

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
JUDGE RAYMOND L. PIANKA

Morningstar Jones
Plaintiff(s)

DATE: 11/29/2006

-VS-

CASE NO. 06 CVG 26743

Robinson
Defendant(s)

MAGISTRATE'S DECISION

Referred for Hearing per Civ. R. 53 to Magistrate:

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Sandra R. Lewis | <input type="checkbox"/> Myra Torain Embry | <input type="checkbox"/> Ruben E. Pope, III |
| <input type="checkbox"/> David D. Roberts | <input type="checkbox"/> Barbara A. Reitzloff | <input type="checkbox"/> Bruce D. Imbacuan |

Service:

Service has has not been perfected upon all defendants. Add'l findings re: service:

First Cause of Action

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Plaintiff in Court | <input type="checkbox"/> Defendant in Court | <input type="checkbox"/> Neither Party in Court |
| <input checked="" type="checkbox"/> Plaintiff rep'd by counsel | <input checked="" type="checkbox"/> Defendant rep'd by counsel | |

Continued At Request Of Pltf (COPR) Deft (CODR) Court (COCR)
until ___/___/___ at ___ AM/PM in Courtroom 3A.

Findings of Fact

1. Plaintiff(s) is (are) the owner(s) landlord (acting on behalf of _____) of the premises described in plaintiff's complaint. (name of owner)
2. The address of the premises from which restitution is sought:
 - is correct and complete as it appears in the body of plaintiff's complaint.
 - is incorrect or incomplete and is corrected to read: _____
3. Defendant(s) is (are) the tenant(s) of the residential commercial premises pursuant to an oral a written rental agreement.
4. Defendant's tenancy is not federally subsidized.
 Defendant's tenancy is federally subsidized, as follows §202; 58
5. Plaintiff(s) did serve defendant(s) with a notice under R.C. 1923.04, on the date contained in the notice or on ___/___/___ . A copy of notice admitted as Pltf's Ex. B
 did not serve defendant(s) with a three day notice under R.C. 1923.04.

6. The grounds alleged for this eviction are:

- Nonpymt Term'n of Periodic T'cy Expir. of Lease
- Non-Color of Title Violation of R.C. 5321.05(A)(9)(Drug Activity)
- Violation of R.C. 5321.05 Breach of Lease (other than nonpymt)
- Other _____

7. Grounds = Nonpayment

- Defendants last paid rent on 8/10 for the month of 8/10.
- Plaintiff(s) was not (were not) required to serve deft(s) add'l notices (in add'n to 3 day) or
- Plaintiff(s) was (were) required to serve deft(s) add'l notices, which
 - were not served or were served on the date contained in the notice, and admitted as Plaintiff's Exh. A.

or

Grounds = Termination of Periodic Tenancy

- Periodic rental date = _____, pursuant to the parties' written oral rental agreement.
- Plaintiff(s) was required to serve defendant with a notice of termination of tenancy, which was in writing and was served on the date contained in the notice, a copy of which was admitted as Pltf's Exh. _____.
 - was given orally on ____/____/_____.
 - was not given.

or

Grounds = Expiration of Lease

- The parties' written lease expired on _____.
- Plaintiff(s) was not (were not) required to serve deft(s) add'l notices (in add'n to 3 day)
- Plaintiff(s) was required to serve deft(s) add'l notices, which
 - was in writing and was served on the date contained in the notice, a copy of which was admitted as Pltf's Exh. ____.
 - was not given.

or

Grounds = Non-color of Title

- Plaintiff has not entered into a rental agreement with defendant.
- Additional findings: _____

or

Grounds = Violation of R.C. 5321.05(A)(9)(Drug Activity)

- Illegal drug activity occurred at the premises on or about _____
- Additional findings: _____

or

Grounds = Violation of R.C. 5321.05 (other than drug activity)

Defendant(s) has (have) violated/failed to fulfill the tenants' obligations under R.C. 5321.05, which materially effects health and safety, as follows: _____

Plaintiff(s) was required to serve deft(s) additional notices, which
 were not served or were served on the date contained in the notice, and admitted as Plaintiff's Exh. _____

Defendant did did not cure the breach, after service of the notice.

or

Grounds = Breach of Lease (other than nonpayment)

Defendant(s) has (have) violated the terms of the rental agreement, as follows: _____

Plaintiff(s) was required to serve deft(s) additional notices, which
 were not served or were served on the date contained in the notice, and admitted as Plaintiff's Exh. _____

8. Defendant has has not been identified as 60 years of age or older. *But is disabled*

9. Additional Findings: ^(#) *Defendant failed to persuade court that he timely tendered September rent.*

(B) Defendant is disabled and testified he could immediately pay rent current. (C) Equities weigh in defendant's favor where plaintiff can be made whole by payment of rent to current month.

Conclusions Of Law

1. Plaintiff(s) has (have) has (have) not established by a preponderance of the evidence that plaintiff served defendant(s) a three day notice as required by law, vesting this court with jurisdiction to proceed.

2. Plaintiff(s) has (have) has (have) not established by a preponderance of the evidence that plaintiff is entitled to judgment on the first cause, on the following grounds:

- Nonpymt Term'n of Periodic T'cy Expir. of Lease
- Non-Color of Title Violation of R.C. 5321.05(A)(9)(Drug Activity)
- Violation of R.C. 5321.05 Breach of Lease (other than nonpymt)
- Other _____

3. No other notices were required or

Plaintiff(s) served defendant(s) with all other notices as required by law.

Plaintiff(s) did not serve defendant(s) with all other notices as required by law, as follows: _____

4. Additional Conclusions: ② Court was not persuaded that eviction was brought on pretextual grounds.

Recommendation

Based upon the foregoing, the Magistrate recommends the following:

- Judgment For Defendant. (HJEFD1)
- Judgment For Plaintiff. Writ of Restitution To Issue. (HJEFP1)
- Forthwith Move Out Ordered _____
- Move Out To Take Place On Or After _____
- By Order Of Court, Dismissed w/ Prej. 1st Cause 2nd Cause Both Causes
- By Order Of Court, Dismissed w/o Prejudice. 1st Cause 2nd Cause Both Causes
- For Want Of Prosecution, Dismissed w/o Prejudice. 1st Cause
- Second Cause Default Hearing Reset for ____/____/____, at 1:30 P.M., 3A.
- Defendant is to be referred to Department of Aging for assistance.
- Inspection of the premises by City Department of Building and Housing is ordered. Inspection to occur on ____/____/____, at _____ a.m./p.m.... Parties are ordered to cooperate with access and inspection. Case set for hearing re: result of inspection on ____/____/____, at _____ AM/PM in Courtroom 3A/Courtroom 13B. Inspector may submit a written report in lieu of appearance must appear at hearing.

Additional Findings/Recommendation(s) In the event defendant fails to pay rent current within a reasonable time (usually found to be approximately 10 days) nothing in this decision would bar plaintiff from bringing a new eviction for nonpayment.

[Signature]
MAGISTRATE 1-5-07

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.