennings that the $25.00 was a loan; that she is not sure if you can count a loan as income for purposes of calculating rent; that she wrote a letter because Jennings asked her to; that she assumed Jennings could not pay the $145.15 obligation; that the request for an extension was approved by her supervisor; that she is not sure if the letter she wrote for Jennings actually went to the Board; that on December 16, 2004, she sent Jennings a Notice of Termination for failing to pay $3,483.52; Jennings thereafter signed the 24 month repayment plan; that she cancelled the Termination Notice since he agreed to the repayment plan; that grounds for eviction is non-payment of rent; that rent may be paid at the bank or mailed in; that a LMHA manager can approve payment of a lesser rental amount than is actually due; that Jennings never requested to pay a lesser amount after he executed the repayment agreement; that Plaintiff's Ex. "F," the Termination Notice, states that the $153.15 must be paid in full; that Jennings slid an $8.00 money order under her door, or gave it to the receptionist; that she returned the money order due to it being tendered late; that she was not sure if she had accepted late rental payments in the past; that she does not know how Jennings normally pays his rent; that she has been a Public Housing Manager for 5 years, and was in retail for 12 years before that; that she does rent calculations; that she never saw a situation where a person received loan funds; that she does not know if Jennings received a Visa cash advance or if that would be a loan; that she

would have to consult the regulations; that she does not know if Jennings is literate; that she does not know why Jennings now receives SSI; that she never asked Jennings if the $25.00 he received from his brother was a loan or gift; that if it was a loan, she would have to consult the regulations; and, that it was not ironic that the only reason Jennings had a rental obligation was because his brother gave him money to pay the rent.

On redirect, Shackelford continued: that a Termination of Tenancy Notice was sent; that Jennings entered into a repayment agreement; that Jennings could have paid the debt in full or left the premises; that the agreement to $145.15 per month gave the maximum amount of time to Jennings to pay under her authority; that the letter she wrote was written after May 23, 2005, after the rent and payment were late; they LMHA does not have to accept rent after the 8th of the month; that Jennings did not come to her to discuss the rent; that the repayment agreement did not provide for partial payments; that she could have accepted the $8.00 rent if tendered prior to the 8th of the month; not sure but thinks that a loan would not count as income; and, that she never had a person show a loan as income.

On re-cross, Shackelford testified further: that she does not know how the fire started; that Jennings denied starting the fire or being negligent for the fire; and, that she sent the Termination Notice for non-payment of the fire damage bill.

On sur-direct, Shackelford testified that: Jennings signed the repayment agreement to allow him to stay in the unit; that Jennings did not contest the fact that he owed the money for the fire damage when he signed the agreement; and, that he signed the agreement of his own free will.

Plaintiffs submitted Exhibits "A – F," into evidence.

On behalf of Defendant, Jennings testified as follows: that he is on SSI as of December, 2005; that he is mentally disabled; that he did not start the fire; that he signed the agreement to pay because he had no other choice and nowhere to go; that he signed a loan agreement with his brother on January 5, 2005; that he has not yet paid his brother back; that he told Shackelford that he was on the hook to repay his brother once he received his 3-Day Notice; that he did not have the $153.15 to pay LMHA; that the bank would not accept his $8.00 money order so he took it to LMHA per his brother's instructions; that Shackelford would not accept his rent; that he had no way of paying the $153.15; that he could not pay $3,500.00 for the fire damage; that he has not received a rent statement since May, 2005; did not know the right words to ask for an extension on the repayment agreement; that he receives $603.00 from SSI and his current rent is $164.00 as of December 1, 2005; and, that he could pay the rent and loan as of now.

On cross examination, Jennings stated: that his brother wrote out the loan document and signed it; that he knows he borrowed money; that he told Shackelford 20 or 50 times that the money was a loan; that the affidavit says nothing about a loan; that he signed 3 or 4 affidavits; that he could have left when he was given the fire bill; that he tried to give LMHA the rent between the 1st and 8th of May; that he went to the bank on the 4th or 5th of May with his money order; that he is not sure when he went to the bank; that he went to the bank every month and gave them 8, one-dollar bills; and, that "my mind is shot."

On re-direct, Jennings stated: he lived at LMHA since 2001 or 2002, for about 5 years; and, that he previously paid his rent.

Defendant submitted Exhibits "1 – 3" into evidence.

II. CONCLUSIONS OF LAW

A. STANDARD OF REVIEW: BURDEN OF PROOF

The burden of proof denotes the duty of establishing the truth of a given proposition or issue by such a quantum of evidence as the law demands in the case in which the issue arises. The Supreme Court has said that the burden of proof imposed by law upon one who must prove the existence of a fact or a thing necessary to be proven in the prosecution of a lawsuit means the obligation to show it by proof. Kennedy v. Walcutt (1928), 118 OS 442, r=vsd on other grounds.

The phrase Aburden of proof@ is used to designate the obligation resting on a party to produce evidence of a prima facie case. That is, it is the duty to proceed with evidence at the beginning, or at any subsequent stage of the trial, in order to make or meet a prima facie case. The party who must sustain the burden of proof must produce competent, credible evidence in support thereof. State ex rel Copeland v. State Medical Board (1923), 107 OS 20.

If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, or the evidence for or against an issue is of equal weight, the burden of proof has not been maintained. Klunk v. Hocking Valley (1906), 74 OS 125.

The burden of proof does not relate to the number of witnesses, but to the merit and weight of the evidence produced, whether by one or many witnesses. As such, the proof necessary to sustain the burden of proof in a civil matter is proof by a

preponderance of the evidence. By a Apreponderance of evidence@ is meant the greater weight of evidence. Traveler=s Insurance Company v. Gath (1928), 118 OS 257.

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B. STANDARD OF REVIEW: CONTRACTS

A contract is a promise or a set of promises, which the law recognizes as creating a duty, and for the breach of which the law provides a remedy. McSweeney v. Jackson (1996), 117 Ohio App.3d 623. Stated another way, a contract is an agreement between two or more people, bounded upon sufficient consideration, to do or refrain from doing a particular thing. Suam v. Moente (1995), 101 Ohio App.3d 48.

An express contract is an agreement whose terms are openly uttered or expressed by the contracting parties, and may be oral or in writing. An implied contract has the same legal effect as an express contract, the only difference being the manner in which the assent of the parties has been manifested. Cleveland Builders Supply v. Farmers Insurance (1995), 102 Ohio App.3d 708.

An express contract speaks for itself and leaves no place for implication; a contract implied in law, on the other hand, is one inferred from the circumstances or acts of the parties. In a proper case, recovering may be had on a quasi contract or quantum meruit basis to prevent unjust enrichment. National City Bank v. Jim Roberts Buick (1986), 24 Ohio Misc. 2d 18.

If a contract is clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined. Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc. (1984), 15 Ohio St.3d 321, 322, 474 N.E.2d 271. However, where a term cannot be determined by reference to the four corners of the contract, factual determination of intent or reasonableness may be necessary to supply the missing term. Hallet & Davis Piano Co. v. Starr Piano Co. (1911), 85 Ohio St. 196, 97 N.E. 377.

Therefore, the initial determination as to whether additional evidence of intent is required is a question of law, not fact. A term is ambiguous when it is reasonably susceptible of two different interpretations. A term does not become ambiguous merely because it works a hardship on one party or works to the advantage of another. Aultman Hospital Assn. v. Community Mut. Ins. Co. (1989), 46 Ohio St.3d 151.

When there is an ambiguous contract term, it is necessary to look to extrinsic evidence. As the Ohio Supreme Court has said:

> the intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement. * * * A court will resort to extrinsic evidence in its effort to give effect to the parties' intentions only where the language is unclear or ambiguous, or where the circumstances surrounding the agreement invest the language of the contract with a special meaning.
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> Kelly v. Medical Life Ins. Co. (1987), 31 Ohio St.3d 130, 132, 509 N.E.2d 411.

C. STANDARD OF REVIEW:
LANDLORD TENANT LAW: TENANT'S DUTIES

Pursuant to R.C. 5321.01, *et seq.*, a tenant's duties are statutorily enumerated to maintain the premises in a safe and sanitary condition; dispose of garbage in a safe and sanitary manner; keep plumbing fixtures clean; use and operate all electrical and plumbing

fixtures properly; comply with applicable housing, health, and safety codes; refrain from destroying, defacing, damaging, or removing any fixtures, appliance, or any other part of the premises; and maintain appliances supplied by the landlord, among other duties not germane herein.

In addition, pursuant to R.C. 5321.01, et seq., a tenant has common law duties to pay rent; make certain repairs; surrender possession of the premises at the termination of the leasehold; and to refrain from committing waste on the premises. Moreover, the tenant must give the landlord timely notice when he intends to terminate the tenancy.

Generally, the tenant must give the landlord 30 days notice to terminate a periodic tenancy. See R.C. 5321.17(B). While this notice should be in writing, it is not always required to be. McGowan v. DM Group IX (1982), 7 Ohio App. 3d 349.

Moreover, when a security deposit is paid by the tenant, the tenant must give the landlord written notice of his forwarding address, pursuant to R.C. 5321.16(B). See also; Carr v. Ed Stein Realtors (1983, Ninth App. Dist.), 10 Ohio App.3d 242. However, where the landlord has actual knowledge of the tenants new address, even if it was not provided in writing, the duty to return the security deposit, and/or an itemization arises. Prescott v. Makowski (1983), 9 Ohio App.3d 155.

D. STANDARD OF REVIEW:
LANDLORD TENANT LAW: LANDLORD'S DUTIES

Equally, the landlord has statutory and common law duties also enumerated at R.C. 5321.01, *et seq*. Specifically, regarding security deposits, R.C. 5321.16 sets out the statutory provisions governing the mechanics of a security deposit. The statute states, in

pertinent part,

> Upon termination of the rental agreement, any . . . money held by the landlord as a security deposit may be applied . . . to the payment of the amount of damages that the landlord has suffered . . . Any deduction from the security deposit shall be itemized and identified by the landlord in a written notice delivered to the tenant together with the amount due, within thirty days after termination of the rental agreement and delivery of possession. The tenant shall provide the landlord in writing with a forwarding address . . . to which the written notice and amount due from the landlord may be sent.

E. STANDARD OF REVIEW: CONTRACTS OF ADHESION

An adhesion contract exists when parties to a contract have substantially unequal bargaining power. Central Nat. Bank of Clev. v. Gallagher (1968), 13 Ohio App.2d 115.

For the most part, insurance policies are "adhesion contracts," which are standardized agreements offered to consumers on an essentially "take it or leave it" basis, wherein the buyer has no realistic choice as to its terms. Winters v. Hart (2005), 162 Ohio App.3d 15.

The term "unconscionability" includes an absence of meaningful choice on the part of one of the parties together with contract terms that are unreasonably favorable to the other party. When a party of little bargaining power enters into a commercially unreasonable contract with little or no knowledge of its terms, it is not likely that his or her consent or even objective manifestation of his or her consent was even given to all the terms and, in such case, the usual rule that terms of an agreement are not to be questioned should be abandoned; the court should therefore consider whether the terms of the contract are so unfair that enforcement should be withheld. Orlett v. Suburban Propane (1989), 54 Ohio App.3d 127.

Finally, Black's Law Dictionary defines "adhesion contract" as "[a] standard-form contract prepared by one party, to be signed by the party in a weaker position, usually a consumer, who has little choice about the terms."

F. STANDARD OF REVIEW: EQUITY JURISDICTION

This Court, like all courts situated in the State of Ohio, has authority in the cases before it "to hear and determine *all legal and equitable remedies* necessary or proper for a complete determination of the rights of the parties." *Behrle v. Beam* (1983), 6 Ohio St.3d 41. The function of equity "is to . . . moderated the unjust results that would follow form the unbending application of the law." *Salem Iron Co. v. Hyland* (1906), 74 Oho St. 160.

Further, a court of equity is a court of conscience "that must apply rules of reason and righteousness, within the rules of equity applicable to the case before it. The various revisions to Ohio's laws since statehood have not brought about any change in the scope of its courts' equity jurisdiction. 41 Ohio Jurisprudence 3d (1998), Equity, Section 3.

Equity abhors penalties, such as "an agreement to pay an arbitrarily fixed sum of money for failing to exactly perform some condition of a contract." *Peppe v. Knoepp* (1956), 3 Ohio St.2d 281. Plaintiffs' practice of repossessing vehicles immediately upon default, with no reasonable grace period or flexibility, is just such a penalty.

Finally, an equity court exercises a broad and flexible jurisdiction to grant remedial relief where justice or good conscience requires it. *Bldg. Serv. v. St.Lukes Hosp.*(1967), 11 Ohio Misc. 218. Equity courts are not bound by formula, or restrained by any limitation that tends to trammel the free and just exercise of judicial discretion. *Keystone Driller Co.*

v. Gen. Excavator Co. (1933), 290 U.S. 240.

III. DECISION

In the case at bar, Plaintiff has sued Defendant in forcible entry and detainer to evict Defendant and acquire restitution of demised premises located at 1730 Broadway Ave., #815, Lorain, Ohio. Defendant opposes the action and denies any wrongdoing.

In a forcible entry and detainer action, the plaintiff-landlord has the burden of proving that, at the time of filing the complaint, he is entitled to possession of the leased premises at issue. Martin v. Bircher (1933), 46 Ohio App. 239.

Here, Plaintiff seeks to evict Defendant based upon non-payment of rent and default under a Repayment Agreement wherein Defendant agreed to repay LMHA the sum of $3,483.52 at $145.15 per month for a fire he allegedly caused.

Defendants' response is that he attempted to pay May's rent which was rejected (even though he should have had no rental obligation as his $25.00 per month was a loan, not income); that he did not cause the fire and could not afford to repay the $145.15 per month extra anyway; and, that he had no choice but to sign the Repayment Agreement.

In the first instance, the Court is not swayed by Defendants putative "loan agreement" with his brother. Despite Exhibit "3," the alleged loan document, the transfers from Defendant's brother are clearly gifts, and as such, are subject to the income calculations of LMHA.[1] This is particularly so as he has never made any repayments.

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1 The Court would note, however, that but for the fact that Defendant reported these funds on his Public Housing affidavit (Plaintiff's Exhibit "B,") he would owe no rent at all to LMHA. In the eyes of the Court, this disclosure bolsters Defendant's credibility

Accordingly, Defendant does owe LMHA rent in the amount of $8.00 per month from May, 2005, through November 30, 2005, for a total of $56.00. Thereafter, Defendant's rent escalated to $164.00 per month, beginning December 1, 2005, as a result of his receipt of SSI.

To that end, Defendant owes rent to LMHA in the amount of $1,804.00 (December 1, 2005, through October 1, 2006) as of the date of this opinion, for a total rent indebtedness of $1,860.00.

The next issue for determination is whether or not Defendant tendered his May, 2005, rent in the amount of $8.00 to LMHA timely, and if so, was it properly rejected. Based upon the testimony and evidence presented, the Court finds that Defendant did in fact tender his $8.00 money order to LMHA by the deadline, May 8, 2005.

Further, the Court places great deference on the fact that Defendant resided at LMHA for almost 5 years without missing his rental payments. As such, even given Defendant's near-indigent status, he had the $8.00 rent available to pay as his brother gave him $25.00 every month. There is simply no reason to believe that as of May, 2005, for no apparent reason, Defendant simply decided to quit paying his rent.

The next issue for resolution is the alleged "fire debt" and repayment obligation. Frankly, the Court is highly disturbed by the conduct of LMHA in this regard. First, there is absolutely no evidence that Defendant started this fire or was otherwise responsible for it.

Secondly, even if he was responsible for the fire, it is highly problematic that LMHA would insist that Defendant enter into a Repayment Agreement, fashion the terms,

add the payments onto his rent, and threaten to evict him if he did not sign. This is a textbook, law school example of a voidable contract of adhesion, based upon public policy.

Finally, even if Defendant *was* responsible for the fire *and* the Repayment Agreement was properly entered into, LMHA was aware that the Defendant could never live up to the obligation as it called for total monthly payment of $153.15, when his total monthly income was $25.00! As such, Defendant was essentially set-up to fail the moment he signed the agreement.[2]

Accordingly, the Court makes the following Orders regarding this matter:

1. Based upon it's equity powers embodied at R.C. 1901.18 and the precedent noted above, and pursuant to Civ.R 15(B), the Court, *sua sponte*, hereby amends Plaintiff's complaint to conform to the evidence adduced and grants judgment in favor of Plaintiff, LMHA, and against Defendant, Keith Jennings, in the amount of **$1,860.00**, as and for rent through October 31, 2006. Interest shall be at 6% per annum from the date of judgment;[3]

2. The Repayment Agreement is hereby vacated, voided, and held for naught, as a contract of adhesion and violative of public policy; Defendant is released from any further liability thereunder;

3. On Plaintiff's action for Forcible Entry and Detainer and Restitution of the demised premises, judgment is granted in favor of Defendant and against Plaintiff. Costs

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2 Had Legal Aid not intervened on Defendant's behalf, it is highly likely that the Defendant would have ended up in the street as a result of this travesty.

3 Obviously, Defendant is entitled to a credit for any rental payments made or escrowed since May, 2005.

to Plaintiff.

IT IS SO ORDERED.

Date

MAGISTRATE D. CHRIS COOK

cc: Clark, Esq.
Taylor, Esq.