

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

Robert E. Woodson

DATE: June 26, 2008

Plaintiff

-vs-

CASE NO.: 2008 CVG 9709

Tonya D. Howard

Defendant

JUDGMENT ENTRY

The Court, having reviewed the *Magistrate's Decision* of June 26, 2008 under Ohio Rule Of Civil Procedure 53(E)(4), adopts that decision.

The Court grants Defendant's motion for summary judgment and grants judgment to Defendant on Plaintiff's first cause of action.

Judgment for Defendant. (HJEFD1)

The Court continues Plaintiff's second cause of action for default hearing to **July 24, 2008 at 1:30 p.m.** in Courtroom 3A of the Justice Center, 1200 Ontario Street, Cleveland, Ohio. The Court grants Defendant leave to file an answer or other responsive pleading prior to the date of the default hearing. If Defendant files an answer or other responsive pleading, the Court will cancel the default hearing and set a pre-trial conference at a future date with written notice mailed to the parties.



JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this *Judgment Entry* was sent via regular U.S. Mail to the following on

Plaintiff

Robert E. Woodson
1825 E. 227th St.
Euclid, OH

Attorneys for Defendant

Jane Messmer
H. Edward Gregory
Legal Aid Society
1223 West Sixth Street
Cleveland, OH 44113

7/2/08 APV

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

Robert E. Woodson

DATE: June 26, 2008

Plaintiff

-vs-

CASE NO.: 2008 CVG 9709

Tonya D. Howard

Defendant

JUDGMENT ENTRY

The Court set this case for hearing June 26, 2008 on Defendants' motion for summary judgment. Plaintiff appeared without an attorney. Defendant appeared with her attorneys. The parties appeared before Magistrate David D. Roberts. The Court swore in Plaintiff and took his testimony concerning his actions with regard to returning the rental subsidy that CMHA sent him for the months of April, May and June 2008. Plaintiff testified that CMHA sent the money by electronic deposit into his account. On May 29, 2008, Plaintiff returned the April and May 2008 rental subsidy by check to CMHA with a request for CMHA not to send the June rent. Defendant's motion includes an affidavit from CMHA that confirms the same facts. The Court also allowed the parties to present argument on the legal standard the Court should apply.

I. Summary judgment Standard

Summary judgment allows a court to resolve a case without trial when the undisputed facts show that one party is entitled to judgment. Ohio Rule Of Civil Procedure 56(C). In this case, Defendant argues that Plaintiff cannot prove that he is entitled to evict her because the undisputed facts show that he "accepted" the April and May subsidy payments from CMHA, an action inconsistent with pursuing an eviction based on Defendant's failure to pay for April.

II. "Acceptance" Of Rent Through Electronic Deposit

The question for the Court is whether Plaintiff "accepted" the rent payments. The Court concludes that Plaintiff's actions did constitute "acceptance" of the payments.

A landlord has the obligation to avoid accepting future rent after serving a notice to vacate because accepting the rent is inconsistent with the notice to vacate. *Graham v. Pavarini* (1983), 9 Ohio App.3d 89, 458 N.E.2d 421. Where a tenant offers cash, the issue is clear. The landlord must not accept the cash if it represents rent for the period

after the notice to vacate. There is no doubt in that case that the landlord does not have possession of the money and that the tenant does. Where a tenant offers a check or money order, cashing the check or money order constitutes acceptance because it gives the landlord control over the money (with an exception for an inadvertent cashing) *Associated Estates Corp. v. Bartell* (1985), 24 Ohio App. 3d 6, 9, 492 N.E.2d 841, 845 (8th Dist.); *Associated Estates Corp. v. Smith* (1984), 1984 WL 5227 (8th Dist.). A landlord can retain the check or money order to be used as evidence, but only if the landlord notifies the tenant that the payment is not being accepted and returns the check or money order to the tenant on or before the date of trial, thus restoring the tenant to control of the money. *Pace v. Buck* (1949), 86 Ohio App. 25, 85 N.E.2d 401 (2nd Dist.). Taking control of the money by cashing the check or the money order constitutes acceptance and cannot be undone or negated by returning an equal amount of money unless the parties have a contract that allows the landlord to accept the deposited funds and return the payment. *Associated Estates Corp. v. Bartell* (1985), 24 Ohio App. 3d 6, 10, 492 N.E.2d 841, 846 (8th Dist.) quoting *Kachelmacher v. Laird* (1915), 92 Ohio St. 324, 335, 110 N.E. 933.

In this case, Plaintiff did not take affirmative action to “accept” the payment by cashing a check or money order. But Plaintiff did take control of the money by accepting it into his account. Thus, for the two months of April and May, Plaintiff and not Defendant had control over payments that were offered to him to pay for Defendant’s rental of property. Plaintiff’s control over these payments, which were in his account and available to him, is inconsistent with a notice to Defendant to vacate his property.

Plaintiff cannot show that his acceptance of the payments for April and May were inadvertent because he waited to the end of May to return payment equal to these two months of subsidy payments. In *Associated Estates Corp. v. Smith* (1984), 1984 WL 5227 (8th Dist.), the landlord cashed only one check out of many that were offered and promptly returned an equal amount. Plaintiff can show that the acceptance of the June payment was inadvertent since he instructed CMHA in May not to send the payment, CMHA sending the payment despite Plaintiff’s instruction not to because the transaction was already scheduled to take place, with CMHA presumably unable or unwilling to stop the payment once it was scheduled). *Defendant’s Motion For Summary Judgment, Affidavit Of Paulette Childs* at ¶7.

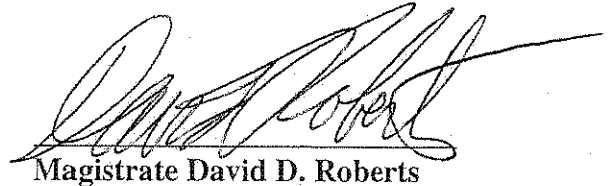
III. Conclusion

Because the facts are undisputed and show that Plaintiff cannot prove that he is entitled to evict Defendant, the Court grants Defendant’s motion for summary judgment and enters judgment for Defendant on Plaintiff’s first cause of action.

IV. Decision

The Court grants judgment to Defendant on Plaintiff's first cause of action.

Judgment for Defendant. (HJEFD1)



Magistrate David D. Roberts

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.

SERVICE

A copy of this Magistrate's Decision was sent via regular U.S. Mail to the following on

7/2/08. WAV

Plaintiff

Robert E. Woodson
1825 E. 227th St.
Euclid, OH

Attorneys for Defendant

Jane Messmer
H. Edward Gregory
Legal Aid Society
1223 West Sixth Street
Cleveland, OH 44113