

[Cite as *Moore v. Hart*, 2003-Ohio-6497.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82627

TAMMIE MOORE :  
 :  
 Plaintiff-appellee :  
 : JOURNAL ENTRY  
 vs. : and  
 : OPINION  
 ROBERT D. HART :  
 :  
 Defendant-appellant :  
 :

DATE OF ANNOUNCEMENT :  
 OF DECISION : DECEMBER 4, 2003

CHARACTER OF PROCEEDING : Civil appeal from  
 : Lakewood Municipal Court  
 : Case No. 02 CVI 2578

JUDGMENT : AFFIRMED.

DATE OF JOURNALIZATION :

APPEARANCES:

For plaintiff-appellee: TAMMIE MOORE  
 Pro Se  
 2260 Wooster Road, #7  
 Rocky River, Ohio 44116

For defendant-appellant:           ROBERT D. HART  
  Attorney at Law  
  20800 Center Ridge Road  
  Suite 222  
  Rocky River, Ohio 44116

JAMES D. SWEENEY, J.

{¶1} Defendant-appellant, Robert D. Hart, appeals from the Lakewood Municipal Court's judgment awarding plaintiff-appellee, Tammie Moore, \$375 on her complaint for return of a security deposit. He argues the court erred by finding no contract between the parties and by finding that Hart had failed to demonstrate any economic loss to support the forfeiture of the deposit. We find no error in the court's decision and affirm.

{¶2} The parties agreed, and the court found, that Moore executed a rental application on September 21, 2002. Immediately above the signature line, the application stated:

{¶3} "I/WE DECLARE THE FOREGOING INFORMATION IS TRUE AND CORRECT, AND I/WE HEREBY AUTHORIZE YOU TO CONDUCT AN EMPLOYMENT AND CREDIT CHECK AND TO VERIFY OUR REFERENCES.

{¶4} "I/WE UNDERSTAND THAT THE SECURITY DEPOSIT WHICH IS PART OF THIS APPLICATION IS NON-REFUNDABLE IF APPLICANT REFUSES TO CONSUMMATE THE RENTAL AGREEMENT AFTER ACCEPTANCE BY LANDLORD. IN CONSIDERATION THEREOF, LANDLORD WILL CEASE ADVERTISING THIS APARTMENT AND WILL CEASE SHOWING THIS APARTMENT."

{¶5} In connection with this application, Moore gave Hart a check in the amount of four hundred dollars. Hart returned five dollars in cash to Moore; twenty dollars was intended to cover the cost of a credit check.

{¶6} Three days later, on September 24, 2002, Moore informed Hart that she no longer wanted the apartment. The next day, she sent a letter to Hart requesting the return of her deposit. Hart refused.

{¶7} Hart claims that he removed the apartment from the market when Moore gave him her application. However, there

were two other units available in the same building which he continued to advertise and show to prospective tenants.

{¶8} Hart claims that Moore forfeited the security deposit under the terms of the rental application. We disagree. As the municipal court correctly noted, "the forfeiture provision is expressly conditioned upon an acceptance of the prospective tenant," and there was no evidence that Hart had accepted Moore's application yet. Hart argues that his acceptance of Moore's money, and his agreement to stop advertising and showing the apartment, demonstrated his acceptance. However, the application form makes it clear that employment, credit and reference checks would be conducted before the application would be accepted or rejected. Therefore, the acceptance of Moore's check, and the agreement to stop advertising and showing the apartment, did not constitute acceptance of her application.

{¶9} Moore could withdraw her application at any time before it was accepted by Hart. *Toro v. Geyer* (1951), 66 Ohio L.Abs. 497; *Bronstein v. Arsham* (Mar. 17, 1983), Cuyahoga App. No. 45163. There is no evidence in the record that Hart

informed Moore that he had accepted her application before she informed him that she did not want to go forward with the lease. Thus, Moore effectively withdrew her application before it was accepted by Hart.

{¶10} The terms of the rental application do not support the forfeiture Hart seeks. Accordingly, we agree with the municipal court that Moore is entitled to the return of her deposit, and affirm its judgment in her favor.

It is ordered that appellee recover of appellant her costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Lakewood Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JUDGE  
JAMES D. SWEENEY\*

PATRICIA A. BLACKMON, P.J. and

TIMOTHY E. McMONAGLE, J. CONCUR

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

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\*Sitting by assignment, Judge James D. Sweeney, retired, of the Eighth District Court of Appeals.