

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

SMALL CLAIMS DIVISION

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FILED
FRANKLIN COUNTY MUNICIPAL COURT
W. J. PATTERSON, CLERK
CASE NO. 9305CVG-015704

COLUMBUS METROPOLITAN HOUSING CORP. :

Plaintiff. :

VS.

 CRAWLEY :

Defendant. :

REFEREE'S REPORT

This cause came on for hearing before Referee Dennis Kimball on July 2, 1993. The plaintiff was represented by Atty. John Waddy. The defendant was represented by Atty. Molly Hennessey. Based upon the 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 the beginning of the hearing, the parties stipulated that the lease attached to the complaint was executed by both parties to this law suit, that the defendant had signed Plaintiff's Exhibit A on July 13, 1992, that the defendant failed to pay January, 1993 rent on time, and that the plaintiff properly served the required notice of proposed termination and the termination notice prior to bringing this eviction action. The defendant maintains that his failure to pay January, 1993 rent on time was not through any willful conduct and that the defendant presently stands ready to make the plaintiff whole for its damages.

2. The defendant has been a tenant of the premises in question located at 2417 Mock Road, Apartment E, in Columbus, Ohio since February 5, 1992. During July, 1992, the defendant offered to pay rent late. The plaintiff refused to accept the rent without the defendant signing a document now entered as Plaintiff's Exhibit A. Plaintiff's Exhibit A basically states

of July, 1992 and that the defendant understood that rent payments were due on the first and no later than the seventh day of each month. Plaintiff's Exhibit A also stated that the plaintiff would not accept any further late rental payments from the defendant.

3. The defendant failed to pay January, 1993 rent by January 7th. The defendant claims that he gave the rent to his 30 year old son with instructions for him to give the money to the defendant's mother, who would then turn the money over to the plaintiff. The defendant's mother testified that the defendant's son came to her house with the defendant's money, and that he stole money from her and then left. The defendant did not pay rent himself because he had to leave town quickly to attend to another member of his family. While the defendant's recollection of details surrounding this incident was inconsistent and lacking in detail, his mother credibly corroborated the essence of the defendant's testimony when she related her grandson's actions when he visited her. The referee finds that the defendant gave the rent money to his son to give to the defendant's mother, and that his son then stole the rent money. Although the defendant's son had never stolen from his father before, the son had a significant prior criminal record involving more than one theft-related offense. The referee finds that the defendant was negligent when he decided to trust the rent money with his son; the defendant did not engage in any willful conduct designed to deprive the plaintiff of its rent money.

4. When the defendant returned from his trip and learned that the rent money had not been paid, he managed to gather enough money together to offer the January rent late. The plaintiff refused to accept the rent outright, but did place the defendant's rent in escrow. The defendant timely tendered rent for February through April which the plaintiff also placed in escrow.

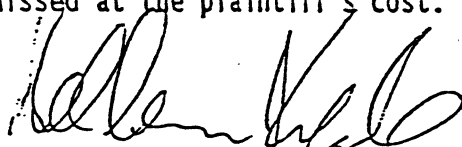
During this time, the defendant pursued the plaintiff's grievance procedure, but without success. When the defendant tendered May rent, the plaintiff refused to accept any more rent because the defendant had exhausted his grievance procedures. As stipulated, the proper notices were served and this law suit was filed.

CONCLUSIONS OF LAW

The referee concludes that the plaintiff has not proven a right to recover possession of the property by a preponderance of the evidence. The defendant's failure to pay rent on time was not due to any willful or malicious action on his part. In addition, the plaintiff may be made whole for the damages caused by the late payment of rent by acceptance of the rent that the plaintiff has escrowed and the acceptance of the rent presently held by the defendant. "[U]nless a lessee's conduct is willful or malicious or if compensation for the breach cannot be made due to the lessor, a court exercising its equity powers will grant the lessee relief from forfeiture." Zanetos vs. Sparks (1984), 13 Ohio App. 3d 242 (Court of Appeals for Franklin County).

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 cost.



REFEREE DENNIS R. KIMBALL

DRK/kjr/7-29-93

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