

IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO

FILED

14 OCT 30 AM 9:17

FRANKLIN COUNTY
MUNICIPAL COURT
LORI M. TYACK

Janice M. Rogers,
Plaintiff,

v.

Tiffany Jones,
Defendant.

Case No. 2014 CVG 028113

Magistrate Kirk A. Lindsey

Magistrate's Decision

This matter went on for hearing on the Plaintiff's first cause of action requesting restitution of the subject premises on October 8, 2014. The Plaintiff appeared, representing herself, and presented testimony and other evidence. The Defendant appeared, represented by attorney Benjamin Horne, and did likewise.

Based upon the evidence presented at the hearing, the magistrate finds that the Plaintiff proved by a preponderance of the evidence that there is a tenancy between the parties for the property located at 3219 Bresden Street pursuant to a written lease with a term running from December 31, 2013 through December 31, 2014.

The Plaintiff seeks the eviction of the Defendant based on numerous alleged breaches of their lease which she set forth in a notice to leave the premises that she served upon the Defendant on August 1, 2014. Those alleged breaches included the failure to pay the water bill, the failure to pay late fees on the January, February, and March rent, the failure to repair certain damage to the property, including "screens, gate, and picnic bench" and the "failure to return loaned items requested in February 2014" (which itself appears to be a grievance outside the terms of the written lease between the parties).

It is uncontroverted that the Defendant receives tenant-based assistance from a Section 8 voucher issued to her by the Columbus Metropolitan Housing Authority (the “CMHA”), and by virtue of that voucher 100% of her rent is subsidized with federal funds administered by CMHA. It is also uncontroverted that, as of the date of the hearing, the Plaintiff had accepted those rent payments from CMHA for the months of August, September, and October 2014.

Under R.C.1923.04, a party desiring to commence an action in forcible entry and detainer must “notify the adverse party to leave the premises, for the possession of which the action is about to be brought, three or more days before beginning the action[.]” It is the generally-accepted rule in Ohio that this notice to vacate is deemed waived as a matter of law if a landlord accepts *future* rent payments after serving the notice to vacate the premises. *See, e.g., Urban Partnership Bank v. Mosezit Academy, Inc.*, 8th Dist. No. 100712, 2014-Ohio-3721; *N. Face Properties, Inc. v. Lin*, 12th Dist. No. CA2012-09-083, 2013-Ohio-2281; *King v. Dolton*, 9th Dist. No. 02CA0041, 2003-Ohio-2423; *Morrow v. Gates*, 12th Dist. No. CA91-11-021, 1992 WL 156116 (June 29, 1992); *Graham v. Pavarini*, 9 Ohio App.3d 89, 458 N.E.2d 421 (8th Dist. 1983), *Presidential Park Apartments v. Colston*, 10th Dist. No. 79AP604, 1980 WL 353341 (Mar. 20, 1980). Accepting future rent after serving the notice to vacate manifests an intention on the part of the landlord to perpetuate the tenancy, which is inconsistent with the demand that the tenant leave. *King* at ¶ 12; *Graham* at 92 (quoting *Presidential Park Apartments* at *2). When the landlord does that, he “waives or invalidates the service of the statutory notice, and the landlord may therefore not proceed with a forcible entry and detainer action.” *Bristol Court v. Jones*, 4th Dist. No. 93-CA-520, 1994 WL 534920, *1 (Sept. 29, 1994). A landlord “accepts” a future rent payment by cashing a check for future rent, where a rent payment is made by automatic deposit into the landlord’s account, or where a landlord holds payment without

informing the lessee that “the checks were not being accepted as payment of rent or that the checks were being held for evidentiary purposes.” *N. Face Properties* at ¶ 11 (quoting *King* at ¶ 15). And it doesn’t matter whether the alleged grounds for eviction were for reasons other than the nonpayment of rent.

The theory remains the same, whether based upon non-payment of rent or breach of lease; a landlord who accepts future rental payments is acting inconsistently with a three-day notice to vacate the premises. “A lessor on condition broken by lessee may elect to forfeit the lease, or to waive the forfeiture. [If] after knowledge of the breach, the lessor, prior to taking any action to forfeit the lease, accepts rent from the lessee, or his assignee, which rent accrued after the breach, he waives the right of forfeiture.”

N. Face Properties at ¶ 16 (quoting *Petropoulos v. Clinical Pathology Facility, Inc.*, 10th Dist. No. 87AP-685, 1988 WL 24397, *4 (Feb. 18, 1988)).

Of course this case involves subsidized rent payments, and neither side presented any case law or any other legal authority going to the issue of whether or not the Plaintiff’s acceptance of such payments from the CMHA of federal subsidy money for August through October constituted the acceptance of future rent when that money came from the subsidizing authority instead of from the tenant herself. The Fourth District Court of Appeals has addressed this issue. It ruled in a case where a tenant’s rent was being fully subsidized by the federal government that the landlord’s acceptance of those payments from the subsidizing authority for a future period of time after the three-day notice constituted the acceptance of future rent so as to waive the three-day notice. *Classic A Properties v. Brown*, 4th Dist. Scioto No. 02CA2868, 2003-Ohio-5850, ¶ 26. It made no difference whether the rent payments came directly from the tenant, or from the third-party funding authority made on behalf of the tenant. *Id.* Either way, the landlord was still manifesting an intention to extend the landlord-tenant relationship, accepting payments that secured the tenant’s ongoing right to remain at the premises into the

future, and this was fundamentally inconsistent with any demand that the tenant leave. It is avoiding this inconsistency and resulting confusion it can impose upon a tenant which is the underlying rationale for this doctrine of waiver under Ohio law.¹

Accordingly, since the Plaintiff has accepted future rent in the form of rent payments from the subsidizing agency in this case for three full months subsequent to the service of the three-day notice on August 1, she has waived the alleged breaches of the lease set forth in that notice and has deprived this Court of jurisdiction to do anything other than dismiss her request for eviction at this time.

Conclusion

Based upon the foregoing, the Plaintiff's first cause of action is dismissed. Costs assessed to Plaintiff.

The Clerk is hereby directed to serve copies of this Magistrate's Decision upon the Plaintiff and counsel for the Defendant at the addresses set forth below. The Plaintiff contacted the Magistrate's office on October 21, 2014 with her new mailing address which is set forth below. The Clerk is directed to update court records to reflect this new address.

¹ My research has not uncovered any Ohio Supreme Court case or Tenth District Court of Appeals case directly addressing this issue, but I find the Fourth District's conclusion to be logical and to support the underlying reason for the rule of waiver in Ohio, and I will therefore follow that authority here. I found cases in the Third, Ninth, and Twelfth Districts which have drawn a distinction between rent to be paid directly to a landlord by a tenant and payments from a third-party funding source, but those cases were different in that they all involved only partial subsidies, and they all involved either a showing by the landlord that it was contractually or legally required to accept the payments under federal law, or a showing that the landlord and tenant did not, by their agreement, define "rent" as including payments from the third-party funding sources. None of those showings have been made in this case, and even if they had been, I'd still find the Fourth District's reasoning to be more persuasive for the reasons set forth above.

October 29, 2014

Date

Kirk A. Lindsey

Magistrate Kirk A. Lindsey

A party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law contained in this Decision unless the party timely and specifically objects to that finding or conclusion. Civ. R. 53(D)(3).

Copies To:

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Columbus, Ohio 43224

Plaintiff

Benjamin D. Horne
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Columbus, Ohio 43206

Attorney for Defendant

FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO

ROGERS, JANICE /

Plaintiff(s)

Attorney(s)

Case No. 2014 CVG 028113

v.

JONES, TIFFANY

/ HORNE, BENJAMIN

Defendant(s)

Attorney(s)

JUDGMENT ENTRY

In accordance with Civil Rule 53, the court hereby adopts the Magistrate's Decision filed this date and enters judgment herein.

The Magistrate's Decision is rejected/modified as follows:

It is, therefore, Ordered, Adjudged and Decrees that final judgment be granted as follows:

- _____
Judgment for plaintiff for restitution of the premises, and court costs;

Judgment for defendant, plaintiff's (first cause of action)(complaint) dismissed at plaintiff's cost;
☒ ~~Case dismissed without prejudice at plaintiff's costs.~~

Other: _____

Pursuant to Rules 53(D)(1) and 58 of the Ohio Rules of Civil Procedure, the Court hereby directs the Clerk of Franklin County Municipal Court to serve on all parties a copy of the decision of the Magistrate and notice of this judgment and its date of entry on the journal.

OCT 31 2014

Date



Judge

FILED
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FRANKLIN COUNTY
MUNICIPAL COURT
CLERK'S OFFICE