

CONSTRUCTION LAWLETTER

For Industry Professionals, Managers, Trades & Suppliers

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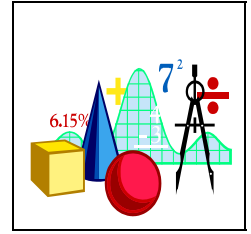
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LEAD PAINT HAZARDS ACT NOT APPLICABLE TO PRIVATE HOUSING

A tenant, faced with the landlord's eviction action for non-payment of rent, counterclaimed against the landlord, alleging that presence of lead-based paint in the premises were "potential hazards" that caused him "mental anguish" and "neurological disorders".

The tenant's claim for significant treble money damages and other "forbearance" and relief, urged the Court that the presence of the presumed lead paint violated the provisions of the (Federal) Residential Lead-Paint Hazard Reduction Act. At trial, the tenant presented no evidence or proof of any actual lead paint on the premises.

The Magistrate granted the eviction, but transferred the case to the Common Pleas Court for determination on the damages since the Tenant's claims exceeded the Municipal Court Magistrate's (monetary) jurisdiction. The Common Pleas Court confirmed the Magistrate's decision, and denied Tenant's claim for damages.

The Court of Appeals opinion held: "Unfortunately, (Tenant, name intentionally omitted), has not read the Act well enough. The Act applies only to "target housing" or housing that is "covered by an applicable mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise received more

thsn \$5,000 in project assistance under a Federal housing program." Section 4822(a)(1), Title 42, U.S. Code. This means, in short, public housing. Furthermore, the disclosure obligations are owed only to prospective purchasers of target housing constructed between certain dates where lead-based paints have been discovered and may be waived if a risk-assessment performed by a certified contractor determines that no lead-based paints are present. Section 4822(a)(3)(B), Title 42, U.S. Code.

Tenant failed to provide any factual basis to support his claim that the premises contained lead-based paint.

In sum, the trial court was absolutely correct when it ruled that (Tenant's) arguments based on the Act were not even remotely relevant to the issue of his obligation to pay rent. *** For these reasons we hold this appeal to be frivolous." The trial Court's judgment was affirmed.

Steadman v. Nelson, 155 Ohio App.3d 282,286-288 (HAM I 11/14/2003).

Minds are like parachutes. They only function when they are open.

Sir James Dewar, Scientist (1877-1925)

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