

IN THE HILLSBORO MUNICIPAL COURT, HIGHLAND COUNTY, OHIO

Hi-Land Terrace

Plaintiff

Case No. 90-CV-G-222

vs.

H.L.T.
HILLSBORO MUNICIPAL COURT
NOV 14 1990

Vicki Bartley

Dwain D. Workman

OPINION AND JUDGMENT ENTRY

Defendant

This cause came on for hearing on the complaint of Hi-Land Terrace against Vicki Bartley for possession of apartment number 106 in the Hi-Land Terrace complex. There is no issue of fact that Defendant failed to pay \$44.00 on October 1, 1990 and that the October 6th notice was served ("Exhibit B" to the complaint).

Paragraph 16 of the lease agreement (reporting changes between regularly scheduled re-certifications) provides:

"b. The tenant may report any decrease in income or any change in the other factors considered in calculating the tenant's rent. If the decrease in income or change in other factors will last more than 90 days, the landlord will verify the information and make the appropriate reduction."

No time is set forth in the lease agreement as to when this report is to be made. (Paragraph 16 a. specifically provides that certain matters must be reported to the landlord immediately. No such time restriction is imposed by the agreement regarding the change in income. The contract, by law, must be construed strictly against Plaintiff regarding this time factor, even though it makes it difficult and impractical for Plaintiff's employees.)

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Rule 5-12 of the HUD handbook, which both parties are bound to, provides, in part:

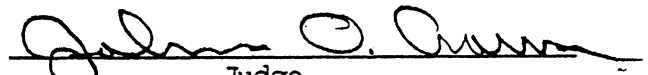
"b. Rent Decrease. If the tenant's rent deceases because of an interim adjustment, the owner must take the decrease effective the first day of the month commencing after the date of the action which caused the decrease."

The sole issue is whether the tenant under the contract or rules is obligated to notify the landlord prior to the effective date of the interim adjustment. There is no question that on September 4, 1990 a mailing was made to the tenant advising her that there would be an interim adjustment for three months making her income zero. There is no question that the tenant notified the landlord, on October 4, 1990, of this adjustment. Why the tenant waited approximately one month to notify the landlord of this change has never been answered. It certainly creates a difficult situation for the management of this complex on behalf of the landlord.

However, the Court feels that the plaintiff/landlord is obligated to follow the terms of its lease set forth in Rule 16 b. as presently drafted. There is no time requirement obligating the tenant to make the report within a given period of time. Plaintiff/landlord is obligated to follow the mandates of Rule 5.12.

Therefore, this Court finds in favor of the Defendant and against the Plaintiff. Plaintiff to pay costs.

ENTER:


Judge