IN THE AKRON MUNICIPAL COURT SUMMIT COUNTY, OHIO

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LIBERTY RENTAL PROPERTIES LLC	2021 MAY -3 AM 11:		
) CASE NO: 21 CVG: $^{00}/05$		
Plaintiff V) MAGISTRATE'S FINDING OF FACT ANDRIA		
SARAH ROHR ET AL) CONCLUSION OF LAW:		
Defendant) Forcible Entry and Detainer Action)		
Findings of Fact: This case was filed on 1/28/21 The second cause	The first cause was served by POSTING AND REGULAR MAIL HAS NOT been properly served, or there was no second cause.		
This case is set for hearing on 4/16/21	. The Plaintiff WAS in court (with) (by)		
counsel. The Defendant(s) WAS in court (with) Plaintiff IS found to have a possessory interest in	(by) counsel. in 530 LAGOON ST., AKRON, OHIO 44314 as		
	sory interest IS attached to the complaint. The property		
	mit County registration IS attached to the complaint. The		
	the City of Akron registration S attached to the complaint.		
Defendant has a tenancy in this property pursuant to (lea	e IS attached to the complaint. Rent per month is		
(other): A copy of the lease \$575 Rent is due on the 1ST of each month, with	h a grace period until the 5TH of each month. A security deposit		
of \$ NA was paid.	Brance berram minutes		
Rent in the amount of \$575 was last received on 10	0/1/2020 for OCTOBER . A Lawful statutory		
	1/4/21, which was at least three days before		
the complaint was served by: Hand Delivered Cert	ified Mail Posting at Premises. A copy of the notice		
IS attached to the complaint A copy of the no	tice was served upon AMHA. Termination of Lease notice was		
served on			
	udgment: failure to pay rent maintains possession forther.		
THIS IS A NON-PAYMENT OF RENT CASE. DEFENDANT WAS APPRO	VED FOR SUMMIT CARES RENTAL ASSISTANCE. PLAINTIFF REFUSES TO		
ACCEPT ANY CARES MONEY TO SATISFY UNPAID RENT. DEFENDANT	RAISED AN EQUITIBLE DEFENSE, WHICH, BY LAW, MUST BE CONSIDERED		
A WRIT SHALL NOT ISSUE, AS THIS COURT FINDS MERIT IN THE IS AMERICAN AS THIS COURT FINDS MERIT IN THE IS Conclusion of Law: It is decision of the Magistrate that a writ	DEFENSE BASED UPON THE PANDEMIC AND AVAILABILITY OF FUNDS. BE NOT BE allowed. It is further the decision of the		
Magistrate that:			
The second cause in this matter be continued, or	this case be transferred to the administrative docket until service		
of the second cause is perfected, or that this case be con-	cluded because there is no second cause or very both causes to state a recoverable claim.		
are dismissed or the second cause is dismissed for failure	to state a recoverable claim MAGISTRATE		
	V V;		

PURSUANT TO CIV. R.58(B), THE CLERK OF COURTS SHALL WITHIN THREE (3) DAYS OF THE FILING OF THIS DECISION SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THIS JUDGMENT ENTRY AND ITS DATE OF ENTRY UPON THE JOURNAL OF THE COURT.

IN THE AKRON MUNICIPAL COURT SUMMIT COUNTY, OHIO

LIBERTY RENTAL PROPERTIES Plaintiff) 21 CVG 00705.)	CLERK COUR
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SARAH ROHR, ET AL.) <u>MAGISTRATE</u>) <u>DECISION</u>	'S MEMORANDUM OF
Defendant)	

This case came before the Magistrate for a hearing on April 16, 2021 at 9:00 a.m. on the First Cause of Action of Plaintiff's Complaint for Forcible Entry and Detainer filed January 28, 2021. Plaintiff's representative, William German appeared, represented by Attorney John Lysenko, and Defendant, Sarah Rohr, appeared, represented by Attorney Joshua Hinkel. Defendant George Pyles did not appear. This case was previously continued from March 18, 2021 due to the Defendant's pursuit of rental assistance monies through the Summit County Cares program.

Additional Findings of Fact

Based upon a review of the Complaint and the statements of counsel, the First Cause of Action in this case arises from Plaintiff's claim of Defendant's non-payment of rent. At the hearing, the Plaintiff indicated that the landlord refuses to accept rental assistance monies from the Defendant.

The Defendant raised an equitable defense claim based upon the COVID 19 national pandemic, the Defendant's inability to pay as a result of the pandemic, and the availability of

funds to make the landlord whole. The Defendant's counsel stated that rental assistance monies were available through the Summit County Cares program for reimbursement to the landlord of up to \$1,500.00 per month for rent, \$50.00 per month for late fees, past due utilities and up to \$400.00 for attorneys fees.

Despite the availability of the funds and the equitable defense raised by the Defendant,

Plaintiff again refused to accept the rental assistance monies in this case. Plaintiff's basis for not
accepting the monies did not relate the non-payment of rent issue noticed in the Complaint or
any issue addressed in the three day notice attached to the Complaint, but rather related to
ancillary breach of lease issues concerning alleged criminal charges and/or activity against the
Defendant. These issues were not before the court as a basis for the eviction.

Conclusions of Law

In this case, the Defendant has raised an equitable defense based upon the pandemic's effect on the tenant. "When a tenant raises equitable defenses, a court must balance the equities to determine whether a forfeiture of the lease is warranted." *Dayton Metro. Hous. Auth. v. Kilgore*, 2011-Ohio-3283, ¶ 40, 194 Ohio App. 3d 767, 775–76, citing *S. Hotel Co. v. Miscott, Inc.* (1975), 44 Ohio App.2d 217, 221. "When a party raises an equitable defense, it is the responsibility of the court to weigh the equitable considerations before imposing a forfeiture." *Gorsuch Homes, Inc. v. Wooten*, 73 Ohio App. 3d 426, 436, (1992).

Since an equitable defense has been raised by the Defendant, this Court must consider that defense and weigh the equities. In weighing the equities, this court considers the fact that

this case involves non-payment of rent and weighs it against the equitable defense raised by the Defendant.¹

Ohio courts have addressed similarly eviction issues when equitable defenses have been presented to the court, as outlined in *In Real Properties Servs. Mgmt. v. Harigle*, No. 3-96-21, 1997 WL 430773, at *5 (Ohio Ct. App. July 30, 1997), where the Court held as follows:

[W]e find ourselves in substantial agreement with courts that have held that nonpayment of rent might not, by itself, presumptively constitute 'good cause' for eviction. *Real Properties Servs. Mgmt. v. Harigle*, No. 3-96-21, 1997 WL 430773, at *5 (Ohio Ct. App. July 30, 1997), citing *Fairborn Apts.*, [(Jan. 31, 1991), Greene App. No. 90 CA 28]; *Northlake Hills*, [(Dec. 8, 1986), Montgomery App. No. 9699, unreported]; see, also, *Cincinnati Metro. Housing Auth. v. Green* (1987), 41 Ohio App.3d 365, 536 N.E.2d 1.

In this regard, a court may take into consideration the circumstances surrounding the alleged breach of the rental agreement. For example, in *Northlake Hills*, the appeals court considered the fact that there was no deliberate disregard of the rental agreement, and the fact that the agreement itself provided for a grace period suggested that late payments, without eviction, were within the realm of reasonable contemplation.

Where nonpayment of rent is due to "circumstances beyond [the tenant's] control, prompt information, and diligent effort to pay" negates any claim to good cause for termination. See Cincinnati Metro. Housing Auth.

In addition, [***], it has been recognized that courts may decline to terminate a lease for non-payment, where the breach was not willful or deliberate. See Zanetos v. Sparks (1984), 13 Ohio App.3d 242, 244, 468 N.E.2d 938.

[emphasis added]. Real Properties Servs. Mgmt. v. Harigle, No. 3-96-21, 1997 WL 430773, at *5 (Ohio Ct. App. July 30, 1997).

"Generally, courts, in balancing the equities, will relieve a tenant from the harsh consequences of a forfeiture where the payment of money damages will adequately compensate the landlord." Gorsuch Homes, Inc. v. Wooten, 73 Ohio App. 3d 426, 435–36, 597 N.E.2d 554, 561 (1992). In Gorsuch Homes, the court weighed certain factors affecting the tenant, including

¹ Although the Plaintiff has raised other issues as a basis for not accepting the rental assistance, those matters were not noticed to the Defendant, nor plead in the Complaint in this case.

whether money damages will compensate the landlord, and the hardship on the tenant if evicted, including the tenants difficulty in obtaining other housing. See *Id*.

Here, the issue of non-payment of rent, in light of the equitable defense raised, does not presumptively constitute "good cause" for this eviction to proceed. When considering certain factors in the case, the Defendant's breach was not willful or deliberate, as it was due to the national pandemic and the stresses placed on the tenant financially as a result of that pandemic. Additionally, money damages will compensate the landlord and make him whole, as said monies are available through the Summit Cares rental assistance program, for which the tenant has already been approved. Under that program, the landlord can receive monies up to \$1,500 per month, \$50 late fee per month, and \$400 in attorneys fees, at a minimum.

"Ohio courts have the power, and often exercise it, to relieve a tenant from the consequences of forfeiture of a leasehold interest." See, e.g., Tabor v. Bellman (1919), 13 Ohio App. 382, 32 Ohio C.C. (N.S.) 101; Whitmore v. Meenach (App.1940), 33 Ohio Law Abs. 95, 33 N.E.2d 408; Peppe v. Knoepp (1956), 103 Ohio App. 223, 74 Ohio Law Abs. 79, 3 O.O.2d 281, 140 N.E.2d 26; Southern Hotel Co. v. Miscott, Inc. (1975), 44 Ohio App.2d 217, 73 O.O.2d 235, 337 N.E.2d 660; CMHA v. Harris, supra; Heritage Hills v. Nusser (July 3, 1986), Ross App. No. 1183, unreported, 1986 WL 7882.

After weighing the non-payment of rent issue raised in the Complaint against the equitable defense raised by the tenant, this Court concludes the following: This case is a non-payment of rent case; Defendant was approved for Summit Cares rental assistance; Plaintiff refuses to accept any Cares money to satisfy the unpaid rent; and Defendant raised an equitable defense, which, by law, must be considered by this Court. Based on the findings made herein, a

writ of restitution shall not issue, as this Court finds merit in the defense based upon the pandemic and the availability of funds to make the landlord whole.

MAGISTRATE KANI HARVEY HIGHTOWER

CC: LIBERTY RENTAL PROPERTIES, LLC, Plaintiff

JOHN LYSENKO, Counsel for Plaintiff

SARAH ROHR, Defendant

JOSHUA HINKEL, Attorney for Defendant Sarah Rohr

GEORGE PYLES, Defendant