

HAMILTON COUNTY MUNICIPAL COURT

HAMILTON COUNTY, OHIO

MT. MORIAH DEVELOPMENT CORP. : Case No: 83 CV 36104  
Plaintiff :  
vs : JUDGMENT ENTRY  
GERALDINE SMITH :  
Defendant :

This cause came on for full hearing on plaintiff's amended complaint seeking declaratory judgment on the issue of whether defendant's refusal to remove a compact freezer from her apartment when directed by plaintiff, through its agent, constitutes such a material breach of the rental agreement and regulations as to justify termination of the lease agreement and occupancy. It has been mutually agreed that both parties shall abide by the Court's decision, and eviction proceedings to remove the tenant for this alleged violation has been withdrawn.

The undisputed facts are that defendant has been notified to remove her 9.0 cu. ft. Coldspot Compact Freezer, along with other residents in the garden apartment section of the federally subsidized project in which defendant resides. Evidence further shows the electrical draw and weight of this particular freezer are well within HUD approved and professionally recognized limits. Expert opinion differs as to potential danger from fire that this freezer may cause.

Careful study of the applicable federal and state law governing interpretation of rental agreements in subsidized projects leads to the conclusion that the landlord has the right --- and possibly the obligation --- to maintain rules of management for the benefit of all residents.

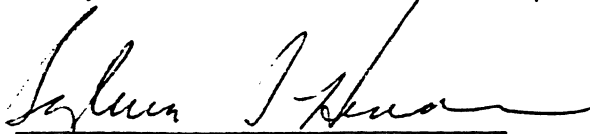
Defendant-Tenant executed several documents indicating her knowledge of the landlord's "sole discretion" to restrict the use of freezers.

Testimony of the official charged with fire protection to these units indicates a concern for the safety of residents of the project, while defendant's expert testified that no overloading of the electrical circuits was presently in effect, so long as the freezer remained plugged in to its present circuit and so long as the circuit breakers of the apartment were operative. Further, documents submitted to the Court indicate freezers are permitted in certain isolated cases with the "Garden" section of the Project.

The maintenance of the health and safety of residents in a multi-family dwelling is so critical that the Court will be quick to enforce any reasonable regulations. However, in this case the regulation banning all freezers appears on its face to be overbroad. A rational rule regulating size or load limit would be readily enforced; however, the regulations as written do not differentiate on the basis of electrical or weight overload. Arguably, a common iron or crock pot as indicated by testimony constitute greater risk, at least as to electrical overload.

Plaintiff is granted sixty days in which to revise the regulations to conform with the rationale of this ruling.

This matter continued to November 13, 1984 at 8:45 A.M. for report and proposed entry.

  
SYLVIA SIEVE HENDON, Judge  
September 17, 1984

cc: Michael Edwards  
Attorney for Plaintiff  
John Nethercutt  
Attorney for Defendant

ORDER: NOTICE MAILED TO PARTIES ON: 9-18-84 INT. JB
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