

IN THE TOLEDO MUNICIPAL COURT, LUCAS COUNTY, OHIO

Hilltop Village,	*	
	*	Case No. CVG-85-16250
Plaintiff,	*	
	*	JUDGMENT ENTRY
-vs-	*	
Karla West,	*	
	*	
Defendant.	*	
	*	
	*	

On December 12, 1985 this case was called for trial. All Parties appeared with counsel. Trial had. At the conclusion of the evidence each Party was granted leave to file a post trial brief on or before January 7, 1986.

Upon consideration of the stipulations of the Parties, the evidence presented at the trial, the post trial briefs of the Parties and the law, this Court cannot escape the observation that this case presents a situation in which the facts and law are often complicated, at times irregular and in several instances things are simply not as they seem. This Court will, in order to hopefully make a difficult situation better or at least not worse, attempt intelligible findings as to the specific issues involved.

First of all, as to the lease itself, this Court finds that as stated in Plaintiff's complaint, the Defendant is in fact occupying the premises under an oral month to month lease agreement which oral lease, however, in accordance with HUD regulations, is totally subject to the terms and conditions set forth in the previously executed written lease agreement and can only be terminated by the landlord

for cause as stated in that written lease agreement.

As to the effectiveness of the rent payment agreement, this Court finds that, as in this case, when a tenant defaults on rent it is perfectly acceptable, equitable and otherwise lawful for the landlord to defer evicting the tenant upon the execution of such a rent payment agreement by the Parties. When on the face of the document it is the clear intention of the Parties that the rent payment agreement become part of the lease with a default on that agreement subjecting the tenant to possible eviction, there is no lawful reason why the landlord cannot proceed in forcible entry and detainer when such default occurs. On the whole, when properly administered the benefits of this procedure go entirely to the tenant. Additionally, the Plaintiff herein presented testimony that HUD had previously approved the rent repayment agreement procedure as an acceptable means of amending a lease for changes in rent and did in fact approve the procedure in this case after the fact.

On the other hand, a landlord cannot create an obligation that does not otherwise properly exist simply by getting a tenant to sign such a rent payment agreement. In this case, due to the irregularities in the procedures used by the property managers in the recertification process, this Court finds that the raising of the rent to Fair Market Value as of October 1, 1984 was not proper and did not create a legal obligation for the Defendant to pay the rent so assessed.

It is therefore ordered that Judgment is hereby rendered for the Defendant and Plaintiff's complaint is hereby dismissed.

  
JUDGE