

FILED
LICKING COUNTY
MUNICIPAL COURT

IN THE LICKING COUNTY MUNICIPAL COURT

Showe Management Corp.,

Plaintiff,

vs.

Yvonne Sendykar,

Defendant.

2007 OCT 32 A 9: 16

NEWARK OHIO
LARRY R. BROWN

Case No: 07CVG02733

JUDGE MICHAEL F. HIGGINS

JUDGMENT ENTRY

This matter came on for the Court's consideration upon the Plaintiffs Complaint seeking to evict the Defendant from federally subsidized housing located in Licking County, Ohio.

The facts are not in material dispute. The Defendant receives assistance from the Metropolitan Housing Authority, a so-called Section 8 HUD subsidized housing program. Metropolitan pays the vast majority of the Defendant's monthly rent. On October 3, 2007, the Plaintiff filed a complaint seeking restitution of the premises. The basis for the action is non-payment of rent for the months of September and October 2007. It is undisputed that the Defendant failed to pay her pro-rata share of the monthly rent obligations for these months. It is also undisputed that the Plaintiff served the Defendant with all proper notices prior to the commencement of this action.

At issue is whether the Plaintiff waived it's Notice to Vacate by accepting partial future rental payments from the Metropolitan Housing Authority. It is clear that this entity paid its agreed-upon pro rata rent for the months of September and October 2007. Plaintiff cites for authority that the Court has jurisdiction to proceed, the case of *National Corp. for Housing Partnerships v. Chapman*, 18 Ohio App 3d

Judge
W. David Branstool

Judge
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104 (*Summit County 1984*). In *National*, the Court of Appeals held that the tenant was still obligated to pay his or her pro rata portion of the rent, and the fact that the landlord continued to receive rent from HUD did not entitle the Defendant/Tenant to avoid obligations contained in the lease, such as the timely payment of rent.

However, other Courts have ruled otherwise in situations where the landlord has accepted federal subsidy payments, *White Rose Properties v. Babb*, No. 00CVF1355 Mun. Ct. Washington County (2001), *Bella Vista Apartments v. Ragland* No. 91CVG-54-471 (County Court Clairmont County May 31, 1991), *Lipford v. Ward*, No. 92CVG-0727 Mun. Ct. Canton (1992).

It is clear in non-subsidized housing cases, partial payment of rent by a landlord waives the Notice to Vacate. Untold courts have held that accepting partial payment of rent from a tenant is inconsistent with the service of a Notice to Vacate the Premises in situations where the partial rent payment is for future rent. While this Court recognizes that the National Corp. for Housing Partnerships is a Court of Appeals Case, it is not from the Fifth District, and accordingly, not controlling. It is therefore the ruling in this case that the landlord's acceptance of future rent payments for September and October 2007 deprive this Court of jurisdiction to proceed and accordingly, this case is dismissed in Deendant's favor.



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MFH/sam

cc: C. Bernard Brush
Plaintiff's Attorney

Yvonne Sendykar,
Defendant