

FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

FILED

SMALL CLAIMS DIVISION

31 DEC -4 PM 3:16

FRANKLIN COUNTY
MUNICIPAL COURT
M. J. DAWSON, CLERK

DANNY SMITH,
Plaintiff,

:
:

v.

:

Case No. M 9109CVG-034190

MARION GALLAGHER,
Defendant.

:
:

REFEREE'S REPORT

This cause came on for hearing before Referee Dennis Kimball on November 25, 1991. The plaintiff was represented by Attorney Lou Frisco. The defendant was represented by Attorney Molly Hennessey.

Based upon the testimony and evidence presented, after weighing the credibility of the witnesses, the referee makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At some point during 1990, a partnership composed of the plaintiff and a person by the name of Timothy Farkas purchased property located at 4095 Ventura Boulevard in Grove City, Ohio at a tax sale. The defendant was the previous owner of the property. The defendant remained in possession of the property. Mr. Farkas and the defendant entered into an agreement whereby the defendant was to pay \$450.00 per month in rent. The defendant made two monthly payments of that amount at the beginning of the tenancy. The defendant and Mr. Farkas then agreed to lower the rent to \$200.00 per month. The defendant was an employee of Mr. Farkas and authorized him to deduct the rent from the defendant's paychecks. Mr. Farkas did so for two or three

months, and then stopped doing so.


2. Around this time, the plaintiff and Mr. Farkas began to have a disagreement about the management of the partnership. Mr. Farkas told the defendant not to worry about paying the rent. A law suit was filed between the plaintiff and Mr. Farkas. The law suit was settled on or about September 17, 1991 when the plaintiff received a deed in his own name covering the property occupied by the defendant. Mr. Farkas assigned his rents from this property to the plaintiff. On the following day, the plaintiff served a three-day notice upon the defendant and then brought this action claiming that the defendant had failed to pay rent. The plaintiff had not given the defendant any verbal or written notice demanding that he resume paying rent.

CONCLUSIONS OF LAW

A. The referee finds that the plaintiff has not proven a right to recover in this action by a preponderance of the evidence. When the plaintiff took title to the property, he took it subject to the tenancy then in existence. Mr. Farkas' statements made while the partnership held title to the property waived the defendant's obligation to pay rent. That waiver continued on to include the time that the plaintiff took title to the property. Mr. Farkas' assignment of rent to the plaintiff did not, by itself, reinstate the defendant's obligation to pay rent. It merely gave the plaintiff the right to do so by giving an appropriate notice to the defendant. With the plaintiff having failed to give such a notice, he may not maintain this action based on nonpayment of rent.

REFEREE'S RECOMMENDATION:

The referee recommends judgment for the defendant on the first cause of action, with the first cause to be dismissed at the plaintiff's costs.



REFEREE DENNIS R. KIMBALL

December 3, 1991

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