

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

BOTNICK REALTY CO.)
)
) PLAINTIFF)
)
) v.)
)
) CHANIN BROWN)
) DEFENDANT)

CASE NO. 91 CVG 5445

REFEREE LYNETT

REFEREE'S REPORT

AKRON MUNICIPAL COURT
DAVID M. ZAMPPELLI
CLERK

JUL 14 10 14 AM '91

FILED

This matter was scheduled for hearing before Referee Thomas F. Lynett on June 14, 1991. Both parties were present in court and both parties with counsel. Both parties filed post trial briefs.

From the evidence presented by the parties the Referee finds the facts to that Plaintiff is managing agent for Cuyahoga Properties and on or about March 11, 1988 entered into a written lease agreement with Defendant for the Federally Subsidized Section 8 Property located at 608 West Market Street, Apt. 14, Akron, Ohio.

Defendant became delinquent in rental payments and failed to respond to Plaintiff's letter to come in for re-certification. On April 30, Plaintiff sent Defendant a notice to leave the premises on or before May 9, 1991 stating the grounds to be non-payment of April rent of \$204.00. This notice contained no statement advising tenant that she has ten days within which to answer the proposed termination of tenancy (see Plaintiff's exhibit B).

Defendant's subsidy was cancelled May 2, 1991 and on that date Plaintiff wrote to Defendant informing her that the rent was now \$583.00 per month and advised her that failure to pay that amount

by June 5 would result in eviction action. On May 13, 1991, Plaintiff served his three day notice to leave the premises and on May 21, 1991, Plaintiff filed the instant case alleging material non-compliance with the terms of the lease agreement.

Defendant claims that Plaintiff is not the real party in interest, by reason of being the managing agent. A reading of Ohio Revised Code Section 1923.01 A (Paragraph 2) discloses the following: "Landlord means the owner, lessor, or sub-lessor of the premises, his agent, or any person authorized by him to manage the premises or receive rent from a tenant . . ." The Referee finds that the Plaintiff, as managing agent, is the real party in interest in this case.

Coming now to the claim of Defendant that she was not served with a proper termination of lease notice, the Referee finds that Plaintiff has failed to follow the terms of its own lease when it served its "ten day notice to leave" and followed it with "three day notice." The rental agreement at Section 23 (b) states that the landlord may terminate this agreement for tenant's material non-compliance with the terms of this lease and that material non-compliance includes the non-payment of rent. The lease also states that any termination by landlord must be carried out in accordance with HUD regulations, state and local laws and of the terms of this agreement. The terms of this agreement specifically state at Paragraph 23 (c) that: (1) All termination notices must specify the date the agreement will terminate, (2) State the grounds for termination, (3) Advise the tenant that he/she has ten days in which to discuss the proposed termination with the landlord, and (4)

advise the tenant of his/her right to defend the action in court.

From the evidence presented by the parties the Referee finds that Plaintiff's exhibit B, whereby defendant is asked to leave the premises in ten days, failed to advise tenant that she has opportunity to discuss the proposed termination within ten days and also failed to notify her that she had the right to defend the action in court. The lease specifically sets out the method and manner in which the lease may be terminated. Plaintiff failed to follow the procedures and the Referee hereby finds the notice fatally defective and rules that Plaintiff failed to give proper notice to Defendant. Accordingly, the Referee finds in favor of the Defendant.

It is the recommendation of Referee that Plaintiff's case be dismissed at Plaintiff's cost and writ of restitution NOT be granted.

Thomas Lynett
Thomas F. Lynett
Referee

JUDGMENT ENTRY

The report of the Referee is hereby approved. It is the judgment of the Court that a writ of restitution BY NOT issue.

Cost to be paid by PLAINTIFF DEFENDANT.

Date: 7/24/91

Edward W. Dwyer
Judge

AKRON MUNICIPAL COURT
DAVID M. ZAMBELLI
CLERK
FILED
JUL 25 10 11 AM '91