STATE OF OHIO, LORAIN COUNTY, ss., - THE ELYRIA MUNICIPAL COURT

MAGISTRATE'S DECISION

FILED

2003 SEP 11 P 12:59

CLERK OF
ELYRIA MUNICIPAL COURT

BY: pi

PIKEWOOD MANOR
Plaintiff

VS

FAYE M. BELLAMY
Defendant

CASE NO. 02CVG03259

The parties' cross-motions for summary judgment were referred to the Magistrate for decision.

FINDINGS OF FACT

Defendant does not dispute the facts underlying Plaintiff's motion for summary judgment, that is, Defendant owns a manufactured home on Plaintiff's lot at 341 Eagle Circle, Elyria, Ohio, that Defendant defaulted in payment of her $355.00 per month rent for October of 2002, and that Plaintiff served her with the §1923.04 notice at least three days prior to filing of this action. Plaintiff is entitled to restitution of the premises unless Defendant presents a complete defense.

Plaintiff does not dispute the sworn averments underlying Defendant's motion for summary judgment which asks for relief from forfeiture: In May 2002, Defendant left her job to care for a disabled child. That child's SSI benefits of $545.00 became the sole source of the family's income. She paid October's rent to a utility to avoid disconnection. On October 12, she requested for Plaintiff to accept but Plaintiff declined processing of a voucher from the Ohio Department of Jobs & Family Services to pay October's rent late but in full. She since has been approved to receive "Widow's benefits" of $998.00 per month from Ford Motor Company. Defendant has been depositing her accruing rent as bond with this Court as ordered.

Plaintiff's basic argument is that R.C. §1923.02(B) confers an absolute, statutory right to a landlord to obtain forfeiture of a tenancy upon proof of a tenant's nonpayment of rent, which a court lacks discretion to deny. This is not the law.

Our court of appeals has unambiguously held that these statutes, Chapters 1923 and 5321, and thus plainly by implication 3733, do not in any manner abrogate any common law defenses, specifically the defense "pursuant to the equitable maxim that 'the law abhors forfeiture.'" Akron Metropolitan Housing Authority v. Speegle (9th Dist. App., Summit Cty. 2-4-97), No. 12757, 1987 WL 6193, *1. "Ohio courts have the power, and **often** exercise it, to relieve a tenant from the consequences of forfeiture of a leasehold interest" for equitable reasons. David v. Edwood Development Co. (9th Dist. App., Summit 1-12-00), No. 19252, 2000 WL 46107, *2 (emphasis added) (citations omitted) and *3, fn. 1.

Consideration of the equities by a court is particularly appropriate in a Chapter 1923 proceeding because equities must actually favor a **landlord** for a landlord to receive "the equitable relief sought,... a writ of restitution, to regain possession of the premises leased to" the tenant. Joseph J. Freed and Associates, Inc. v. Cassinelli Apparel Corp. (1986), 23 Ohio St.3d 94, 95 (commercial lease). A municipal court has subject matter jurisdiction over eviction and contract cases to consider all related legal and equitable issues. Blenheim Homes, Inc. v. Mathews (Franklin 1963, 119 Ohio App. 44; Lauch v. Monning (Hamilton 1968), 15 Ohio

App.2d 112. Thus, this court may properly determine whether equity would be "served by an eviction in this case." Gary Crim, Inc. v. Rios (Mahoning 1996), 114 Ohio App.3d 433, 436. *See also* Southern Hotel Co. v. Miscott, Inc. (Franklin 1975), 44 Ohio App.2d 217 (syllabus); Seventh Urban, Inc. v. University Circle (1981), 67 Ohio St.2d 19, 22; Reck v. Whalen (Miami 1996), 114 Ohio App.3d 16.

Nonpayment or late payment of rent is not an exception to equitable defenses. In Speegle, our court of appeals admonished that "the availability of eviction for the late payment or non-payment of rent is severely limited by the preservation of the prejudices of the common law against forfeitures." Akron Metropolitan Housing Authority v. Speegle (9th Dist. App., Summit Cty. 2-4-97), No. 12757, 1987 WL 6193, *1. As early as 1929, the Lorain County Court of Appeals deemed the general rule disfavoring forfeitures on these grounds to be "settled" that:

> "[A] court of equity will relieve a lessee and set aside a forfeiture incurred by his breach of the condition [to pay rent], on the theory that such condition and forfeiture are intended merely as a security for the payment of money – such relief being granted upon the condition that the defaulting party does that which is equitable and just under the circumstances; but a court of equity will refuse to aid a defaulting party and relieve against a forfeiture if his violation of the contract was the result of gross negligence or was willful and persistent, because he who asks help from a court of equity must himself be free from inequitable conduct with respect to the same subject-matter."

Nagy v. Wargo (Lorain App. 1929), 7 Ohio Law Abs. 457, *citing* Pomeroy's Equity Jurisprudence (4th Ed.), §§452-453. *See also* Heisler v. Wiegand (Lorain App. 1936), 23 Ohio Law Abs. 351. This rule has been described as "well established," "now undoubted" and "universally" applied. 31 A.L.R.2d 321, §3 (1953).

Because "forfeitures are highly disfavored," the breach must be nearly an intended consequence or result "in a loss [to the landlord] which cannot be compensated." Krivins v. Smyers (9th Dist. App., Summit Cty. 4-22-81), No. 9935, 1981 WL 3945 (land installment contract). One court has stated that the burden in fact rests on the landlord to prove the tenant's breach was willful and persistent and that remedy of forfeiture "is clearly required." Whitmore v. Meenach (2nd Dist. App., Montg. Cty. 1940), 33 Ohio Law Abs. 95, 33 N.E.2d 408, 410, 411.

Plaintiff contends any Ohio cases that have relieved tenants from forfeiture can be distinguished by involving landlords not as "blameless" as Plaintiff, as if the only relevant maxim of equity relates to "clean hands" of the landlord. The tenant's equities are evidently to be ignored, though injury to the tenant is loss of a home weighed against the landlord's injury of delay in receipt of money. No authority is offered for this revision to equity jurisprudence.

The extent to which our court of appeals has frowned on forfeitures, even without fault by the landlord, is perhaps exemplified by Nagy v. Wargo (Lorain App. 1929), 7 Ohio Law Abs. 457. There, our appellate court granted relief from an eviction ordered by a trial court, though the tenant willfully breached the lease. He tendered less than full payment when due, which was rejected by the landlord. He then promised he would not pay any further amount. He had "no excuse" for not paying the full amount; it was just "more convenient to pay a part later." Our court of appeals found that the tenant's breach had been "in a sense willful, [but] it was not

persistent." The Ninth District went so far as to order the landlord to pay half the costs of the eviction and two appeals, evidently because rent was eventually offered by the tenant in full, but the landlord refused and filed for restitution of the premises. *Id.*

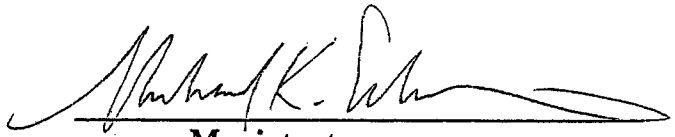
Unlike Nagy, Defendant's failure here to pay October's rent was more than a matter of convenience. She had a competing threat of utility disconnection following a change in financial circumstances. By October 12, 2002, eleven days after rent was due, she offered Plaintiff a means to be paid its rent through a governmental voucher program. As in Nagy, Plaintiff declined late payment in favor of litigation. Defendant's facts are far more compelling.

This court "cannot ignore the fact that this case involves a manufactured home which is owned by Defendant and the discussion by the Ohio Supreme Court regarding manufactured homes in Schwartz vs. McAtee, 22 Ohio St. 3d 14 (1986). The equitable considerations in this case clearly outweigh the allowance of a forfeiture of the leasehold and are in favor of allowing Defendant to pay [back and current rent] and resume her tenancy." Westgate Village Mobile Home Park v. Fetro, No. CVG950312, 1995 WL 907587 (Fostorio Mun. Ct. 9/27/95).

Defendant should be afforded an opportunity to make the landlord whole. "[A] forfeiture will not be declared where the equities of the parties can be adjusted." Zanetos v. Sparks, 13 Ohio App.3d 242, 244 (Franklin 1984). Defendant should be relieved "from the harsh consequences of a forfeiture where the payment of money damages will adequately compensate the landlord." Gorsuch Homes, Inc. v. Wooten, 73 Ohio App.3d 426, 436 (Clark 1992).

RECOMMENDATION

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS CONDITIONALLY GRANTED. WITHIN FOURTEEN DAYS AFTER ADOPTION OF THIS MAGISTRATE'S DECISION, DEFENDANT SHALL DEPOSIT WITH THE COURT ALL UNPAID RENT FOR OCTOBER, NOVEMBER, AND DECEMBER OF 2002. UPON DEPOSIT, JUDGMENT SHALL BE GRANTED FOR DEFENDANT AND AGAINST PLAINTIFF AND ALL FUNDS ON DEPOSIT, INCLUDING BOND, SHALL BE PAID TO PLAINTIFF BY CLERK OF COURT. FAILURE TO DEPOSIT SUCH FUNDS WITHIN THAT TIME (AND ANY ACCRUING RENT TO DATE) SHALL RESULT IN JUDGMENT FOR PLAINTIFF, DENIAL OF DEFENDANT'S MOTION, AND FOR WRIT OF RESTITUTION TO ISSUE UPON WRITTEN APPLICATION WITH PROOF OF SERVICE FOURTEEN DAYS THEREAFTER.



Magistrate

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