

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

ROYER, KOHR & GRIFFITH

:

Plaintiffs,

:

-vs-

:

CASE NO: M'88 CVG 24901

OPAL HOBBS

:

Defendant:

:

REFEREE'S REPORT

This cause came on for hearing before Referee Dennis Kimball on August 3, 1988: The plaintiff was represented by Attorney Damon Wetterauer: The defendant was represented by Attorney Kathleen LaTour: Based upon the following facts, the referee makes the following conclusions of law and recommendation:

FINDINGS OF FACT

1: By stipulation of the parties, the referee finds that the plaintiff timely served the defendant with a 30 day termination notice effective July 1, 1988: The defendant failed to vacate by July 1st: The plaintiff then served defendant a valid 3-day notice on July 1st: The defendant sent the plaintiff two money orders on July 8th in an attempt to pay July rent: The plaintiff received those money orders soon thereafter: The plaintiff did not cash the money orders; the plaintiff did not return them to the defendant or notify the defendant that they were being held for evidentiary purposes:

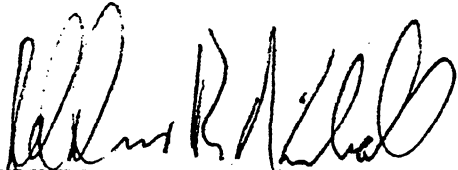
2: The referee additionally finds that the plaintiff tendered the money orders in question to the court on the date of the hearing: The parties agreed that if the case was dismissed, the plaintiff would receive the money orders:

CONCLUSIONS OF LAW

The referee finds that the plaintiff has not proven a right to recover in this action by a preponderance of the evidence. The plaintiff received the money order nearly three weeks before the trial date. That was sufficient time for the plaintiff to either return the payment or notify the defendant that the payment would be held for evidentiary purposes. Failure to take either step amounts to acceptance of the rent payment. Pace v. Buck (1949), 86 O. App. 25 (Court of Appeals for Franklin County). Thus, the plaintiff accepted future rent by accepting July rent soon after it was mailed on July 8th. Therefore, the 3-day notice has been waived as a matter of law. Presidential Park Apartments v. Colston (1980), 17 O. Op. 3rd 220 (Court of Appeals for Franklin County). Such waiver of the 3-day notice deprives this court of jurisdiction in this case:

REFEREE'S RECOMMENDATION:

The referee recommends that this action be dismissed without prejudice at the plaintiff's costs.



REFEREE DENNIS R. KIMBALL

COPIES TO:

Damon Wetterauer,
Attorney for plaintiff

Kathleen LaTour,
Attorney for defendant

DRK:seh 
August/24, 1988