IN THE MENTOR MUNICIPAL COURT
LAKE COUNTY, OHIO

MENTOR LAGOONS, INC. Plaintiff	)	CASE NO. 86 CVF 195
vs.	)	JUDGMENT ENTRY
MARIAN V. CHALKER Defendant	)	

Case came on for trial May 20, 1986 parties represented by counsel. Upon evidence and briefs court finds in favor of the plaintiff.

Dispensing with the minimization argument first, the court finds that only fairly recently have landlords been required by judicial decision to use an old remedy - that of minimizing damages. For the defendant to now suggest that courts should further place landlords under the burden of conforming to a management proficiency translated into some arbitrary percentage of vacancy level is a novel idea at best. This court finds that the plaintiff landlord has reasonably tried to minimize damages under it particular circumstances and that the law will not generally require him to advance in preference a more recent vacancy merely to satisfy the requirement of minimization.

As to the constructive eviction argument, this court finds that it will only exist if conditions are bad enough to constitute a serious health or safety hazzard. It is not enough to merely inconvenience, annoy or constitute a breach of the lease contract (or statute). If it is of the second group in nature, then notice and a reasonable time to corredt are required. Even if it is more serious, usually notice and time to correct are essential. However, because of the seriousness action by the landlord must be immediate or his lack of past actions is determinative.

In this case we have annoyance or unconfortableness involved. This court does not find as a matter of law that mid 50° temperatures inside an apartment in the wintertime constitutes the serious health factor

constituting a constructive eviction. Usually this is looked at from an objective standard unless the tenant involved can show she has made known to the landlord her specific health problem. Certainly the defendant did not make her arthritis known to plaintiff. Thus the court looks to notice and a reasonable time to correct. The landlord did some correction of some problems. I fail to find that the defendant made known her objections in such a way as to constitute notice that corrections must be made because the failure to do so would constitute a breach of contract.

However, it is clear that defendant's enjoyment during the winter months has been diminished by the $100.00 a month asked for in her counterclaim and $50.00 a month for other months. Therefore, court finds on the complaint in favor of the plaintiff in the amount of $1681.00 and for the defendant on the counterclaim in the amount of $1100.00 ($800.00 for lessening enjoyment and $300.00 for security deposit).

WHEREFORE, IT IS ORDERED judgment for plaintiff in the amount of FIVE HUNDRED EIGHTY-ONE DOLLARS ($581.00) plus costs and interest.

Richard A Swain
JUDGE RICHARD A. SWAIN

cc: Albert C. Nozik and
Charles G. Deeb
Attorneys for Plaintiff

Ralph Rudd
Attorney for Defendant