

IN THE SUPREME COURT OF OHIO

PAMELA LEMASTERS	*	CASE NO.
1400 West Market Street		
Apartment #21	*	AN ORIGINAL ACTION
Celina, Ohio 45822		
	*	
Relator,		
	*	
-vs.		
	*	
THE CELINA MUNICIPAL COURT		
225 North Main Street	*	
P.O. Box 362		
Celina, Ohio 45822	*	
and	*	
THE HON. JAMES J. SCHEER	*	
Celina Municipal Court		
225 North Main Street	*	
P.O. Box 362		
Celina, Ohio 45822	*	
Respondents.	*	

COMPLAINT FOR AN ORIGINAL WRIT OF PROHIBITION & MANDAMUS

s/ Debra A. Lavey

Debra A. Lavey #0073259
Matthew N. Currie #0078656
Attorneys for Relator
Advocates for Basic Legal Equality, Inc.
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Relator Pamela LeMasters (“Ms. LeMasters”), for her Complaint against Respondents, the Celina Municipal Court (“Trial Court”) and the Honorable James J. Scheer (“Judge Scheer”), states to this Honorable Court as follows:

INTRODUCTION

1. This is an original action for a writ of prohibition to restrain the Trial Court and Judge Scheer from taking any action to enforce and/or execute on the eviction judgment against Ms. LeMasters, issued on October 26, 2015, including but not limited to holding a contempt hearing or issuing a writ of restitution. Ms. LeMasters also seeks a writ of mandamus to compel Judge Scheer to issue the stay pending her appeal to the Third District Court of Appeals since Ms. LeMasters was entitled to a stay as a matter of right under Civ. R. 62(B).

JURISDICTION

2. This Court has original jurisdiction to issue both writs of prohibition and mandamus pursuant to Article IV, Section 2(B)(1)(b) and 2(B)(1)(d) of the Ohio Constitution along with Rule 12.02 of the Rules of Practice of the Supreme Court of Ohio.

3. Ohio Revised Code §2731.06 vests this Court with original jurisdiction to grant an alternative writ.

4. Ohio Revised Code §2503.40 vests this Court with original jurisdiction to grant other writs when necessary to enforce the administration of justice. *Smith v. Granville Twp. Bd. Of Trustees* (1996), 77 Ohio St.3d 1215, 671 N.E.2d 1277.

PARTIES

5. Relator, Pamela LeMasters, is a tenant of Gorsuch Homes, Inc. DBA Williamsburg Square Apartments. Ms. LeMasters resides in a federally subsidized apartment located at 1400

West Market Street, Apartment 21, Celina, Ohio 45822. Ms. LeMasters' entire rent amount is subsidized by the U.S. Department of Housing and Urban Development ("HUD").

6. The Respondents in this action are the Celina Municipal Court and the Honorable James J. Scheer, a judge in the Celina Municipal Court.

FACTS

7. Gorsuch Homes, Inc. DBA Williamsburg Square Apartments filed a Complaint for Eviction in the Trial Court on October 6, 2015 against Ms. LeMasters.

8. A hearing was held in the Trial Court on October 26, 2015 where Ms. LeMasters appeared pro se.

9. The Trial Court granted an eviction judgment against Ms. LeMasters on October 26, 2015 and ordered that she be removed from the rental premises no later than November 22, 2015.

10. The Trial Court scheduled a contempt hearing for November 23, 2015 at 8:00 A.M. This hearing would be for Ms. LeMasters to show cause if not moved why she should not be held in contempt and/or fined and/or jailed for failure to follow the Court's orders. (Exhibit A – Journal Entry granting eviction).

11. Ms. LeMasters timely filed a Notice of Appeal and Motion to Stay the eviction judgment with the Trial Court on November 17, 2015.

12. Ms. LeMasters requested that the Trial Court stay the eviction judgment without the posting of a supersedeas bond since Ms. LeMasters rent amount is \$0 and the landlord, Gorsuch Homes, Inc. DBA Williamsburg Square Apartments, was receiving the entire rent amount from HUD. (Exhibit B – Motion for Stay in Trial Court).

13. On November 19, 2015, the Trial Court denied Ms. LeMasters Motion to Stay and Judge Scheer provided no basis for the denial. (Exhibit C – Trial Court Journal Entry denying stay)

14. On November 19, 2015, Ms. LeMasters filed a Motion to Stay the eviction judgment in the Court of Appeals for the Third District (“Appellate Court”). (Exhibit D – Motion for Stay in Appellate Court)

15. On November 20, 2015, the Trial Court issued a Journal Entry continuing the Show Cause Hearing scheduled for November 23, 2015 until the Court of Appeals renders its decision on Ms. LeMaster’s Motion for Stay. (Exhibit E – Journal Entry continuing contempt hearing)

16. The landlord, Gorsuch Homes, Inc. DBA Williamsburg Square Apartments, filed a Response opposing the Motion to Stay. In the landlord’s response, they conceded that they will suffer no economic harm if the stay was granted yet requested that the stay be denied for noneconomic reasons. (Exhibit F – Response to Motion for Stay)

17. On December 3, 2015, the Appellate Court issued a Judgment Entry denying Ms. LeMasters’ Motion to Stay the eviction judgment. (Exhibit G – Appellate Court Judgment Entry)

18. The Appellate Court reasoned as follows: “[w]e disagree with [Ms. LeMaster’s] assertion that there is ‘no damage’ because her rent is entirely paid by the U.S. Department of Housing and Urban Development. As noted in the response, the eviction was not based on economic reasons....”

19. The Appellate Court’s Judgment Entry set no bond amount and provided no opportunity for Ms. LeMasters to stay the eviction judgment.

20. The landlord, Gorsuch Homes, Inc. DBA Williamsburg Square Apartments, intends on seeking a writ of restitution or moving for contempt proceedings to enforce the eviction judgment through the Trial Court if Ms. LeMasters does not vacate by January 4, 2016. (Exhibit H – Correspondence from Counsel for landlord)

COUNT ONE – MANDAMUS

21. The allegations stated in paragraphs 1-20 above are incorporated as if fully rewritten herein.

22. Under Civ.R. 62(B), an appellant is entitled to a stay of the judgment as a matter of right. See *State ex. rel. State Fire Marshal v. Curl* (2000), 87 Ohio St.3d 568, 2000-Ohio-248; *State ex rel. Ocasek v. Riley* (1978), 54 Ohio St.2d 488, 8 O.O.3d 466, 377 N.E.2d 792.

23. The only requirement of Civ.R. 62(B) is the posting of an adequate supersedeas bond. *State ex. rel. State Fire Marshal v. Curl* (2000), 87 Ohio St.3d 568, 2000-Ohio-248; *State ex rel. Ocasek v. Riley* (1978), 54 Ohio St.2d 488, 8 O.O.3d 466, 377 N.E.2d 792.

24. While courts have discretion to set the amount of the bond, both the Trial and Appellate Court denied the stay without addressing the bond.

25. The posting of a supersedeas bond would be unnecessary in this case as Ms. LeMasters' entire rent amount is being paid by HUD and her landlord, Gorsuch Homes, Inc. DBA Williamsburg Square Apartments, has already conceded that they would suffer no economic harm if the stay was granted.

26. Ms. LeMasters is entitled to a writ of mandamus, mandating and directing Judge Scheer and the Trial Court to issue a stay of the eviction judgment, issued on October 26, 2015, without bond immediately.

COUNT TWO – PROHIBITION

27. The allegations stated in paragraphs 1-26 above are incorporated as if fully rewritten herein.

28. Ms. LeMaster's landlord intends on seeking either a writ of restitution or requesting contempt proceeding before Judge Scheer and the Trial Court to enforce the eviction judgment if Ms. LeMasters does not vacate the rental premises by January 4, 2016.

29. Any action taken to enforce the eviction judgment is unauthorized by law as Ms. LeMasters was entitled to a stay of the eviction judgment as a matter of right. See *State ex. rel. State Fire Marshal v. Curl* (2000), 87 Ohio St.3d 568, 2000-Ohio-248; *State ex rel. Ocasek v. Riley* (1978), 54 Ohio St.2d 488, 8 O.O.3d 466, 377 N.E.2d 792.

30. Ms. LeMasters has already sought a stay in both the Trial and Appellate Courts; however, those motions were already denied.

31. Ms. LeMasters has no plain and adequate remedy in the ordinary course of law by which to prevent the actions by Judge Scheer and the Trial Court.

32. If Judge Scheer and the Trial Court enforce the eviction judgment, Ms. LeMasters' appeal may be dismissed because the issues on appeal could be considered moot. See *Blodgett v. Blodgett* (1990), 49 Ohio St. 3d, 243, 551 N.E.2d 1249.

33. Ms. LeMasters is entitled to a writ of prohibition prohibiting Judge Scheer and the Trial Court from enforcing the eviction judgment.

PRAYER FOR RELIEF

WHEREFORE, Relator Ms. LeMasters prays for relief as follows:

A. On Count I, issue a peremptory writ of mandamus, or at a minimum an alternative writ mandating and directing Respondents Judge Scheer and the Trial Court to issue a stay of the eviction judgment against Ms. LeMasters, issued on October 26, 2015, pending the outcome of the appeal to the Appellate Court;

- B. On Count II, issue a peremptory writ of prohibition, or at minimum an alternative writ prohibiting Respondents Judge Scheer and the Trial Court from enforcing the eviction judgment against Ms. LeMasters, including but not limited to, issuing a writ of restitution or holding a contempt hearing on the eviction judgment, pending the outcome of the appeal to the Appellate Court.
- C. Award to Relator costs and expenses, including reasonable attorney fees, incurred in the pursuit of this case.
- D. Award such other relief as the Court deems equitable, necessary, proper and just.

Respectfully Submitted,

Debra A. Lavey #0073259
Matthew N. Currie #0078656
Attorneys for Relator
Advocates for Basic Legal Equality, Inc.
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mcurrie@ablelaw.org

STATE OF OHIO

*

*

AFFIDAVIT OF PAMELA LEMASTERS

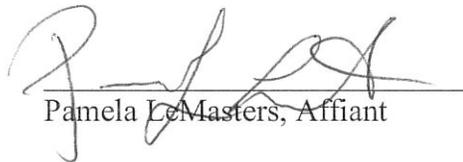
COUNTY OF MONTGOMERY

*

I, Pamela LeMasters, being first duly sworn according to law, deposes and states as follows:

1. My name is Pamela LeMasters.
2. I reside at 1400 West Market Street, Apartment 21, Celina, Ohio 45822.
3. I rent my apartment from Gorsuch Homes, Inc. dba as Williamsburg Square Apartments which is a HUD-subsidized property.
4. I reside at that property with my three year old daughter.
5. I am currently unemployed and my only source of income is child support in the approximate amount of \$583 per month.
6. My rent is completely subsidized by HUD and as such, my monthly rent obligation is \$0.
7. I rely on this housing subsidy to provide housing for me and my 3-year old daughter.
8. I do not have adequate funds or resources to find housing at this time and without the stay of the eviction judgment, I will be homeless.
9. I have read the foregoing Complaint seeking writs of Mandamus and Prohibition, have personal knowledge of the facts set forth therein, and hereby attest that those facts are true and accurate.

Further, Affiant sayeth naught.


 Pamela LeMasters, Affiant

SWORN TO before me and subscribed in my presences this 30th day of December 2015.



DEBRA ANN LAVEY, Attorney at Law
 Notary Public, State of Ohio
 My Commission has no expiration date.
 Section 147.03 O.R.C.


 Notary Public

CELINA MUNICIPAL COURT
MERCER COUNTY, OHIO



GORSUCH HOMES INC
Plaintiff(s)

vs.

PAMELA LEMASTERS
Defendant(s)

JOURNAL ENTRY
CASE NO. 15CVG00709

FILED
CELINA MUNICIPAL COURT
OCT 26 2015
Barbara A. Painter
Clerk

This matter came on for hearing.

The defendant(s) were not present in Court.

~~X~~ The defendant(s) were present in Court. The Court finds the defendant(s) owe plaintiff the sum of \$ _____ for back rent and a judgment is so awarded and granted.

The defendant(s) along with all their personal property are to be removed from the rental at 1400 W MARKET ST APT 21, CELINA, OH 45822 no later than Sunday, Nov 22, 2015 at 4:00 P.M.

A Show Cause Hearing is set for Monday, Nov 23, 2015 at 8:00 A.M. If defendant(s) along with all their personal property are fully removed by said date & time then they need not appear for Show Cause Hearing. This hearing would be to show cause if not moved why they should not be possibly held in contempt and/or fined and/or jailed for failure to follow the Court's orders.

Fully moved means that all their property is removed, the premises cleaned, the keys returned to the landlord. Anything left might be considered by the Court as abandoned and subject to disposal. Defendant(s) also must supply as per law a copy of their new address upon leaving.

A writ of restitution is given to plaintiff against defendant(s) effective:

~~As soon as possible but no later than Sunday Nov 22, 2015 at 4:00 P.M.~~
Costs assessed to the plaintiff with right to recover from the defendant(s).

IT IS SO FOUND, ORDERED, ADJUDGED AND DECREED.

a copy given to all today

Date October 26, 2015

James J. Lee
JUDGE

Copies given to:



IN THE CELINA MUNICIPAL COURT
MERCER COUNTY, OHIO

GORSUCH HOMES, INC.,

* CASE NO. 2015-CVG-00709

Plaintiff-Appellee,

*

*

-vs.-

PAMELA LEMASTERS,

*

Defendant-Appellant.

*

MOTION TO STAY EXECUTION OF
JOURNAL ENTRY PENDING APPEAL
WITHOUT BOND WITH SUPPORTING
MEMORANDUM AND AFFIDAVIT

Now comes the Defendant-Appellant, Pamela LeMasters, by and through her counsel Debra A. Lavey of Advocates for Basic Legal Equality, Inc., who moves this Court to stay the execution of the Journal Entry issued on October 26, 2015, specifically her move out from the rental premises, without a posting of a supersedeas bond in her appeal, pursuant to Ohio Rule of Civil Procedure 62(B) and R. C. 1923.14. This Motion is supported by the Memorandum below.

MEMORANDUM

Procedural History

Plaintiff-Appellee filed a Complaint for Eviction on October 6, 2015 and a hearing on that Complaint was held on October 26, 2015. This Court granted an eviction judgment against Defendant-Appellant on October 26, 2015 and ordered that she be removed from the rental premises no later than Sunday, November 22, 2015 at

4:00 P.M. Defendant-Appellant appeals this judgment and moves this Court for a stay of the scheduled move out.

Argument

This Court should grant a stay of the Journal Entry without the requirement that Defendant-Appellant post a bond. Civil Rule 62(B) and R.C. 1923.14 each permit a stay to be granted by the trial court in an eviction case. R.C. 1923.14 provides in pertinent part:

R.C. 1923.14 Writ of execution enforced

(A) ...If an appeal from the judgment of restitution is filed and if, following the filing of the appeal, a stay of execution is obtained and any required bond is filed with the court of common pleas, municipal court, or county court, the judge of that court immediately shall issue an order to the sheriff, police officer, constable, or bailiff commanding the delay of all further proceedings upon the execution.

Ohio Civ. R. 62(B) states the following:

(B) Stay upon appeal. When an appeal is taken the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

The supersedeas bond must initially be sought from the trial court. Ohio R. App. P.

7(A). The trial court is required to rule on a tenant's timely request for a supersedeas bond before the writ of restitution has been executed. *Martin v. Mohler*, No. 89-CA-1859, 1991 WL 28306, at *1(Ohio App., Scioto Cty., Feb. 12, 1991). The supersedeas bond must

be sufficient to pay "all money costs and damages" that the appellee may be awarded in the appeal." R.C. 2505.14

Ordinarily, a landlord may only recover those damages caused by the delay in enforcing the eviction order and those potential damages to the landlord are solely the loss of rent during that period. *Langford v. Danolfo*, No. 43917, 1982 WL 5265, at *1 (Ohio App., Cuyahoga Cty., Apr. 1, 1982). For an assisted housing landlord, the potential loss of rent is the tenant's portion of the contract rent, not the full contract rent. *Forest City Mgmt., Inc. v. Lauderback*, No. 91-CA-1972 (Ohio App., Scioto Cty., Mar. 15, 1991).

After the court has determined the amount of the landlord's potential damages from the granting of a stay of execution, it must determine the form of the bond to be imposed. Courts have discretion to tailor the requisites and conditions of the bond to the needs of the litigation. 4 Ohio Jur. 3d Appellate Review § 229 (2011).

In an eviction action, generally the court court will demand one of two basic types of bonds. One is a use and occupancy bond, whereby the tenant is required to pay to the court or the landlord each month, during the pendency of the appeal, their portion of rent each month. The other is a lump sum bond in the amount of the rent that is likely to become due during the pendency of the appeal.

In this case, Defendant-Appellant's portion of the rent is \$0 as her entire rent amount is subsidized by the U.S. Department of Housing and Urban Development ("HUD") and paid directly to the Plaintiff-Appellee. Aff. ¶7. Since the entire rent payment is being paid by HUD, the landlord in this case has no potential damages from

the granting of the stay of execution; therefore, no bond should be required by this Court.

WHEREFORE, Defendant-Appellant prays this Court to issue a stay of execution in this matter without supersedeas bond, and prevent Plaintiff-Appellee from taking any action to procure or enforce a writ of execution on the judgment, or otherwise to take action to enforce the judgment rendered in this case. She further prays this Court to issue an order to the sheriff, police officer, constable, or bailiff, commanding them to take no action to execute the writ of execution, and otherwise to delay all further proceedings upon the execution until full and final resolution of the appeal.

Respectfully submitted,

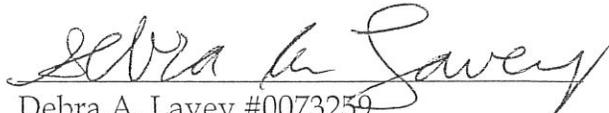
A handwritten signature in cursive script that reads "Debra A. Lavey". The signature is written in black ink and is positioned above a horizontal line.

Debra A. Lavey #0073259

Attorney for Defendant-Appellant
Advocates for Basic Legal Equality, Inc.
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Dayton, Ohio 45402
937-535-4411 telephone
937-535-4600 facsimile
dlavey@ablelaw.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was served by regular mail upon James A. Tesno, Attorney for the Plaintiff-Appellee, 100 North Main Street, Celina, Ohio 45822, by ordinary U.S. mail on this 17th day of November, 2015.


Debra A. Lavey #0073259
Attorney for Defendant-Appellant

IN THE CELINA MUNICIPAL COURT
MERCER COUNTY, OHIO

GORSUCH HOMES, INC., * CASE NO. 2015-CVG-00709

Plaintiff-Appellee, *

*

-vs.-

PAMELA LEMASTERS, *

Defendant-Appellant. *

AFFIDAVIT IN SUPPORT OF MOTION
STAY OF EXECUTION PENDING
APPEAL WITHOUT BOND

*

I, Pamela LeMasters, being first duly sworn according to law, say that :

1. I am the Defendant-Appellant in the above-entitled action; that said cause was brought in the Municipal Court of Celina, Ohio Division, for forcible entry and detainer; and that a judgment was granted against me on October 26, 2015.
2. I am currently residing at Williamsburg Square Apartments in Apartment 21, located at 1400 West Market Street, Celina, Ohio 45822, along with my minor child.
3. I am currently unemployed and my only source of income is child support in the approximate amount of \$583 per month.
4. I also receive food assistance in the amount of \$257 per month.
5. I own no stocks, bonds or real property.
6. My only assets are my personal household goods and clothing.
7. My rent is subsidized and as such, my monthly rent obligation is \$0.
8. Unless a stay is granted without bond, I will suffer irreparable harm.


Pamela LeMasters, Affiant

STATE OF OHIO

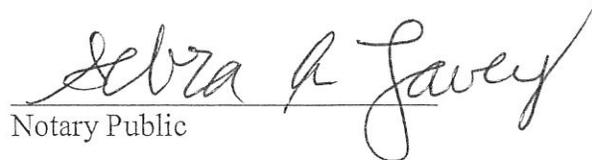
SS:

COUNTY OF MERCER

Sworn to and subscribed in my presence this 17th day of November 2015.



DEBRA ANN LAVEY, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date.
Section 147.03 O.R.C.


Notary Public

CELINA MUNICIPAL COURT
MERCER COUNTY, OHIO

FILED
CELINA MUNICIPAL COURT
NOV 19 2015
Barbara A. Painter
Clerk

GORSUCH HOMES INC, et al
Plaintiff(s)
VS.

PAMELA LEMASTERS, et al
Defendant(s)

JOURNAL ENTRY

Case No. 15CVG00709



Upon review of Defendant's Motion to Stay Execution of Journal Entry Pending Appeal, the Court declines the stay request. Defendant to be advised also by phone so they have as much notice as possible.

Date: 11/19/2015

CC: ATTY DEBRA A LAVEY
ATTY JAMES A TESNO

James J. Scheer
JUDGE



IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MERCER COUNTY

GORSUCH HOMES, INC.,

* Appellate Ct. Case No. 10-15-18

Appellee,

FILED

* Trial Ct. Case No. 2015-CVG-00709

-vs.-

NOV 19, 2015

PAMELA LEMASTERS,

MERCER CO. COURT OF APPEALS

[Signature] *, Clerk

Appellant.

* MOTION TO STAY EXECUTION OF
JOURNAL ENTRY PENDING APPEAL
* WITHOUT BOND WITH SUPPORTING
MEMORANDUM AND AFFIDAVIT

Now comes the Appellant, Pamela LeMasters, by and through her counsel Debra A. Lavey of Advocates for Basic Legal Equality, Inc., who moves this Court to stay the execution of the Journal Entry issued on October 26, 2015 by the trial court, without a posting of a supersedeas bond in her appeal, pursuant to Ohio App. R. 7(A). The Appellant requests that this Honorable Court stay her move out scheduled for Sunday, November 22, 2015. This Motion is supported by the Memorandum below and the attached Affidavit.

MEMORANDUM

Procedural History

Appellee filed a Complaint for Eviction in the trial court on October 6, 2015 and a hearing on that Complaint was held on October 26, 2015. The trial court granted an eviction judgment against Appellant on October 26, 2015 and ordered that she be removed from the rental premises no later than Sunday, November 22, 2015 at 4:00 P.M. Appellant filed a Notice of Appeal and a Motion for Stay, among other pleadings, with the trial court on November 17, 2015. The trial court issued a Journal Entry on November 19, 2015 denying Appellant's Motion for Stay. (Ex. A - Journal Entry). Appellant moves this Court for a stay of the Journal Entry, filed on October 26, 2015, which would stay the scheduled move out of Sunday, November 22, 2015.

Argument

This Court should grant a stay of the Journal Entry without the requirement that Appellant post a supersedeas bond for three reasons: (1) The granting of the stay presents no harm to Appellee, (2) Appellant has meritorious claims and the denial of the stay could make those claims moot, and (3) Appellant would suffer irreparable harm.

First, this Court should grant the stay without bond since the granting of the stay posts no harm to the Appellee. Appellant resides at a HUD subsidized property where her rent amount is based on her income. As such, Appellant's portion of her rent is \$0

and the full rental amount is being paid to the Appellee by HUD. Therefore, Appellee is not damaged by the granting of this motion without bond.

This Court should grant a stay of the Journal Entry without the requirement that Appellant post a bond. Ohio Civ. R. 62(B) states the following:

(B) Stay upon appeal. When an appeal is taken the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

The supersedeas bond must initially be sought from the trial court. Ohio R. App. P. 7(A). In this case, Appellant sought a motion for stay without supersedeas bond in the trial court and this motion was denied. (Ex. A - Journal Entry).

The supersedeas bond must be sufficient to pay "all money costs and damages" that the appellee may be awarded in the appeal." R.C. 2505.14 Ordinarily, a landlord may only recover those damages caused by the delay in enforcing the eviction order and those potential damages to the landlord are solely the loss of rent during that period. *Langford v. Danolfo*, No. 43917, 1982 WL 5265, at *1 (Ohio App., Cuyahoga Cty., Apr. 1, 1982). For an assisted housing landlord, the potential loss of rent is the tenant's portion of the contract rent, not the full contract rent. *Forest City Mgmt., Inc. v. Lauderback*, No. 91-CA-1972 (Ohio App., Scioto Cty., Mar. 15, 1991).

After the court has determined the amount of the landlord's potential damages from the granting of a stay of execution, it must determine the form of the bond to be

imposed. Courts have discretion to tailor the requisites and conditions of the bond to the needs of the litigation. 4 Ohio Jur. 3d Appellate Review § 229 (2011).

In an eviction action, generally the court will demand one of two basic types of bonds. One is a use and occupancy bond, whereby the tenant is required to pay to the court or the landlord each month, during the pendency of the appeal, their portion of rent each month. The other is a lump sum bond in the amount of the rent that is likely to become due during the pendency of the appeal.

In this case, Appellant's portion of the rent is \$0 as her entire rent amount is subsidized by the U.S. Department of Housing and Urban Development ("HUD") and paid directly to the Appellee. Aff. ¶11. Since the entire rent payment is being paid by HUD, the landlord in this case has no potential damages from the granting of the stay of execution and no harm; therefore, this Court should grant the stay without bond.

Moreover, this Court should grant the stay because Appellant has meritorious defenses and the denial of the stay could render the eviction judgment moot. Appellant's appeal of the trial court's Journal Entry, issued on October 26, 2015, is meritorious and not frivolous. Appellant has several meritorious arguments including but not limited to the following: (1) Appellant was evicted by the trial court in violation of the Violence Against Women's Act (VAWA), (2) The Appellee violated Appellant's due process by failing to provide her a 10-day meeting, and (3) the Appellee relied on grounds for eviction that were not in the Notice of Termination issued to Appellant.

First, Appellant was evicted due to the act(s) of her abuser in violation of the Violence Against Women Act (VAWA). With respect to subsidized housing eviction actions, VAWA provides tenants with two general protections. The first is that an incident of actual or threatened domestic violence, dating violence, or stalking is not a serious or repeated lease violation by the victim and is not good cause to terminate the tenancy of the victim. 24 CFR §5.2005(c)(1). The second is that criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of the tenant's household or any guest or other persons under the tenant's control, shall not be cause for termination of the tenancy of the victim, if the victim is tenant or immediate family member of the tenant. 24 CFR §5.2005(c)(2).

Appellant testified at trial that she was a victim of domestic violence from her husband, Mr. LeMasters, who she is legally separated from. Aff. ¶4,6. She further testified that she was scared to call the police due to potential ramifications for here and her daughter. Aff. ¶5. The Appellant should not have been evicted since she was protected under VAWA.

Second, Appellant was deprived of due process when Appellee failed to provide her with a 10-day meeting to discuss the proposed termination of tenancy. A project-based subsidized housing tenant is entitled to an opportunity to contest the proposed termination in a meeting with the landlord. 24 CFR §880.607(c)(1); HUD Handbook 4350.3 REV-1 , ¶8-13(B). Moreover, provision 23(e) of the lease between the parties requires that the Appellee provide Appellant with notice and right to a 10-day meeting.

(Ex. B - Lease). Appellant testified at the trial that she requested a meeting on numerous occasions; however, the Appellee never provided her with a meeting. Aff. ¶7-8.

Third, Appellee relied on grounds not cited in their Notice of Termination. "If an eviction action is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by paragraph e." (Ex. B - Lease). At trial, the Appellee relied on reasons other than those cited in notice of termination and Appellant objected to that issue at trial. Aff. ¶9.

Despite these meritorious claims, Appellant's appeal from the Journal Entry granting restitution could be considered moot. The general rule is that if the tenant vacates the premises (voluntarily or involuntarily), the tenant's appeal from the eviction judgment is moot. *Long v. MacDonald*, No. 3-02-10, 2002 WL 31007937, at *2 (Ohio App., Crawford Cty., Sept. 9, 2002). Since Appellant has meritorious claims and the failure to grant this Motion could cause the case to be moot, this Court should grant Appellant's Motion for Stay without bond.

Finally, this Court should grant Appellant's Motion for stay without bond, because Appellant would suffer irreparable harm. Appellant is a single mother and her only source of income is child support of \$583 per month. Aff. ¶10. Her entire rent amount is subsidized and she relies on that subsidy to provide housing for her and her 3-year old child. Aff. ¶11-12. Appellant does not have adequate resources to find

housing at this time and without this stay, Appellant and her daughter would be homeless. Aff. ¶13.

WHEREFORE, Appellant prays this Court to issue a stay of the October 26, 2015 Journal Entry issued by the trial court granting restitution of the premises without the requirement that Appellant post a supersedeas bond. Appellant prays that this Court order Appellee from taking any action to procure or enforce a writ of execution on the judgment, or otherwise to take action to enforce the judgment rendered in the trial court along with an order to the sheriff, police officer, constable, or bailiff, commanding them to take no action to execute the writ of execution, and otherwise to delay all further proceedings upon the execution until full and final resolution of the appeal.

Respectfully submitted,



Debra A. Lavey #0073259

Attorney for Appellant

Advocates for Basic Legal Equality, Inc.

130 W. Second Street, Suite 700 West

Dayton, Ohio 45402

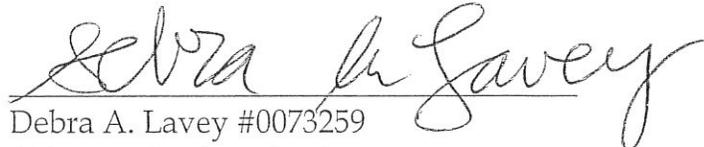
937-535-4411 telephone

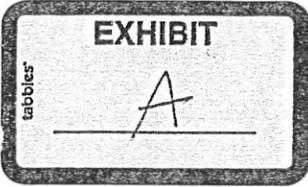
937-535-4600 facsimile

dlavey@ablelaw.org

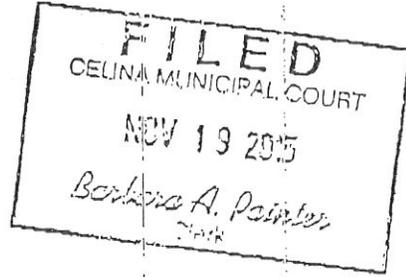
CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was served by regular mail upon James A. Tesno, Attorney for the Appellee, 100 North Main Street, Celina, Ohio 45822, by ordinary U.S. mail on this 14th day of November, 2015.


Debra A. Lavey #0073259
Attorney for Appellant



CELINA MUNICIPAL COURT
 MERCER COUNTY, OHIO



GORSUCH HOMES INC, et al
 Plaintiff(s)
 VS.

JOURNAL ENTRY

PAMELA LEMASTERS, et al
 Defendant(s)

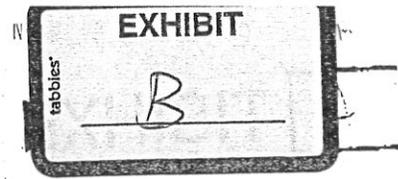
Case No. 15CV000709

Upon review of Defendant's Motion to Stay Execution of Journal Entry Pending Appeal, the Court declines the stay request. Defendant to be advised also by phone so they have as much notice as possible.

Date: 11/19/2015

James J. Scheer
 JUDGE

CC: ATTY DEBRA A LAVEY
 ATTY JAMES A TESNO



MODEL LEASE FOR SUBSIDIZED PROGRAMS

- 1. Parties and Dwelling Unit: The parties to this Agreement are Williamsburg Square, referred to as the Landlord, and Pamela Lemasters referred to as the Tenant. The Landlord leases to the Tenant(s) unit number 21, located at 1400 West Market Street Celina, Ohio 45822 in the project known as Williamsburg Square Apartments.
- 2. Length of Time (Term): The initial term of this Agreement shall begin on 3-24-14 and end on 3-31-15. After the initial term ends, the Agreement will continue for successive terms of one month each unless automatically terminated as permitted by paragraph 23 of this Agreement.
- 3. Rent: The Tenant agrees to pay \$ 12.00 for the partial month ending on 3-31-14. After that, Tenant agrees to pay a rent of \$ 44.04 per month. This amount is due on the first day of the month at Williamsburg Square Rental Office
1400 West Market Street Celina, Ohio 45822.
The Tenant understands that this monthly rent is less than the market (unsubsidized) rent due on this unit. This lower rent is available either because the mortgage on this project is subsidized by the Department of Housing and Urban Development (HUD) and/or because HUD makes monthly payments to the Landlord on behalf of the Tenant. The amount, if any, that HUD makes available monthly on behalf of the Tenant is called the tenant assistance payment and is shown on the "Assistance Payment" line of the Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures form which is Attachment No. 1 to this Agreement.
- 4. Changes in the Tenant's Share of the Rent: The Tenant agrees that the amount of rent the Tenant pays and/or the amount of assistance that HUD pays on behalf of the Tenant may be changed during the term of this Agreement if:
 - a. HUD or the Contract Administrator (such as a Public Housing Agency) determines, in accordance with HUD procedures, that an increase in rents is needed;
 - b. HUD or the Contract Administrator changes any allowance for utilities or services considered in computing the Tenant's share of the rent;
 - c. the income, the number of persons in the Tenant's household or other factors considered in calculating the Tenant's rent change and HUD procedures provide that the Tenant's rent or assistance payment be adjusted to reflect the change;
 - d. changes in the Tenant's rent or assistance payment are required by HUD's recertification or subsidy termination procedures;
 - e. HUD's procedures for computing the Tenant's assistance payment or rent change; or
 - f. the Tenant fails to provide information on his/her income, family composition or other factors as required by the Landlord.

The Landlord agrees to implement changes in the Tenant's rent or tenant assistance payment only in accordance with the time frames and administrative procedures set forth in HUD's handbooks, instructions and regulations related to administration of multifamily subsidy programs. The Landlord agrees to give the Tenant at least 30 days advance written notice of any increase in the Tenant's rent except as noted in paragraphs 11, 15 or 17. The Notice will state the new amount the Tenant is required to pay, the date the new amount is effective, and the reasons for the change in rent. The Notice will also advise the Tenant that he/she may meet with the Landlord to discuss the rent change.
- 5. Charges for Late Payments and Returned Checks: If the Tenant does not pay the full amount of the rent shown in paragraph 3 by the end of the 5th day of the month, the Landlord may collect a fee of \$5 on the 6th day of the month. Thereafter, the Landlord may collect \$1 for each additional day the rent remains unpaid during the month it is due. The Landlord may not terminate this Agreement for failure to pay late charges, but may terminate this Agreement for non-payment of rent, as explained in paragraph 23. The Landlord may collect a fee of \$ 10.00 on the second or any additional time a check is not honored for payment (bounces). The charges discussed in this paragraph are in addition to the regular monthly rent payable by the Tenant.

6. Condition of Dwelling Unit By signing this Agreement, the Tenant acknowledges that the unit is safe, clean and in good condition. The Tenant agrees that all Appliances and equipment in the unit are in good working order, except as described on the Unit Inspection Report, which is Attachment No. 2 to this Agreement. The Tenant also agrees that the Landlord has made no promises to decorate, alter, repair or improve the unit, except as listed on the Unit Inspection Report.
7. Charges for Utilities and Services: The following charts describe how the cost of utilities and services related to occupancy of the unit will be paid. The Tenant agrees that these charts accurately describe the utilities and services paid by the Landlord and those paid by the Tenant.

- a. The Tenant must pay for the utilities in column (1). Payments should be made directly to the appropriate utility company. The items in column (2) are included in the Tenant's rent.

(1)		(2)
Put "x" by any Utility Tenant pays directly	Type of Utility	Put an "x" by any utility included in Tenant Rent
X	Heat	<input type="checkbox"/>
X	Lights, Electric	<input type="checkbox"/>
X	Cooking	<input type="checkbox"/>
<input type="checkbox"/>	Water	X
<input type="checkbox"/>	Other - Specify	<input type="checkbox"/>
<input type="checkbox"/>	Sewage	X
<input type="checkbox"/>	Trash Removal	X
<input type="checkbox"/>		<input type="checkbox"/>

- b. The Tenant agrees to pay the Landlord the amount shown in column (3) on the date the rent is due. The Landlord certifies that HUD had authorized him/her to collect the type of charges shown in column (3) and that the amounts shown in column (3) do not exceed the amounts authorized by HUD.

(3)	Show Amount Tenant Pays to Landlord in Addition to Rent
Parking	\$0
Other (Specify)	\$
	\$
	\$
	\$
	\$

8. Security Deposits: The Tenant has deposited \$ 139. with the Landlord. The Landlord will hold this security deposit for the period the Tenant occupies the unit. After the Tenant has moved from the unit, the Landlord will determine whether the Tenant is eligible for a refund of any or all of the security deposit. The amount of the refund will be determined in accordance with the following conditions and procedures.

- a. The Tenant will be eligible for a refund of the security Deposit only if the Tenant provided the Landlord with the 30-day written notice of intent to move required by paragraph 23, unless the Tenant was unable to give the notice for reasons beyond his/her control.
- b. After the Tenant has moved from the unit, the Landlord will inspect the unit and complete another Unit Inspection Report. The Landlord will permit the Tenant to participate in the inspection, if the Tenant so requests.
- c. The Landlord will refund to the Tenant the amount of the security deposit plus interest computed at TBD%, beginning 3-24-14, less any amount needed to pay the cost of:
- (1) unpaid rent;
 - (2) damages that are not due to normal wear and tear and are not listed on the Unit Inspection Report;
 - (3) charges for late payment of rent and returned checks, as described in paragraph 5; and
 - (4) charges for unreturned keys, as described in paragraph 9.

- d. The Landlord agrees to refund the amount computed in paragraph 8c within 30 days after the Tenant has permanently moved out of the unit, returned possession of the unit to the Landlord, and given his/her new address to the Landlord. The Landlord will also give the Tenant a written list of charges that were subtracted from the deposit. If the Tenant disagrees with the Landlord concerning the amounts deducted and asks to meet with the Landlord, the Landlord agrees to meet with the Tenant and informally discuss the disputed charges.
- e. If the unit is rented by more than one person, the Tenants agree that they will work out the details of dividing any refund among themselves. The Landlord may pay the refund to any Tenant identified in Paragraph 1 of this Agreement.
- f. The Tenant understands that the Landlord will not count the Security Deposit towards the last month's rent or towards repair charges owed by the Tenant in accordance with paragraph 11.

9. Keys and Locks:

The Tenant agrees not to install additional or different locks or gates on any doors or windows of the unit without the written permission of the Landlord. If the Landlord approves the Tenant's request to install such locks, the Tenant agrees to provide the Landlord with a key for each lock. When this Agreement ends, the Tenant agrees to return all keys to the dwelling unit to the Landlord. The Landlord may charge the Tenant \$ 5.00 for each key not returned.

10. Maintenance:

- a. The Landlord agrees to:
 - (1) regularly clean all common areas of the project;
 - (2) maintain the common areas and facilities in a safe condition;
 - (3) arrange for collection and removal of trash and garbage;
 - (4) maintain all equipment and appliances in safe and working order;
 - (5) make necessary repairs with reasonable promptness;
 - (6) maintain exterior lighting in good working order;
 - (7) provide extermination services, as necessary; and
 - (8) maintain grounds and shrubs.
- b. The Tenant agrees to:
 - (1) keep the unit clean;
 - (2) use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;
 - (3) not litter the grounds or common areas of the project;
 - (4) not destroy, deface, damage or remove any part of the unit, common areas, or project grounds;
 - (5) give the Landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating and cooling equipment or any other part of the unit or related facilities; and
 - (6) remove garbage and other waste from the unit in a clean and safe manner.

11. Damages:

Whenever damage is caused by carelessness, misuse, or neglect on the part of the Tenant, his/her family or visitors, the Tenant agrees to pay:

- a. the cost of all repairs and do so within 30 days after receipt of the Landlord's demand for the repair charges; and
- b. rent for the period the unit is damaged whether or not the unit is habitable. The Tenant understands that HUD will not make assistance payments for any period in which the unit is not habitable. For any such period, the Tenant agrees to pay the HUD-approved market rent rather than the Tenant rent shown in paragraph 3 of this agreement.

12. Restrictions on Alterations:

No alteration, addition, or improvements shall be made in or to the premises without the prior consent of the Landlord in writing. The Landlord agrees to provide reasonable accommodation to an otherwise eligible tenant's disability, including making changes to rules, policies, or procedures, and making and paying for structural alterations to a unit or common areas. The Landlord is not required to provide accommodations that constitute a fundamental alteration to the Landlord's program or which would pose a substantial financial and administrative hardship. See the regulations at 24 CFR Part 8. In addition, if a requested structural modification does pose a substantial financial and administrative hardship, the Landlord must then allow the tenant to make and pay for the modification in accordance with the Fair Housing Act.

13. General Restrictions:

The Tenant must live in the unit and the unit must be the Tenant's only place of residence. The Tenant shall use the premises only as a private dwelling for himself/herself and the individuals listed on the Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, Attachment 1. The Tenant agrees to permit other individuals to reside in the unit only after obtaining the prior written approval of the Landlord. The Tenant agrees not to:

- a. sublet or assign the unit, or any part of the unit;
- b. use the unit for unlawful purposes;
- c. engage in or permit unlawful activities in the unit, in the common areas or on the project grounds;
- d. have pets or animals of any kind in the unit without the prior written permission of the Landlord, but the landlord will allow the tenant to keep an animal needed as a reasonable accommodation to the tenant's disability, and will allow animals to accompany visitors with disabilities who need such animals as an accommodation to their disabilities; or
- e. make or permit noises or acts that will disturb the rights or comfort of neighbors. The Tenant agrees to keep the volume of any radio, phonograph, television or musical instrument at a level, which will not disturb the neighbors.

14. Rules:

The Tenant agrees to obey the House Rules, which are Attachment No. 3 to this Agreement. The tenant agrees to obey additional rules established after the effective date of this Agreement if:

- a. the rules are reasonably related to the safety, care and cleanliness of the building and the safety, comfort and convenience of the Tenants; and
- b. the Tenant receives written notice of the proposed rule at least 30 days before the rule is enforced.

15. Regularly Scheduled Recertifications

Every year around the first day of November the Landlord will request the Tenant to report the income and composition of the Tenant's household and to supply any other information required by HUD for the purposes of determining the Tenant's rent and assistance payment, if any. The Tenant agrees to provide accurate statements of this information and to do so by the date specified in the Landlord's request. The landlord will verify the information supplied by the Tenant and use the verified information to re-compute the amount of the Tenant's rent and assistance payment, if any.

- a. If the Tenant does not submit the required recertification information by the date specified in the Landlord's request, the Landlord may impose the following penalties. The Landlord may implement these penalties only in accordance with the administrative procedures and time frames specified in HUD's regulations, handbooks and instructions related to the administration of multifamily subsidy programs.

- (1) Require the Tenant to pay the higher, HUD-approved market rent for the unit.
- (2) Implement any increase in rent resulting from the recertification processing without providing the 30-day notice otherwise required by paragraph 4 of this Agreement.

- b. The Tenant may request to meet with the Landlord to discuss any change in rent or assistance payment resulting from the recertification processing. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and discuss how the Tenant's rent and assistance payment, if any, were computed.

16. Reporting Changes Between Regularly Scheduled Recertifications

- a. If any of the following changes occur, the Tenant agrees to advise the Landlord immediately.
 - (1) Any household member moves out of the unit.
 - (2) An adult member of the household who was reported as unemployed on the most recent certification or recertification obtains employment.
 - (3) The household's income cumulatively increases by \$200 or more a month.
- b. The Tenant may report any decrease in income or any change in other factors considered in calculating the Tenant's rent. Unless the Landlord has confirmation that the decrease in income or change in other factors will last less than one month, the Landlord will verify the information and make the appropriate rent reduction. However, if the Tenant's income will be partially or fully restored within two months, the Landlord may delay the certification process until the new income is known, but the rent reduction will be retroactive and the Landlord may not evict the Tenant for nonpayment of rent due during the period of the reported decrease and the completion of the certification process. The Tenant has thirty days after receiving written notice of any rent due for the above described time period to pay or the Landlord can evict for nonpayment of rent. (Revised 3/22/89)

- c. If the Tenant does not advise the Landlord of these interim changes, the Landlord may increase the Tenant's rent to the HUD-approved market rent. The Landlord may do so only in accordance with the time frames and administrative procedures set forth in HUD's regulations, handbooks and instructions on the administration of multifamily subsidy programs.
 - d. The Tenant may request to meet with the Landlord to discuss how any change in income or other factors affected his/her rent or assistance payment, if any. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and explain how the Tenant's rent or assistance payment, if any, was computed.
17. Removal of Subsidy:
- a. The Tenant understands that assistance made available on his/her behalf may be terminated if events in either items 1 or 2 below occur. Termination of assistance means that the Landlord may make the assistance available to another Tenant and the Tenant's rent will be re-computed. In addition, if the Tenant's assistance is terminated because of criterion (1) below, the Tenant will be required to pay the HUD-approved market rent for the unit.
 - (1) The Tenant does not provide the Landlord with the information or reports required by paragraph 15 or 16 within 10 calendar days after receipt of the Landlord's notice of intent to terminate the Tenant's assistance payment.
 - (2) The amount the Tenant would be required to pay towards rent and utilities under HUD rules and regulations equals the Family Gross Rent shown on Attachment 1.
 - b. The Landlord agrees to give the Tenant written notice of the proposed termination. The notice will advise the Tenant that, during the ten calendar days following the date of the notice, he/she may request to meet with the Landlord to discuss the proposed termination of assistance. If the Tenant requests a discussion of the proposed termination, the Landlord agrees to meet with the Tenant.
 - c. Termination of assistance shall not affect the Tenant's other rights under this Agreement, including the right to occupy the unit. Assistance may subsequently be reinstated if the Tenant submits the income or other data required by HUD procedures, the Landlord determines the Tenant is eligible for assistance, and assistance is available.

18. Tenant Obligation To Repay:

If the tenant submits false information on any application, certification or request for interim adjustment or does not report interim changes in family income or other factors as required by paragraph 16 of this Agreement, and as a result, is charged a rent less than the amount required by HUD's rent formulas, the Tenant agrees to reimburse the Landlord for the difference between the rent he/she should have paid and the rent he/she was charged. The Tenant is not required to reimburse the Landlord for undercharges caused solely by the Landlord's failure to follow HUD's procedures for computing rent or assistance payments.

19. Size of Dwelling:

The Tenant understands that HUD requires the Landlord to assign units in accordance with the Landlord's written occupancy standards. These standards include consideration of unit size, relationship of family members, age and sex of family members and family preference. If the Tenant is or becomes eligible for a different size unit, and the required size unit becomes available, the Tenant agrees to:

- a. move within 30 days after the Landlord notifies him/her that unit of the required size is available within the project; or
- b. remain in the same unit and pay the HUD-approved market rent.

20. Access by Landlord:

- a. The Landlord agrees to enter the unit only during reasonable hours, to provide reasonable advance notice of his/her intent to enter the unit, and to enter the unit only after receiving the Tenant's consent to do so, except when urgency situations make such notices impossible or except under paragraph (c) below.
- b. The Tenant consents in advance to the following entries into the unit:
 - (i) The tenant agrees to permit the Landlord, his/her agents or other persons, when authorized by the Landlord, to enter the unit for the purpose of making reasonable repairs and periodic inspections.
 - (ii) After the Tenant has given a notice of intent to move, the Tenant agrees to permit the Landlord to show the unit to prospective tenants during reasonable hours.
- c. If the Tenant moves before this Agreement ends, the Landlord may enter the unit to decorate, remodel, alter or otherwise prepare the unit for re-occupancy.

21. Discrimination Prohibited:

The Landlord agrees not to discriminate based upon race, color, religion, creed, National origin, sex, age, familial status, and disability.

22. Change in Rental Agreement:

The Landlord may, with the prior approval of HUD, change the terms and conditions of this Agreement. Any changes will become effective only at the end of the initial term or a successive term. The Landlord must notify the Tenant of any change and must offer the Tenant a new Agreement or an amendment to the existing Agreement. The Tenant must receive the notice at least 60 days before the proposed effective date of the change. The Tenant may accept the changed terms and conditions by signing the new Agreement or the amendment to the existing Agreement and returning it to the Landlord. The Tenant may reject the changed terms and conditions by giving the Landlord written notice that he/she intends to terminate the tenancy. The Tenant must give such notice at least 30 days before the proposed change will go into effect. If the Tenant does not accept the amended agreement, the Landlord may require the Tenant to move from the project, as provided in paragraph 23.

23. Termination of Tenancy:

- a. To terminate this Agreement, the Tenant must give the Landlord 90-days written notice before moving from the unit.
- b. Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement.
- c. The Landlord may terminate this Agreement for the following reasons:
 - (1) the Tenant's material noncompliance with the terms of this Agreement;
 - (2) the Tenant's material failure to carry out obligations under any State Landlord and Tenant Act;
 - (3) drug related criminal activity engaged in on or near the premises, by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control;
 - (4) determination made by the Landlord that a household member is illegally using a drug;
 - (5) determination made by the Landlord that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
 - (6) criminal activity by a tenant, any member of the tenant's household, a guest or another person under the tenant's control;
 - (a) that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises);
 - (b) or that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises;
 - (7) if the tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual or that in the case of the State of New Jersey is a high misdemeanor;
 - (8) if the tenant is violating a condition of probation or parole under Federal or State law;
 - (9) determination made by the Landlord that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;
 - (10) if the Landlord determines that the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in the criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest or another person under the tenant's control has been arrested or convicted for such activity.

- d. The Landlord may terminate this Agreement for other good cause, which includes, but is not limited to, the tenant's refusal to accept change to this agreement. Terminations for "other good cause" may only be effective as of the end of any initial or successive term.

The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that (a) disrupt the livability of the project; (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project (3) failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies), and (4) Non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

- e. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice and the grounds for the proposed termination. If the Landlord is terminating this agreement for "other good cause," the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit and in accordance with State law requirements. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law. All termination notices must:

- specify the date this Agreement will be terminated;
- state the grounds for termination with enough detail for the Tenant to prepare a defense;
- advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant;
- and advise the Tenant of his/her right to defend the action in court.

- f. If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by paragraph e.

24. Hazards:

The Tenant shall not undertake, or permit his/her family or guests to undertake, any hazardous acts or do anything that will increase the project's insurance premiums. Such action constitutes a material non-compliance. If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the Tenant, the Tenant will be responsible for rent only up to the date of the destruction. Additional rent will not accrue until the unit has been repaired to a livable condition.

25. Penalties for Submitting False Information:

Knowingly giving the Landlord false information regarding income or other factors considered in determining Tenant's eligibility and rent is a material noncompliance with the lease subject to termination of tenancy. In addition, the Tenant could become subject to penalties available under Federal law. Those penalties include fines up to \$10,000 and imprisonment for up to five years.

26. Contents of this Agreement:

This Agreement and its Attachments make up the entire agreement between the Landlord and the Tenant regarding the unit. If any Court declares a particular provision of this Agreement to be invalid or illegal, all other terms of this Agreement will remain in effect and both the Landlord and the Tenant will continue to be bound by them.

27. Attachments to the Agreement:

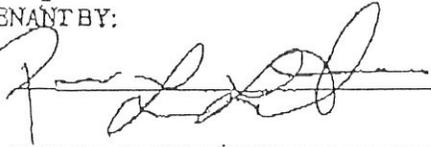
The Tenant certifies that he/she has received a copy of this Agreement and the following Attachments to this Agreement and understands that these Attachments are part of this Agreement.

- a. Attachment No. 1 - Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, form HUD-50059
- b. Attachment No. 2 - Unit Inspection Report.
- c. Attachment No. 3 - House Rules (if any).

- 28. Tenants' rights to organize: Landlord agrees to allow tenant and tenant organizers to conduct on the property the activities related to the establishment or operation of a tenant organization set out in accordance with HUD requirements.
- 29. Tenant Income Verification: The Tenant must promptly provide the Landlord with any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income in accordance with HUD requirements.
- 30. The lease agreement will terminate automatically, if the Section 8 Housing Assistance contract terminates for any reason.

31. Signatures:

TENANT BY:

1. 

3 12/1/14
Date Signed

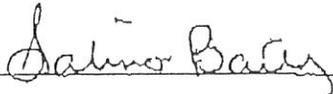
2. _____

1 1
Date Signed

3. _____

1 1
Date Signed

LANDLORD BY:



3 12/4/14
Date Signed

Public reporting burden - HUD is not requesting approval of any burden hours for the model leases since use of leases are a standard business practice in the housing rental industry. This information is required to obtain benefits. The request and required supporting documentation are sent to HUD or the Contract Administrator (CA) for approval. The lease is a contract between the owner of the project and the tenant(s) that explains the terms for residing in the unit. Leases are a standard business practice in the housing rental industry. Owners are required to use the HUD model lease which includes terms normally covered by leases used in the housing rental industry plus terms required by HUD for the program under which the project was built and/or the program providing rental assistance to the tenants.

This information is authorized by 24 CFR 5.360, 236.750, 860.606, 883.701, 884.215, 886.127, 891.425, 891.625 and 891.765 cover lease requirements and provisions. This information is considered non-sensitive and does not require any special protection.

COMMUNITY RULES & REGULATIONS

Multifamily living requires respect for and consideration of your neighbors as well as compliance with fire ordinances, insurance regulations, and Management and program policies. These rules and regulations are necessary in order to have a neat, clean, and attractive community of which we all will be proud. Each tenant has the same rights as if each apartment were a separate home; however, since these apartments are close together, you must think of the other tenants while living in your apartment.

Disturbances:

Tenants shall not make nor permit any disturbing activities, noises in the building, Common Areas or grounds caused by themselves, their family, friends, invitees, or guests; nor permit anything to be done by such persons that will interfere with the rights, comforts, or conveniences of other tenants. These rules are in effect 24 hours a day.

Interim Recertification's and Rent Adjustments:

A. Residents are responsible for reporting interim changes in income and family composition. Changes in income and family composition may result in an adjustment in rent. Interim Recertification's must be completed if there is an increase in the permanent tenant gross income of \$200 or more per month (\$2,400 per year).

Maintenance:

1. The method and plans for carrying out an effective maintenance and repair program will be outlined in Management's Policy Manuals.

2. Maintenance Request: Routine maintenance requests should be reported to the manager at the office or other designated location during regular office hours. The maintenance form is to be filled out and given to the Manager. A tenant may not perform any maintenance to the apartment at any time.

3. Maintenance Emergency: Should emergency maintenance be required (major leaking from pipes, no heat in winter, total lack of sewer or sanitation facilities, fire, flood or other natural disaster, electrical failures, burglary, vandalism, or other disturbances which breach security), call the Community Manager at the office or call 419 790 8881

Guests:

1. Only those persons named in the lease are lawful tenants. Household guests will be considered as such without penalty for a period of up to fourteen (14) days in a thirty (30) day period.

Guests who want to be added to the lease are subject to the same screening criteria as all new tenants.

2. Upon receipt of notice from Management that an unauthorized person has been reported or is suspected of living in the unit, the tenant agrees to meet with Management and to provide upon request of Management, documentation in support of the tenant's position. The tenant understands that the failure to meet or provide requested documentation may result in eviction.

3. Tenants are responsible for the conduct of their household guests. Because of Management's safety concerns, guests are to be adequately supervised to insure the comfort and privacy of other residents. Tenants and/or their guests must not loiter in the hallways, passageways, dumpster's areas, laundry rooms, or parking lots. The tenant agrees to assume liability for all damages caused by their guests.

Animals:

Certified Assist and Companion Animals are welcome upon verification of need, except in communities designated by law for the elderly. No animals kept as a pet, other than one 20 gallon aquarium of fish; or two caged and/or confined birds, guinea pigs, gorbils, or hamsters, are permitted. Management reserves the right to limit the placement of aquariums. The tenant acknowledges that, having signed the Lease and Rules and Regulations, the tenant is fully aware that the tenant is not permitted to own, harbor, or tend an animal, whether owned or a stray, inside the apartment or on the grounds of the community except as noted above. Animal waste must be disposed of regularly and appropriately (solid waste must be placed in plastic bags, sealed and placed in trash dumpster or container).

Dogs and cats are permitted only in communities that are designed exclusively for the elderly, handicapped or disabled. All residents of these communities must obtain a pet permit and make arrangements for paying the pet deposit before acquiring an animal. Breed, size and weight limitations will apply. Please refer to Pet Policy/Agreement (available at the office) for conditions that apply to animal ownership. Residents shall not permit their pet, certified assist or companion animal to disturb, interfere, or diminish the peaceful enjoyment of other residents. This term "disturb, interfere, or diminish" shall include, but is not limited to, barking, howling, chirping, biting, snapping, scratching, and other like activities. Pet owners must arrange alternate care of pets in the event of illness or absence of owner.

Medical Equipment:

In the event that any household member may find it necessary to install or maintain medical equipment/apparatus in the apartment, such equipment/apparatus will be installed and maintained in accordance with any local, state, or federal law; or regulation; or program stipulation; concerning the safe maintenance of the equipment/apparatus in a manner which would not increase the risk of fire or promote a hazard to other residents of the community.

The tenant must post any required notice of the use of specialized equipment/apparatus and is to use or have used any such equipment/apparatus in a safe manner following recommended procedures. The tenant is required to secure all oxygen tanks and like

equipment to the wall when not in use and the securement must meet company specifications as well as pertaining regulations. Installation, use, or posting required to be approved by Management prior to installation or posting. If advised of any violation, Tenant must correct said violation within the specified time frame and failure to do so could result in legal action or correction of the violation by Management with any cost incurred by Management to be paid within 30 days of receipt of notice.

Live-in Attendant:

Upon proof of need, a tenant may have a Live-in Attendant. Management will run criminal/arrest records on Live-in Attendants and the Live-in Attendant must meet this screening before approval will be given. Live-in Attendants are not a tenant of the community but are in the household to provide assistance to a household member. Should the household member no longer need the services of the Live-in Attendant, the attendant must vacate the unit. While not a tenant of the community, the Live-in Attendant, as is any guest, is required to obey and abide by the Rules and Regulations governing the community.

General:

Exterior Restrictions: Tenants shall not install fences, hooks, spikes, screws, licks, signs, flags, gardens, shrubbery, incinerators, clothes posts, or affix or make building alterations without prior written approval of Management. You may not hang laundry, clothing, rugs, or other items on the exterior of the building. Management reserves the right to limit the use of exterior Leased Premises areas to the use for which the areas were intended. Tenants may not place items that where such placement would hinder or restrict lawn care such as mowing or result in a trip hazard. Exterior Leased Premises areas must be kept clean and in good order and only have items designed for exterior use appropriate for the area. Exterior Leased Premises areas may not be blocked or otherwise restricted.

Trash Removal. Trash and other materials are to be bagged and sealed before disposal. Trash is to be placed in the trash container, chute or dumpster, not placed around same or left in the apartment, patio, balcony, porch, or halls. No hazardous, restricted or large materials or items are to be disposed of in the dumpster, trash container or in the trash enclosure. Residents will be held responsible for the cost to dispose of items or materials improperly placed in the dumpster, chute, container, or enclosure. Parents should not allow small children to dispose of trash. Management reserves the right to restrict the use of chutes, and compactors for the purposes intended-only. Garbage and other material may not be disposed of through chutes and compactors unless specifically allowed by Management. Items placed in chutes are to be of size and shape that allows free and easy movement.

Vehicles: No vehicle larger than a passenger automobile or pick-up is permitted in the parking areas at any time. Therefore, campers, trailers, mobile homes, trucks, or boats will not be permitted in the parking lot. Motorized vehicles such as motorcycles are subject to the same rules as any other vehicle. Head-in parking and obedience of parking rules are required. Additionally, any unlicensed or broken down vehicle will not be permitted in the parking area for more than 48 hours. Repairs, other than changing a flat tire or jump starting and/or washing of vehicles is **PROHIBITED**. Vehicles may not be stored on the premises. Vehicles will be towed at the owner's expense based on any of the above violations.

Door Locks: Your apartment may be equipped with deadbolt locks. Other security devices are not to be installed without written consent of Management. If Management gives consent, tenant must provide a key to Management.

Window Treatment: Curtains or mini blinds are required at all windows and must appear white from the outside. Lessee may have colored draperies inside with white-appearing drapery linings.

Wall Hangings: Use only approved fasteners (such as small nails), no glue-on hooks or other fasteners that attach to the drywall, to hang pictures, mirrors and other wall hangings.

TV Antenna: Tenants are not to install exterior antennas for TV or radios.

Special Equipment: Tenants are not permitted to install or keep washers, dryers, dishwashers, kerosene space heaters, air conditioning units, or freezers, unless unit already has permanent hookups present and written Management consent is received. If permission is given for placement of window air conditioners, the air conditioners may not be installed in rooms with only one window and no door to the outside.

Electric Motorized Vehicles: The use of Electric Motorized Vehicles ("EMVs"), which include Electric Wheelchairs, Electric Scooters and Electric Carts, has increased dramatically over the past few years. While the use of EMVs is necessary and reasonable for many mobility-impaired individuals, EMVs present unique and novel safety issues. Because of these issues, many of which have been evident in our own property, to help ensure the safety of all residents and guests, and to avoid unnecessary damage to our property, our House Rules will be amended to contain the following rules regarding the use of EMVs:

1. To help ensure the safe operation of EMVs, EMVs must be operated on "low speed" at all times.

2. The only person authorized to operate an EMV on the premises is the owner/operator who, if requested, must provide an approved 504 Accommodation Request/Verification of his/her need for the EMV; no one else is authorized to operate an EMV on the premises.
3. EMVs must be parked inside the owner/operator's apartment or the apartment of the resident he/she may be visiting; EMVs must not be left unattended in the hallways, stairways or other Common Areas unless specifically designated by Management.
4. EMVs must be recharged only within the owner/operator's apartment.
5. Pedestrians must be given the right of way at all times; ample notice must be provided before passing pedestrians in the hallways.
6. Extreme care must be taken while entering and exiting the elevators with an EMV. Owner/operators must back into all elevators. Before entering or exiting an elevator, owner/operators must be able to visually inspect the area ahead and behind them to make certain that it is clear of all pedestrians and obstructions. Owner/operators who are unable to do this must outfit their EMV with mirrors.
7. Owner/operators are solely responsible for all upkeep and repairs on their EMVs.
8. Owner/operators are responsible for any damage caused by their EMV inside their apartments and in communal areas of the building in excess of normal wear and tear.
9. Management is not responsible for any damage to EMVs caused by other owners, residents or guests.
10. If an owner/operator drives an EMV in an unsafe manner, causes injury to other residents or creates excessive damage to the property, the owner/operator may be required to provide third-party verification of his/her ability to operate the EMV in a safe manner. Continued damage may result in loss of EMV privileges.

11. Under certain circumstances these rules may be further modified to reasonably accommodate the needs of individual owners.

Smoke Detectors: Tenants are responsible for the routine checking of any smoke detectors located within the apartment. Except for monitored systems, test of the smoke detector is to be done by manually pushing test button. On monitored systems, tenants are to check to see if light is working. Tenants are to maintain current to the detectors and are responsible for keeping batteries in any battery-operated smoke detectors. Tenants are not to remove or disconnect smoke detectors. Tenants are to advise Management of the need for any repairs in writing to the Community office. Management is to respond within 72 hours of written request for repair of any smoke detector.

Structure, Fixtures, and Appliances: Tenant shall not mark, paint, drill into, or in any way injure, deface, or damage any wall, ceiling, door, frame, partition, floor, wood of the premises and/or building of which it is a part. Fixtures and appliances are to be used and maintained in the manner in which the fixture or appliance was designed.

Common Areas: Common Areas are for the use and enjoyment of all residents at the community. While the over-all responsibility of the Common Area is Management's, tenants must comply with the following Common Area rules. Common Areas include all community property not contained within the individual Leased Premises. These areas include hallways, stairwells, lobbies, laundry rooms, restroom, basement areas, attics, roofs, courtyards, lawns, planted areas and beds, pathways and sidewalks, air space, driveways and parking lots, and many amenity areas such as, but not limited to, community rooms, mailboxes, or playgrounds. Common Area amenities are not included as part of the leased area and a change or deletion of a common area amenity will not result in a reduction of the rental rate for the leased area.

1. **Alteration to Common Areas:** Tenants may not alter or change the use of Common Areas without the prior permission of Management and only in the manner approved by Management. This would include, but is not limited to alterations to decorations, furniture, equipment, materials, and planted and bedded areas. Tenants are not to place signs, flags, decorations, or other items in Common Areas except as may be approved by Management. Tenants are not to use tape or other adhesive materials on painted or papered walls or ceilings. Tenants may not place items in a Common Area that would result in a trip hazard or interfere with accessibility or would result in a violation of Fair Housing Laws.
2. **Care of Common Areas:** Tenants may not leave trash, litter, or other refuse of any kind in Common Areas. Trash, litter and other refuse is to be disposed of by the tenant in the proper manner. Tenants are to remove any debris and clean spills that occur when using Common Area furniture, materials, and equipment. Failure to dispose of trash, litter, refuse, debris or spills properly can result in a fee to cover the cost of disposal or cleanup by staff or contractor. Tenants will be billed for any damages to Common Areas that are the result of carelessness, misuse, or neglect. Tenants are to notify Management of any damages found within the Common Areas.
3. **Limited Use:** While Common Areas will be available for use by the tenant, Management reserves the right to limit the hours during which Common Areas may be used.
4. **Alcohol:** Alcohol is not to be consumed in Common Areas.
5. **Laundry:** Laundry equipment is to be used in the manner for which it was designed. No dyeing or other like actions are to be done in community-supplied equipment. No laundry is to be hung to dry in Common Areas. Tenants are responsible for cleaning of laundry equipment debris and spills caused during use.
6. **Tenant personal property:** Tenants may not leave personal property unattended in Common Areas without prior permission of Management and only in the manner authorized by Management. Personal property left unattended in Common Areas may be removed by staff. If personal property is chained or secured in Common Areas, within 24 hours

notice, staff may cut the chain or lock in order to remove the item. The community will store property that is removed for a period of 30 days. Any cost for storage will be at the tenant's expense and the tenant must pay the cost of storage upon claiming the property.

- 7. Smoking: No Smoking is permitted in Interior Common Areas except in marked designated areas.
- 8. Appropriate Attire: Common Areas are to be treated the same as any building or exterior area that would be used by the public. Tenants are to be dressed as they would dress in a business or public area when in Common Areas.
- 9. Private Use of Common Area: Designated Common Areas may be available for the temporary private use of tenants. Tenants are to honor the private use of a facility or area and not disturb or disrupt approved usage. Designated Common Areas for this community are: COMMUNITY BUILDING. Policies for private use of Common Areas are:
 - a) Prior Approval: Approval must be received from Management to reserve the area. Approval will be given first come, first serve basis with community-wide activities having first call upon Community Areas. Tenant may be required to sign acknowledgement of their responsibilities for using the area.
 - b) Use Limited to a Specific Date and Time: Management reserves the right to limit the length of time and specific time of day the area will be made available for private use. The tenant is responsible for notifying Management of any change in plans. If a change is needed, Management will attempt to accommodate the tenant taking into consideration other commitments for use of the area.
 - c) Preparation: The tenant will be responsible for preparations of the area for their event.
 - d) Control: The tenant is responsible for keeping the noise at a level that will not disturb other tenants. The tenant is responsible for controlling their guests. Guests are not to roam the community but are to stay within the reserved area or the tenants leased premises except to enter and leave. Parking for guests will be at a location agreed upon by Management.
 - e) Return of Area: The tenant is responsible for leaving the area in a clean and orderly manner and returning the area to its proper condition. If the tenant fails to leave the area in a clean, orderly, and proper condition, the tenant will be billed for the cost to return the area to a clean, orderly, and proper condition by staff or contractor.
 - f) Damages: The tenant is responsible for any and all damage occurring during private use.

Paula 3-24-14

CELINA MUNICIPAL COURT
MERCER COUNTY, OHIO

FILED
CELINA MUNICIPAL COURT
NOV 29 2015
Barbara A. Probst
Clerk

GORSUCH HOMES INC, et al
Plaintiff(s)
VS.

PAMELA LEMASTERS, et al
Defendant(s)

JOURNAL ENTRY

Case No. 15CVG00709



The Court has become aware that Defendant has requested a stay from the Court of Appeals. As such this Court will continue the Show Cause Hearing set for Monday, November 23, 2015, until after the Court of Appeals renders its decision.

It is so found.

Date: 11/20/2015

CC: ATTY JAMES A TESNO
ATTY DEBRA LAVEY

James Tesno

JUDGE



IN THE COURT OF APPEALS OF MERCER COUNTY, OHIO
THIRD APPELLATE DISTRICT

Gorsuch Homes, Inc.,)	Appellate Case No. <u>10-15-18</u>
Plaintiff-Appellee,)	Trial Court Case No. <u>15CVG00709</u>
vs.)	
)	<u>APPELLEE'S RESPONSE</u>
Pamela Lemasters,)	<u>TO MOTION FOR STAY</u>
Defendant-Appellant.)	

.....

The Appellant has moved this Court for a stay of execution of judgment.

As the Court is aware, this is an eviction action. Trial on the merits was held on October 26, 2015. At trial, the Defendant appeared pro se.

Contrary to the Appellant's assertions, the eviction hearing proceeded on the basis set forth in the notice of eviction (Exhibit B to Complaint). The basis for eviction was specifically "Allowing a non-trespassed individual on the premises continually". Testimony was presented at trial that the Defendant had permitted unauthorized persons to stay at her apartment, contrary to the terms of the lease.

The Appellant claims that she has meritorious defenses. The Appellee disputes this. The alleged violation of the Violence Against Women Act was not raised at trial. If this issue was raised at trial, the Defendant was not evicted because of the acts of an abuser under the VAWA. She was evicted because she voluntarily permitted unauthorized people to stay at her apartment in violation of the lease.

Further, the issue of the right to a "10-day meeting" was raised and litigated at trial. Testimony was presented to the Judge, who obviously would have to consider the credibility of the witnesses in deciding the merits of this issue. Inherent in his decision is that he did not find a violation of the rule. The Appellee submits that the determination of this issue is a question of fact, not law, and that deference should be given to the Trial Court's decision in this preliminary motion.

The Appellee disputes the Appellant's assertion that the Court considered matters not included in the Notice of Termination. Sufficient evidence was presented to the Trial Court of the facts substantiating the reasons for eviction set forth in the Notice to Vacate.

The Appellant has set forth the same issues in her Motion for Stay before the

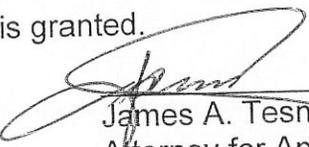
Trial Court. While acknowledging this Court's gatekeeping role to independently consider motions for stay, the Appellant's Motion raises issues that would be in the particular mind of the Trier of Facts, ie what facts or defenses were considered by the Trial Court in reaching its decision. The Appellant has made assertions of what the Trial Court did or did not consider in making its decision. The Appellee asserts that as between the Court or a party, the Court is in a better position to determine what it considered in reaching its decision. The Trial Court has rejected the Appellant's Motion For Stay, which raised these same issues.

The Appellant also asserts that she will suffer irreparable harm if the Trial Court's decision is not stayed. She weighs her argument against her unsubstantiated assertion that the Appellee will not be adversely affected by a stay. In propounding her argument, the Appellant assumes that the only issue is economic. The Appellee chose to evict the Appellant for non-economic reasons. If the only motivations to keep the Appellant at the apartment complex were economic, the Appellee could have elected to ignore the Appellant's transgression and allow her to continue to live in the apartment.

Motive for an eviction case is irrelevant. The factual issue is whether the tenant has violated the specific term of the lease set forth in the notice. This does not mean that the landlord doesn't weigh many factors in deciding whether to evict or not.

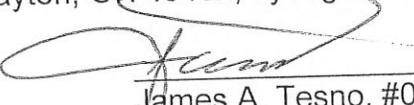
While the Appellant submits that the Appellee will not suffer economic harm if the stay is granted, the Court should also consider that there can be other detrimental effects to the Appellee if the stay is granted.

Date: November 23, 2015


James A. Tesno, #0007416
Attorney for Appellee
100 N. Main St., Celina, OH 45822
Ph 419- 586-6481 Fax 419-586-2629

PROOF OF SERVICE

I hereby certify that a copy of the foregoing APPELLEE'S RESPONSE TO MOTION FOR STAY was served upon Attorney for Appellant, Debra A. Lavey, 130 W. Second St., Suite 700 West, Dayton, OH 45402, by regular U.S. Mail, this 23rd day of November, 2015.


James A. Tesno, #0007416
Attorney for Appellee

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MERCER COUNTY



GORSUCH HOMES INC.,

PLAINTIFF-APPELLEE,

v.

PAMELA LEMASTERS,

DEFENDANT-APPELLANT

CASE NO. 10-15-18

JUDGMENT
ENTRY

FILED
10:33
DEC 03 2015 6/365

MERCER CO. COURT OF APPEALS
[Signature], CLERK

This matter comes before the Court for determination of Appellant's motion to stay execution of the trial court's writ of restitution without bond, and Appellee's response in opposition to the motion to stay.

Upon consideration the Court finds that the trial court's writ of restitution, filed October 26, 2015, required Appellant to vacate the premises no later than Sunday, November 22, 2015. The instant motion was not filed until Thursday, November 19, 2015, and did not reach this Court until Monday, November 23, 2015. Therefore, the instant motion was not promptly filed and, on its' face, has been rendered moot.

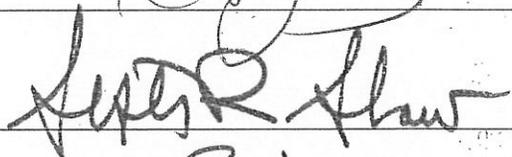
The Court further finds that, even if not rendered moot by Appellant's compliance with the writ, there is no good cause shown for staying execution of the trial court's writ of restitution without any bond posted. We disagree with Appellant's assertion that there is "no damage" because her rent is entirely paid by

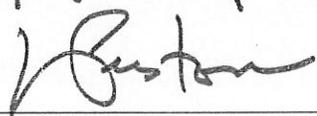
Case No. 10-15-18

the U.S. Department of Housing and Urban Development. As noted in the response, the eviction was not based on economic reasons, but rather because Appellant continually permitted unauthorized persons to stay at the apartment, contrary to the terms of the lease. Accordingly, for these reasons, the motion should be denied.

It is therefore **ORDERED** that Appellant's motion to stay execution without bond pending appeal be, and hereby is, denied.

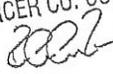




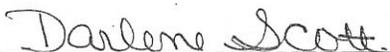


JUDGES

DATED: DECEMBER 2, 2015
/hlo

FILED
DEC 03 2015 ⁶/₃₀₆
MERCER CO. COURT OF APPEALS
, CLERK

Copies issued to James Tesno and Debra Lavey on 12/4/15.



Darlene Scott, Deputy Clerk



LAW OFFICES OF
MEIKLE, TESNO & LUTH

William Meikle
James A. Tesno
Thomas Luth

100 N. Main St.
Celina, Ohio 45822

Area Code 419
Telephone 586-6481
FAX 586-2629

December 26, 2015

Attorney Debra Lavey

fax @ 937-535-4600

Re: Williamsburg Sq. Apts. v. Lemasters

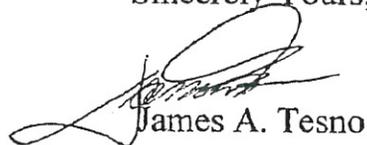
Dear Debra:

I discussed your proposal with my client. They are not willing to hold this matter in abeyance while the appeal goes forward.

Considering the time that has already gone by since your client was originally ordered to vacate the premises and the fact that both the Trial Court and Court of Appelas have denied your requests for a stay, I think the Apartments' offer to give your client to January 4 is very reasonable.

If she doesn't want to agree to the January 4 date, I have orders to proceed. I don't believe that your appeal precludes us from going forward to seek restitution or, alternatively, contempt proceedings if she won't move.

Sincerely Yours,



James A. Tesno