

FILED

2021 MAY -3 AM 11:53

**CASE NO:** 21 **CVG:** 00705

**MAGISTRATE'S FINDING OF FACT AND**

**CONCLUSION OF LAW:**

## Forcible Entry and Detainer Action

MAGISTRATE

**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

v.

SARAH ROHR, ET AL.

Defendant

21 CVG 00705

MAGISTRATE'S MEMORANDUM OF  
DECISION

FILED

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AKRON MUNICIPAL COURT  
JIM LARIA  
CLERK

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

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

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

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<sup>1</sup> 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