[Cite as *Holman v. White Pond Villa Apts.*, 2023-Ohio-2221.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

DEBORAH HOLMAN	C.A. No. 30439
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
WHITE POND VILLA APARTMENTS	AKRON MUNICIPAL COURT COUNTY OF SUMMIT, OHIO
Appellee	CASE No. 20-CVH-06883

DECISION AND JOURNAL ENTRY

Dated: June 30, 2023

SUTTON, Presiding Judge.

{¶1} Plaintiff-Appellant, Deborah Holman, appeals the judgment of the Akron Municipal Court. For the reasons that follow, this Court reverses.

I.

Relevant Background

{¶2} In March 2021, 8-months prior to initiating rent escrow proceedings, Ms. Holman notified Brittany Friend, the building manager for Apex White Pond, LP/White Pond Villa Apartments, about rain water leaking into her apartment and water damage to the ceiling and wall. These issues were not remedied by Apex White Pond, LP/White Pond Villa Apartments. Ms. Holman then notified Kathy Graves, a sanitarian from the Department of Neighborhood Assistance with the City of Akron, regarding these same issues. Ms. Graves visited Ms. Holman's apartment and took photographs of the water damage to the inside of the apartment and the structural issues with the balcony. On July 1, 2021, by authority of the Akron Environmental

Health Housing Code, Ms. Graves ordered owner/agent Apex White Pond, LP, to make the following repairs to Ms. Holman's apartment by August 6, 2021:

> 1. Repair walls and ceilings where necessary[;]
>
> 2. Have exterior doors and windows made weathertight [and] put in a good state of repair (repair patio door to make weatherproof [and] waterproof[;] [and]
>
> 3. Have carpet professionally cleaned and sanitized. Provide document. Or replace carpeting affected by plumbing leaks.

According to Ms. Holman, no repairs were made in compliance with Ms. Graves' July 1, 2021 order.

{¶3} On November 1, 2021, pursuant to R.C. 5321.07, Ms. Holman escrowed one-month's rent with the Clerk of Courts for the Akron Municipal Court due to wetness and mold in her apartment, and other structural issues, which exacerbated her medical conditions. In Ms. Holman's application to escrow rent, she indicated written notice was provided to her landlord of her intent to escrow rent with the Clerk of Courts. Further, Ms. Holman stated her rent, in the amount of $274.00, was current under the lease agreement. Ms. Holman deposited $274.00 with the Clerk of Courts. Additionally, Ms. Holman filed a copy of her 30-day notice dated September 9, 2021, and a certificate of mailing dated September 10, 2021, showing the 30-day notice was mailed to Apex White Pond LP, 477 White Pond Drive, Akron , Ohio 44320. In her 30-day notice, Ms. Holman wrote, in part:

* * *

> In March of this year I notified Ms. Friend of the leak in my apartment in front of my patio door. I stated to her I don't know how long it's been raining inside but I noticed it today.
>
> In June of this year I ask[ed] Ms. Friend about reasonable [accommodations] of taking up my carpet because it's been getting wet every time it rains. Prior to June[,] I called downstairs speaking to Ms. Gore and Ms. Friend while it was

> raining asking them to come up to see where the leak was and how much water was leaking inside. No one came.
>
> It is now September and nothing has been done to repair the leak nor address my concerns about my balcony. This is my notice to all listed above that I am putting my rent with the courts until all repair[s] are made in my apartment as well as treating it for mold inside the walls. It was told to me by the gentleman who treated my apartment for mold prior to now, that before the water found its way out causing the leak[,] it was running inside the walls. I am disabled with respiratory problems as well as other health conditions. The option was offered to move in another unit by management knowing I had already told Ms. Friend moving was not an option for me because of my health. Because of the neglect on her behalf as well as others what was a leak is now water damage to my walls and ceiling. This will never be okay to neglect and abuse me or anyone paying rent for any unit anywhere.

During her six-year residency at White Pond Villa Apartments, Ms. Holman made alterations to this particular apartment unit, through her insurance, such as installing a different doorknob/lockbox, replacing the standard toilet, adding grab bars in the bathroom, and altering the bathtub to accommodate her specific medical conditions. As such, because Ms. Holman's apartment was now handicap accessible, and it was too difficult for her to physically move her belongings due to her medical condition, Ms. Holman did not wish to terminate her lease or move from this apartment.

{¶4} Ms. Holman requested the trial court hold a hearing and/or issue a court order to assist her in obtaining the necessary repairs to her apartment. The trial court scheduled a hearing, via Zoom, on November 30, 2021, at 11:00 a.m. Notice of the hearing was sent to both parties. Ms. Holman appeared for the Zoom hearing with counsel. White Pond Villa Apartments did not make an appearance. At the start of the hearing, Ms. Holman's counsel addressed the trial court as follows:

> [W]e are asking, under the revised code section, that [Ms. Holman's] rent be reduced by the amount that she has paid, the 271 a month, and that she get that money back for November and that she be permitted to continue to escrow rent, December and ongoing, until the appropriate repairs are made and for each month that those repairs are not made that that money, the 271, be returned to her, again,

> through the revised code, [] Section 5321.07, [] allowing an order for reducing the periodic rent due to the landlord and we're asking that [the rent] be reduced by the 271.26 that she pays every month.

{¶5} Ms. Holman testified at the hearing regarding the uninhabitable conditions in her apartment and submitted exhibits for the trial court magistrate to review. On December 1, 2021, the trial court magistrate issued a decision, including findings of fact and conclusions of law, stating, in part:

* * *

> [Ms.] Holman's testimony and evidence proved that the premises were not fit and habitable in that she is suffering health issues from the excessive amount of water and moisture that continues to enter into her residence and has done so since March 2021.

* * *

> As of the date of this decision, there is currently $271.26 in escrow. Due to the nature of the repairs and remedies needed to make the property fit and habitable and a healthy living environment for tenants, the [m]agistrate recommends that the money held in this case by the court be released to [] [Ms. Holman], and that [Ms. Holman's] portion of the HUD subsidized rent be abated to [$0.00] per month until all repairs are made, bringing the property into compliance with all applicable housing codes, as determined by the City of Akron Housing Division. Once repairs are made, and satisfactory Housing Inspection conducted, the [landlord] may apply for release from rent abatement with the [c]ourt.

* * *

On December 23, 2021, the trial court adopted the magistrate's December 1, 2021 decision. The record indicates the Clerk of Courts mailed copies of the December 1, 2021 magistrate's decision, and the December 23, 2021 judgment entry to both parties. These mailings were not returned to the trial court.

{¶6} Approximately 7-months later, White Pond Villa Apartments filed a motion for relief from judgment. In its motion, White Pond Villa Apartments requested relief from the trial court's December 23, 2021 judgment entry because "it was never properly served with a

Summons and Complaint." Further, White Pond Villa Apartments argued the trial court "conducted a hearing before any return of service was made and [Ms. Holman] has not named a proper entity in this matter." In support of its motion, White Pond Villa Apartments attached the affidavit of Jay Rothenberg, a "property manager" for Integra Affordable Management, LLC, the "managing agent" for Apex White Pond, LP. In his affidavit, Mr. Rothenberg attested Apex White Pond, LP is the owner of the property known as "White Pond Apartments." Notably, in his affidavit, Mr. Rothenberg did not indicate whether *he* specifically was employed as a property manager at the time Ms. Holman filed the rent escrow proceedings, nor did he indicate if he was the only property manager employed by Integra Affordable Management, LLC. Mr. Rothenberg also did not state whether he is the sole person receiving and reviewing mail addressed to Apex White Pond, LP. Moreover, Mr. Rothenberg attested, based only upon information and belief, the "property" never received Ms. Holman's application to deposit rent.

{¶7} Ms. Holman responded to White Pond Villa Apartment's motion for relief for judgment. In her response, Ms. Holman argued White Pond Villa Apartment's motion lacked merit because "(1) Ohio law does not require the [c]lerk to issue a summons in a rent escrow proceeding; (2) Ms. Holman served her landlord as required by R.C. 5321.07; (3) Ms. Holman named her landlord in her rent escrow application as required by R.C. 5321.07; and (4) [the trial court] properly followed all procedures."

{¶8} On August 10, 2022, the trial court vacated its December 23, 2021 judgment entry abating Ms. Holman's portion of the rent until the required repairs were made to her apartment. In so doing, the trial court reasoned:

* * *

> This case was filed on November 1, 2021. The record indicates that the Application to Deposit the Rent was sent by regular mail on November 1, 2021.

> It has been repeatedly held that when service is not perfected upon a defendant in a civil case, the trial court lacks personal jurisdiction, and any judgment rendered against that defendant is void.
>
> * * *
>
> In this case the record is clear that the Application to Deposit the Rent was not sent out by certified mail. Furthermore, before the court is the defendant's uncontradicted sworn statement that he did not sign or receive service.

(Emphasis in original.)

* * *

{¶9} Ms. Holman appealed raising three assignments of error for our review. We group certain assignments of error to better facilitate our analysis.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED BY APPLYING [CIV.R.] 4 AND [CIV.R.] 4.1 TO RENT ESCROW PROCEEDINGS IN R.C. CHAPTER 5321.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED BY FINDING ITS DECEMBER 23, 2021 JUDGMENT ENTRY WAS CONTRARY TO THE PRINCIPALS OF DUE PROCESS.

{¶10} In her first and second assignments of error, Ms. Holman argues the trial court erred in vacating its December 23, 2021 judgment entry based upon lack of service by certified mail, pursuant to the Ohio Rules of Civil Procedure, and for violating the principals of due process. For the following reasons, Ms. Holman's arguments are well-taken.

{¶11} The Landlord and Tenant Reform Act of 1974, which created R.C. 5321 et seq., governs the issues in this appeal. "Ohio's Landlords and Tenants Act imposes duties on landlords which were absent at common law. The General Assembly enacted R.C. 5321.07 to provide tenants with leverage to redress breaches of those duties." *Miller v. Ritchie*, 45 Ohio St.3d 222,

224 (1989). In *Chernin v. Welchans*, 844 F.2d 322, 323-24 (6th Cir.1988) the Sixth Circuit Court of Appeals explained:

> The rent deposit procedure at issue is one of the remedies included in the Ohio Landlord-Tenant Act of 1974. The Act imposes a number of obligations on residential landlords and provides remedies that tenants may invoke to enforce those obligations. A tenant may deposit his rent with the clerk of the municipal or county court that has jurisdiction in the area where the apartment building is located.

{¶12} Specifically, R.C. 5321.07, a statute at issue in *Chernin*, *supra*, allows the following:

> (A) If a landlord fails to fulfill any obligation imposed upon him by section 5321.04 of the Revised Code, other than the obligation specified in division (A)(9) of that section, or any obligation imposed upon him by the rental agreement, if the conditions of the residential premises are such that the tenant reasonably believes that a landlord has failed to fulfill any such obligations, or if a governmental agency has found that the premises are not in compliance with building, housing, health, or safety codes that apply to any condition of the premises that could materially affect the health and safety of an occupant, the tenant may give notice in writing to the landlord, specifying the acts, omissions, or code violations that constitute noncompliance. *The notice shall be sent to the person or place where rent is normally paid*.
>
> (B) If a landlord receives the notice described in division (A) of this section and after receipt of the notice fails to remedy the condition within a reasonable time considering the severity of the condition and the time necessary to remedy it, or within thirty days, whichever is sooner, and if the tenant is current in rent payments due under the rental agreement, the tenant may do one of the following:
>
> (1) Deposit all rent that is due and thereafter becomes due the landlord with the clerk of the municipal or county court having jurisdiction in the territory in which the residential premises are located;
>
> (2) *Apply to the court for an order directing the landlord to remedy the condition*. As part of the application, *the tenant may deposit rent pursuant to division (B)(1) of this section, may apply for an order reducing the periodic rent due the landlord until the landlord remedies the condition, and may apply for an order to use the rent deposited to remedy the condition.* In any order issued pursuant to this division, the court may require the tenant to deposit rent with the clerk of court as provided in division (B)(1) of this section.
>
> (3) Terminate the rental agreement.

(Emphasis added.) Further, in accordance with R.C. 5321.08(A), "[w]henever a tenant deposits rent with the clerk of a court as provided in section 5321.07 of the Revised Code, the clerk shall give written notice of this fact to the landlord and to his agent, if any."

{¶13} In *Chernin* at 323, the Sixth Circuit Court of Appeals specifically addressed "whether [R.C.] 5321.01 et seq. [], a statutory scheme allowing rent withholding, denies [landlords] their fourteenth amendment due process rights. The *Chernin* Court, in upholding the constitutionality of this statutory scheme, concluded:

> Due process will be satisfied if the [landlord] is informed of the impending loss and afforded ample time to present objections. * * * The landlord is given notice by the tenants prior to a rent deposit and by the clerk of the court immediately after the deposit. This mandatory notice requirement ensures that notice is given in sufficient time for the landlord to have an opportunity to present his objections. * * * Thus, the mandatory notice by the tenant, as provided for by the statute, is constitutionally sound.
>
> * * *
>
> Therefore, by focusing on the rent withholding scheme as a whole, including its mandatory notice requirements, it is clear that the notice provided for is reasonably likely to reduce the risk of erroneous deprivation and therefore is constitutionally adequate.

Id. at 328-329.

{¶14} Here, the record reveals Ms. Holman complied with the plain language of R.C. 5321.07 in escrowing her rent and seeking rent abatement until the requested repairs were completed to make her apartment habitable. On September 10, 2021, Ms. Holman mailed correspondence to Apex White Pond, LP, and Ms. Friend, the building manager, at the following address: 477 White Pond Drive, Akron, Ohio 44320. This correspondence notified Ms. Holman's landlord of the repairs needed to create habitable conditions in her apartment, and her intent to escrow rent with the Clerk of Courts until the repairs are complete. The record contains a certificate of mailing showing the date and time the notice was mailed to the landlord.

Additionally, White Pond Villa Apartments admitted to receiving this notice, and did not contest this is the same address where Ms. Holman deposited her rent. On November 1, 2021, because the repairs had not yet been made to the apartment, Ms. Holman completed and filed an application to deposit rent with the Clerk of Courts. That same day, Ms. Holman completed and filed a request for court order and/or hearing, seeking the trial court's assistance in obtaining her stated repairs. The record indicates on November 1, 2021, the Clerk of Courts mailed Ms. Holman's application to deposit rent and her request for court order and/or hearing to White Pond Villa Apartments/Apex White Pond, LP, at 477 White Pond Drive, Akron, Ohio 44320. Notably, the application to deposit rent also advised the landlord that the escrowed rent "may be released to you upon your application and satisfaction of the provisions of [R.C.] 5321.09." The record does not indicate these mailings were returned to the trial court as undeliverable or for any other reason.

{¶15} Further, on November 9, 2021, the trial court issued a notice of hearing by video, which informed both parties of the November 30, 2021 hearing at 11:00 a.m. via Zoom. The notice contained a meeting ID and passcode for the Zoom hearing, and also indicated notice was sent to both parties. Indeed, based upon this notice, Ms. Holman, along with counsel, appeared at the hearing. Again, the record does not reflect the landlord's notice was returned to the trial court as undeliverable or for any other reason. During opening statements, Ms. Holman's counsel addressed the court and asked for abatement of Ms. Holman's portion of the rent to $0.00 until the repairs are complete. The magistrate, pursuant to R.C. 5321.07(B)(2), abated Ms. Holman's portion of the rent to $0.00 "until all repairs are made, bringing the property into compliance with all applicable housing codes, as determined by the City of Akron Housing Division." The magistrate also indicated the landlord could apply "for release from rent abatement" with the trial

court once repairs were made, and a satisfactory housing inspection was conducted. The record reflects the magistrate's decision and trial court's judgment entry were mailed to both parties without being returned to the trial court.

{¶16} Pursuant to R.C. 5321.07, a tenant "may give notice in writing to the landlord, specifying the acts, omissions, or code violations that constitute noncompliance. *The notice shall be sent to the person or place where rent is normally paid*." (Emphasis added.) Additionally, pursuant to R.C. 5321.08, when a tenant escrows rent "the clerk shall *give written notice of this fact to the landlord and to his agent, if any*." (Emphasis added.) The plain language of R.C. 5321.07 and R.C. 5321.08 do not require a tenant to file a civil action, summons, or serve the landlord via certified mail in order to initiate a rent escrow proceeding or seek the remedies set forth in R.C. 5321.07(B)(1)(2) or (3), including rent abatement until repairs are made. As indicated above, the *Chernin* Court previously determined this statutory scheme constitutional, and determined its notice requirements do not deprive a landlord of due process. Further, the trial court acted within its discretion in holding an evidentiary hearing regarding Ms. Holman's rent escrow application and requested remedies. *See Wallen v. Cryder*, 2d Dist. Montgomery No. 28232, 2019-Ohio-2945, ¶ 3; *Liggett v. Whitaker Properties*, 2d Dist. Montgomery No. 23425, 2010-Ohio-1610, ¶ 2; and *Heck v. Whitehurst Co*., 6th Dist. Lucas No. L-03-1134, 2004-Ohio-4366, ¶ 8 (where rent escrow hearings were held on the tenant's rent escrow applications).

{¶17} Accordingly, because Ms. Holman followed the procedure set forth in the plain language of R.C. 5321.07, and the clerk of courts issued service pursuant to the plain language of R.C. 5321.08, Ms. Holman's first and second assignments of error are sustained.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED BY FINDING ITS PRIOR JUDGMENT WAS VOID BECAUSE IT DID NOT HAVE PERSONAL JURISDICTION OVER WHITE POND [VILLA APARTMENTS].

{¶18} In her third assignment of error, Ms. Holman argues the trial court erred in finding its December 23, 2021 judgment entry void because it did not have personal jurisdiction over White Pond Villa Apartments. We agree.

{¶19} The trial court, in vacating its December 23, 2021 judgment entry stated, in relevant part:

> It has been repeatedly held that when service is not perfected upon a defendant in a civil case, the trial court lacks personal jurisdiction, and any judgment rendered against that defendant is void.

{¶20} As this Court already determined, Ms. Holman properly filed her application to escrow rent with the Clerk of Courts, naming Apex White Pond, LP/White Pond Villa Apartments as her landlord. According to Mr. Rothenberg's affidavit, Apex White Pond, LP is the is the *owner of the property* known as "White Pond Apartments[.]" Pursuant to R.C. 5321.08, the Clerk of Courts properly provided written notice to Apex White Pond, LP/White Pond Villa Apartments, regarding both Ms. Holman's application to escrow rent and her request for an order/hearing. Additionally, the Clerk of Courts notified Apex White Pond, LP/White Pond Villa Apartments, in writing, regarding the date and time of the Zoom hearing regarding the rent escrow proceeding. All notices were sent to Apex White Pond, LP/White Pond Villa Apartments at the *same address* Ms. Holman sent her 30-day notice, which it admitted receiving in the mail. Further, the Clerk of Courts completed a check-list, which is in the record, indicating it sent a letter to Apex White Pond, LP/White Pond Villa Apartments notifying it of the rent deposit, along with a copy of Ms. Holman's rent escrow application and hearing request form. The record does

not indicate any of these notices were returned to the trial court as undeliverable or for any other reason.

{¶21} Therefore, because Ms. Holman's landlord was properly served with notice of the proceedings, pursuant to R.C. 5321.07 and R.C. 5321.08, the trial court did not lack personal jurisdiction over Apex White Pond, LP/White Pond Villa Apartments and the December 23, 2021 judgment entry was not void.

{¶22} Accordingly, Ms. Holman's third assignment of error is sustained.

III.

{¶23} For the reasons previously stated, Ms. Holman's assignments of error are sustained. The judgment of the Akron Municipal Court, vacating its prior decision, is reversed and this cause is remanded for the trial court to reinstate its December 23, 2021 judgment entry which adopted the magistrate's December 1, 2021 decision.

Judgment reversed,
cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to

mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

BETTY SUTTON
FOR THE COURT

CARR, J.
CONCURS.

FLAGG LANZINGER, J.
DISSENTING.

{¶24} I respectfully dissent from the majority opinion. I would affirm the trial court's decision, vacating an order that misapplied the Landlord-Tenant Act of 1974 and denied the landlord of due process.

{¶25} The majority opinion relies on the Sixth Circuit case *Chernin v. Welchans* in holding that the landlord's right to due process was not violated. I agree that the *Chernin* decision holds the that statutory scheme of the Landlord-Tenant Act of 1974 (R.C. 5321.01 et seq.) is constitutional, however, the trial court violated the landlord's constitutional rights by misapplying the statutory scheme in this case. *Chernin* centers around the issue of depravation of property to the landlord i.e., deposited rent money before a hearing. *Chernin v. Welchans*, 844 F.2d 322, 325 (6th Cir.1988). In *Chernin*, the landlord asserted that the statutory scheme of R.C. 5321.01 was unconstitutional on its face because a pre-depravation (of rent money) hearing was required. *Id.* The *Chernin* Court held that the statutory scheme allowing rent withholding, encompassed in R.C. 5321.01 et seq., does not deny landlords of due process rights. *Id.*

{¶26} "O.R.C. Section 5321.01 et seq. permit a tenant to deposit his rent payment into a court-maintained escrow account when he believes that his rental unit is not being properly maintained." *Chernin* at 323. R.C. 5321.01 et seq. essentially created a court-administered escrow account scheme. "Although Ohio law provides that the nonpayment of rent may be excused under certain circumstances when the landlord fails to comply with the duties mandated by R.C. 5321.04, the remedies established by the legislature are contained in R.C. 5321.07 and require the tenant to pay the disputed rent into a court-administered escrow account." *Steadman v. Nelson*, 155 Ohio App.3d 282, 287, 2003-Ohio-6057, ¶ 11 (1st. Dist.). By definition, escrow means "[a]n account held in trust or as security[.]" *Black's Law Dictionary* (11th Ed.2019).

{¶27} Referencing only the tenant, the statutory scheme permits the tenant to "[a]pply to the court for an order directing the landlord to remedy the condition." R.C. 5321.07(B)(2). "As part of the application, the tenant may deposit rent pursuant to division (B)(1) of this section, may apply for an order reducing the periodic rent due to the landlord until the landlord remedies the condition, and may apply for order to use the rent deposited to remedy the condition." *Id.* The plain reading of the statute does not allow the tenant to have an evidentiary hearing with regard to the merits of the matter.

{¶28} In contrast, R.C. 5321's statutory scheme permits only the landlord to request a judicial hearing to contest the rent escrow or abatement. *See* R.C. 5321.09(B); *Chernin* at 324. A full evidentiary hearing must be held within sixty days of the landlord's hearing request. *Id.* There is no language in the statute allowing the tenant to make such request. Presumably, actual notice was made to a landlord if he requests a hearing. R.C. 5321.09 hinges on the notice requirement.

{¶29} R.C. 5321.09 entitled "Defensive actions of landlord" states:

A landlord who receives notice that rent due him has been deposited with a clerk of a municipal or county court pursuant to section 5321.07 of the Revised Code, may do any of the following:

Apply to the clerk of the court for release of the rent on the ground that the condition contained in the notice given pursuant to division (A) of section 5321.07 of the Revised Code has been remedied. The clerk shall forthwith release the rent, less costs, to the landlord if the tenant gives written notice to the clerk that the condition has been remedied.

Apply to the court for release of the rent on the ground that the tenant did not comply with the notice requirement of division (A) of section 5321.07 of the Revised Code, or that the tenant was not current in rent payments due under the rental agreement at the time the tenant initiated rent deposits with the clerk of the court under division (B)(1) of section 5321.07 of the Revised Code.

Apply to the court for release of the rent on the ground that there was no violation of any obligation imposed upon the landlord by section 5321.04 of the Revised Code, other than the obligation specified in division (A)(9) of that section, any obligation imposed upon him by the rental agreement, or any obligation imposed upon him by any building, housing, health, or safety code, or that the condition contained in the notice given pursuant to division (A) of section 5321.07 of the Revised Code has been remedied.

The tenant shall be named as a party to any action filed by the landlord under this section, and shall have the right to file an answer and counterclaim, as in other civil actions. A trial shall be held within sixty days of the date of the filing of the landlord's complaint, unless, for good cause shown, the court continues the period for trial.

If the court finds that there was no violation of any obligation imposed upon the landlord by section 5321.04 of the Revised Code, other than the obligation specified in division (A)(9) of that section, any obligation imposed upon him by the rental agreement, or any obligation imposed upon him by any building, housing, health, or safety code, that the condition contained in the notice given pursuant to division (A) of section 5321.07 of the Revised Code has been remedied, that the tenant did not comply with the notice requirement of division (A) of section 5321.07 of the Revised Code, or that the tenant was not current in rent payments at the time the tenant initiated rent deposits with the clerk of court under division (B)(1) of section 5321.07 of the Revised Code, the court shall order the release to the landlord of rent on deposit with the clerk, less costs.

If the court finds that the condition contained in the notice given pursuant to division (A) of section 5321.07 of the Revised Code was the result of an act or omission of the tenant, or that the tenant intentionally acted in bad faith in proceeding under section 5321.07 of the Revised Code, the tenant shall be liable

> for damages caused to the landlord and costs, together with reasonable attorney's fees if the tenant intentionally acted in bad faith.

R.C. 5321.09.

{¶30} Further, Section (B) of R.C. 5321.09 makes it clear that the Ohio Civil Rules apply to the landlord's challenges to the court-administered rent escrow procedure, stating "[t]he tenant shall be named as party to any action filed by the landlord under this section, and shall have the right to file an answer and counterclaim, as in other civil actions. A trial shall be held within sixty days of the date of the filing of the landlord's complaint * * *." R.C. 5321.09(B). The *Chernin* Court explained that "[w]hen a tenant invokes the rent deposit procedure at issue, Ohio law temporarily prevents the landlord from obtaining part of the escrowed funds until the outcome of a trial held within sixty days of the date of the landlord's application for release of rent." *Chernin* at 325.

{¶31} Here, Ms. Holman placed $271.26 in escrow with the trial court and invoked the rent deposit procedure. Subsequently, Ms. Holman requested that the trial court hold a hearing and/or issue a court order to assist her in obtaining necessary repairs. The court set an evidentiary hearing. The trial court sent notice of a hearing to the entity that Ms. Holman purported to be her landlord. No party representing the landlord appeared at the hearing. The court took evidence with regard to the conditions of the premises. In its December 23, 2021, order, the trial court ordered that "judgment be entered in favor of the Plaintiff/Tenant, and against the Defendant/Landlord, that the funds currently escrowed with the Court be paid to the Plaintiff/Tenant and that the Plaintiff/Tenant's portion of the HUD subsidized rent be abated to $00.00." The trial court held a trial, issued a judgment against the landlord, and awarded the escrowed rent money to Ms. Holman.

{¶32} If a landlord did not receive adequate notice of the tenant initiating the rent escrow procedure, the landlord could bring an action for possession of the premises and breach of the rental agreement when the landlord stopped receiving rent. Under R.C. 5321.03, a landlord may bring an action for possession of the premises if the tenant is in default in the payment of rent. R.C. 5321.03(A)(1) "The maintenance of an action by the landlord of this section does not prevent the tenant from recovering damages for any violation by the landlord of the rental agreement or of section 5321.04 of the Revised Code." R.C. 5321.03(B). The tenant could then file an answer and counterclaim indicating that it had initiated the rent escrow/abatement procedure.

{¶33} If the tenant initiates the escrow/abatement procedure and the landlord does not request a trial or to challenge the procedure, the tenant is not without remedies to recover escrowed rent money. R.C. 5321.12 provides for remedies. "In any action under Chapter 5321. of the Revised Code, any party may recover damages for the breach of contract or the breach of any duty that is imposed by law." R.C. 5321.12. A rental agreement must be read to include R.C. 5321.01(D), R.C. 5321.04, R.C. 5321.05, R.C. 5321.12, R.C. 5321.13, R.C. 5321.14, and R.C. 5321.18, as well as additional terms agreed upon by the parties. As suggested by *Laster v Bowman*, 52 Ohio App.2d 379 (8th Dist.1977), and R.C. 5321.06, R.C. Chapter 5321 supersedes any terms which are inconsistent with the chapter or any other rule of law. *Colquett v. Byrd*, 59 Ohio Misc. 45, 47 (M.C.1979).

{¶34} The majority opinion would create law whereupon a tenant could request a hearing on the merits without proper notice to the real party in interest. A trial court could have an evidentiary hearing/trial without appropriate notice to the landlord and issue a "judgment" against

a landlord, as it did here. The plain language of R.C. Chapter 5321, however, does not provide for such a procedure. I, therefore, respectfully dissent.

APPEARANCES:

ANDREW D. NEUHAUSER, MELISSA E. FRANGOS, and JOHN M. PETIT, Attorneys at Law, for Appellant.

THOMAS P. OWEN and RACHEL E. COHEN, Attorneys at Law, for Appellee.