

**LANDLORD LAW REPORT**  
**Failure to Seek New Tenant Costs**  
**Landlord Lost Rent Payment Damages**  
**courtesy of CD Publications**

Ohio: A landlord loses a claim for unpaid rent and damages against tenants who moved out early because the landlord failed to prove it attempted to find a new tenant.

The landlord leased an apartment to two tenants for a one year term. One tenants moved in but the other never took possession. The landlord knew the non-occupying tenant did not move in and where she lived. He accepted rent from the other tenant without objection or reservation.

The tenant who lived in the apartment stopped paying rent and moved out before the end of the lease. When the rent was not paid, the landlord sent a notice to vacate. He mailed a copy to the non-occupying tenant's home as well.

The court did not award all the rent the landlord requested because he failed to mitigate his damages by attempting to find a new tenant.

The landlord subsequently sued both tenants for the unpaid rent and possession of the apartment – serving them both at the rental property. This time, he did not send a copy to the non-occupying tenant.

The court entered a default judgment against both tenants when neither appeared for court or filed a response. It awarded \$6,874 in damages for the unpaid rent and the landlord began garnishing the wages of the tenant who never lived in the apartment.

More than a year after the default judgment, the non-occupying tenant filed a motion to set aside the judgment. The trial court granted the motion, agreeing the landlord never properly served her because the landlord knew she didn't live at the address where the lawsuit was served.

This tenant then filed an answer and a counterclaim for attorneys' fees against the landlord. The court awarded the landlord approximately \$1,000 for unpaid rent and utilities – much less than the earlier judgment.

The court did not award all the rent the landlord requested because he failed to mitigate his damages by attempting to find a new tenant. In addition, the court awarded the tenant, who never lived in the landlord's apartment \$500 for attorney's fees, ruling the landlord committed fraud by requesting a default judgment knowing the tenant was never properly served. The landlord appealed the trial court's decision.

Under state law, a land lord must employ "reasonable efforts" to mitigate damages caused by breach of lease agreement. A landlord must make reasonable efforts to find a new tenant before suing for lost rent.

If the landlord acts reasonably in trying to locate a new tenant, the old tenant will be held liable only for the lost rent up until a new tenant moves in or the lease expires. Failure to mitigate is an affirmative defense which must be raised b the tenant in a landlord's claim for damages.

Here, the landlord's only evidence of mitigation was testimony from an employee who said the apartment was listed in the newspaper. The landlord, however, couldn't produce a copy of the ad or a receipt for it.

The trial court ruled the landlord did not make a reasonable effort to mitigate its damages cased b the tenant's breach. The appellate court affirms this decision, ruling the mere fact the landlord may have advertised the apartment does not prevent the court from finding the landlord could have done more to find a new tenant.

***Landlord Law Report is written by a practicing landlord-tenant attorney and contains quick-reading highlights of recent federal and state court decisions on fair housing, premises liability, rent control, lease enforcement, drug use, eviction, handicapped accessibility, building security, lead paint/asbestos, and Section 8 tenants, plus summaries of HUD rulings. Each issue is filled with advice on how multifamily***

***property owners and managers can be better prepared to protect themselves from expensive and time-consuming litigation.***

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