

FILED

1986 FEB -6 PM 3: 22

Sunbury Gardens,

Plaintiff,

-v-

Mark Pizza,

Defendant.

FRANKLIN COUNTY
MUNICIPAL COURT
TED HYSSELL, CLERK

Case No. M'85CVG 36063

This cause came on for hearing before Referee Dennis Kimball on December 24, 1985. The plaintiff was represented by Attorney William Kahle. The defendant was represented by Attorney Paul Spaeth. 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. The plaintiff seeks to evict the defendant from property known as 1607 N. Fourth Street, Apt. D in Columbus, Ohio on the basis of nonpayment of the \$225.00 in rent due November 15, 1985. At the time plaintiff served a three day notice to the defendant on November 26, the rent had not yet been paid. The plaintiff received a rent check on behalf of the defendant on December 4, dated November 29. However, the plaintiff had filed this eviction action on December 3. There was no evidence produced to indicate that the plaintiff attempted in any manner to return the check to the defendant. Neither was there any evidence to indicate that the check was not negotiable or would have been dishonored if presented.

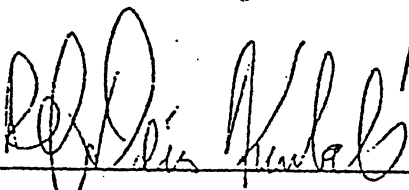
The plaintiff merely held onto the check until the hearing date, and tendered it back to the defendant. The plaintiff did not retain the check for any evidentiary purposes. The Referee therefore finds that the plaintiff accepted the rent check, thereby waiving the three day notice in this case.

CONCLUSIONS OF LAW

The Referee finds that the plaintiff has not presented sufficient evidence to prove a basis for eviction in this case by a preponderance of the evidence. Plaintiff's acceptance of the rent waived the three day notice, thereby depriving the Court of jurisdiction.

REFEREE RECOMMENDS

Judgment for defendant on the first cause, with the first cause to be dismissed at the plaintiff's costs.



REFEREE DENNIS KIMBALL

FENNER COUNTY
MUNICIPAL COURT
TED WYSELL, CLERK

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Copies to:

William Kahle, Attorney for Plaintiff

Paul Spaeth, Attorney for Defendant.