

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

CUYAHOGA METROPOLITAN
HOUSING AUTHORITY
1441 WEST 25th STREET
CLEVELAND, OHIO 44113

PLAINTIFF

VS.

BEVERLY OWENS
1919 EAST 55th STREET, #811
CLEVELAND, OHIO 44103

DEFENDANT

) CASE NUMBER 92 CVG 5159
) JUDGMENT ENTRY RECEIVED
) FOR JOURNALIZATION
) APR 21 1992
) BENNY BONANNO, CLERK
) LANDLORD-TENANT
)
)
)
) REFEREE'S REPORT
) AND RECOMMENDATION
)

This case came to be heard on March 20, 1991, before Referee Barbara A. Reitzloff, to whom this case was assigned by Judge William H. Corrigan, pursuant to Civil Rule 53, to take evidence on all issues of law and fact, regarding plaintiff's first cause of action.

Plaintiff in court without counsel.

Defendant not in court nor represented by counsel.

FINDING OF FACTS:

1. Plaintiff is a public housing agency which owns and operates the Wilson Public Housing Estate located at 1919 East 55th Street, Cleveland, Ohio, assisted under the Public Housing Program of 1937. 24 C.F.R. Part 966 (1989).

2. Defendant occupies apartment number 811 ("the rental premises") at the Wilson Estate as a tenant of the plaintiff

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pursuant to a written lease. Her rent for the unit is federally subsidized under the Public Housing Program.

3. Plaintiff filed the instant action in Forcible Entry and Detainer against defendant for her alleged violations of the written lease.

4. An employee of the plaintiff, Officer Balli, observed the defendant on several occasions in common areas of the Estate in an intoxicated state. On these occasions defendant was often loud and disruptive, and frequently used profanity. On at least one of these occasions Officer Balli observed the defendant carrying a kitchen knife. Officer Balli also testified that he believed that defendant had been previously charged with assault on a police officer.

5. Plaintiff's employee, the manager of the Wilson Estate, served defendant with a "Notice of Termination and Invitation to Explain" ("notice of termination") on November 25, 1991. A copy of the notice of termination is attached to plaintiff's complaint and admitted as plaintiff's Exhibit A. The notice of termination contained the following language:

Our office has received information that you have violated Article 9, Section (s) A, B, K, M, N, O and P of your dwelling lease (SEE ATTACHED). Since this is a violation of your lease, you are hereby notified that, unless this matter is resolved with our office, your lease will terminate thirty (30) days from this date and eviction proceedings will be filed thereafter.

You are requested to come into the Management Office on Wednesday, December 4, 1991 at 10:00 a.m. to make such reply or explanation as you may wish... To avoid further action regarding this matter, please do not fail to contact us so that we can hear any reply or explanation you may wish to make...

6. On the same day, November 25, 1991, plaintiff served defendant with a second notice, a "Notice to Leave Premises" ("notice to vacate"). The notice to vacate contained the language that Revised Code 1923.04 requires for a notice to vacate. It demanded that defendant vacate the rental premises within three days.

7. Plaintiff produced no other notices served upon defendant regarding this termination of her tenancy. On February 28, 1992, plaintiff commenced this action in forcible entry and detainer.

CONCLUSIONS OF LAW AND FACT

Plaintiff is a public housing authority ("PHA") that administers federal rent subsidy programs including the Public Housing Program. The federal rules and regulations prescribe procedures the plaintiff must follow when it proposes to terminate a tenant's lease under the Public Housing Program. 24 C.F.R. Part 966.

A PHA is required, inter alia, to give the tenant a written notice of any proposed termination of the tenant's tenancy. 24 C.F.R. §966.4(1)(2) The notice generally must be given to the tenant at least fourteen days (14) prior to the termination of the lease in cases on nonpayment of rent and at least thirty days (30) prior to the termination of the lease in other cases. Id. The notice must state the specific grounds for the proposed termination, inform the tenant of the tenant's right to reply to the notice, and inform the tenant

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of the right to examine PHA documents directly relevant to the termination or eviction. 24 C.F.R. 966.4(1)(3)(ii). The tenant's lease does not terminate until the end of the advance notice period required for the notice of proposed termination 24 C.F.R. Part 966, Federal Register Vol. 56, No. 198, October 11, 1991, §3.1.1.

When prosecuting an eviction case in state court, a public housing authority must comply with the applicable state law, as well as federal law. Under Ohio law, to maintain an action in forcible entry and detainer, a landlord must serve a notice to vacate in accordance with the requirements of Revised Code 1923.04.

The Revised Code 1923.04 notice to vacate may not be served until after the expiration of the tenancy. Oppmann Properties v. Jackson, No. 90-CVG-9118 (Mun. Ct. Cleveland, May 29, 1990), unreported; FMJ Properties v. Hinton, No. 50314 (Ct. App. Cuyahoga County April 10, 1986), unreported; Gibbes v. Freeman, No. 52745 (Ct. App. Cuyahoga County September 3, 1987), unreported; Siegler v. Batdorff, 63 Ohio app.2d 76, 408 N.E.2d 1383 (Cuyahoga County 1979); Voyager Village Limited v. Williams, 3 Ohio App.3d 288, 444 N.E.2d 1337 (Greene County 1982). As the Cuyahoga County Court of Appeals stated in FMJ Properties, supra, slip op. at 6:

A notice to vacate may not be served until after the expiration of the tenancy and it may not instruct the tenant to vacate the premises by a date that precedes the termination of the tenancy. Therefore, the public housing authority may not serve the

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Revised Code 1923.04 notice to vacate prior to the expiration of the notice of proposed termination.

In the present case, on November 25, 1991, plaintiff simultaneously served defendant with the notice of proposed termination and the Revised Code 1923.04 notice to vacate. Based on the date of the notice of proposed termination (November 25, 1991), and the statement in the notice that defendant's tenancy will terminate thirty days after the date of service, defendant's tenancy could not be terminated before December 26, 1991. Therefore, the Revised Code 1923.04 notice to vacate could not properly be served before December 27, 1991. Its service on November 25, 1991 resulted in its service before the termination of defendant's tenancy.

Plaintiff's service of the Revised Code 1923.04 notice to vacate prior to the expiration of defendant's tenancy constitutes improper service. (cites). Absent proper service of the Revised Code 1923.04 notice to vacate, this court lacks jurisdiction to proceed, and dismisses plaintiff's first cause of action accordingly. *Oppmann Properties v. Jackson, supra*; *FMJ Properties v. Hinton, supra*; *Dayton Metropolitan Housing Authority v. Russell*, 16 Ohio Op.3d 94 (Court App. Montgomery County 1980); *Sternberg v. Washington*, 113 Ohio App 216, 177 N.E.2d 525 (Summit County 1960).

Plaintiff argues that the federal regulations, specifically 24 C.F.R. 966.4(1)(3)(iii), permit simultaneous service of the federal notice of proposed termination and state notice to vacate. The regulations, however, govern only the issue of

when a federal notice of proposed termination may be served, and not when service of the state notice to vacate may properly be made. When it promulgated 24 C.F.R. 996.4(1)(3)(iii), HUD specifically addressed this issue in its introductory comments to the regulations:

...Federal law does not mention the State law notice. Federal law does not affect the time when the State notice may be given...

24 C.F.R. Part 966, Federal Register Vol 56, No. 198, October 11, 1991, §3.1.1.

Under Ohio law, the state notice to vacate may not be served prior to the expiration of the defendant's tenancy. In this case, simultaneous service of the notice of proposed termination and Revised Code 1923.04 notice to vacate resulted in service of the Revised Code 1923.04 notice to vacate prior to the expiration of the tenancy. As a result, this court lacks jurisdiction to proceed to the merits of this case.

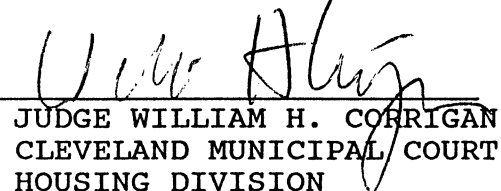
JUDGMENT

Plaintiff's first cause of action is dismissed at plaintiff's costs.

RECOMMENDED:


BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

APPROVED:


JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION

SERVICE

A copy of the Referee's Report was sent by ordinary United States mail to the Plaintiff's Attorney, Mark Witt, 1441 West 25th Street, Cleveland, Ohio 44113 and to the Defenant Beverly Owens, 1919 East 55th, #811, Cleveland, Ohio 44103 this 21st day of April 1992.

IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE REFEREE'S REPORT MUST BE IN WRITING WITHIN FOURTEEN (14) DAYS OF FILING AND MUST COMPLY WITH THE OHIO RULES OF PROCEDURE AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

RECOMMENDED: Barbara A. Reitzloff

BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

APPROVED: William H. Corrigan

JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION