

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

LAKEVIEW TERRACE)	CASE NUMBER 92 CVG 8034
2700 WASHINGTON AVENUE)	
CLEVELAND, OHIO 44113)	
)	
PLAINTIFF)	
)	
VS.)	<u>LANDLORD-TENANT</u>
)	
ANNETTE SMITH)	
2621 DIVISION #552)	
CLEVELAND, OHIO 44113)	
)	<u>REFEREE'S REPORT</u>
DEFENDANT)	<u>AND RECOMMENDATION</u>
)	

This case came to be heard on April 24, 1992, 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 with counsel.

Defendant in court with counsel.

FINDING OF FACTS:

1. Plaintiff is the manager of Lakeview Terrace Public Housing Estate ("Lakeview Terrace") located at 2621 Division Avenue, Cleveland, Ohio. Lakeview Terrace is owned by the Cuyahoga Metropolitan Housing Authority, a public housing agency which owns and operates Lakeview Terrace assisted under the Public Housing Program of 1937. 24 C.F.R. Part 966 (1989).
2. Defendant occupies apartment number 552 ("the rental premises") at Lakeview Terrace as a tenant of the plaintiff

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. Plaintiff's employee, the manager of Lakeview Terrace, testified that a fire took place in the rental premises on approximately August 5, 1991. She testified that she met with defendant after the fire, and that defendant admitted to her at that meeting that the fire was caused by defendant's cousin, who dried clothes above an open gas stove burner while defendant slept.

5. On August 5, 1991, the manager of Lakeview Terrace served defendant with a "Notice of Termination and Invitation to Explain" ("August 5, 1991 notice"), a copy of which was admitted into evidence as Plaintiff's Exhibit D. The manager testified that no attachments accompanied the notice sent to defendant. The August 5, 1991 notice stated as grounds for termination of defendant's tenancy 9-A, 9-J Destroying Property."

6. On February 10, 1992, the manager of Lakeview Terrace served defendant with a "Ten (10) Day Notice to Leave Premises" ("February 10, 1992 Notice"). A copy of the notice of termination is attached to plaintiff's complaint and admitted as Plaintiff's Exhibit A. The notice stated as grounds for termination of defendant's tenancy "Violation of your Lease Agreement 9(K). To refrain, and cause his/her household and persons on the premises with the consent of the

resident or members of his/her household to refrain from destroying, defacing, damaging, or removing any part of the premises or estate."

6. On February 25, 1992, plaintiff served defendant with 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 April 3, 1992, plaintiff commenced this action in forcible entry and detainer.

CONCLUSIONS OF LAW AND FACT

Plaintiff in its management of Lakeview Terrace, acts as a public housing authority ("PHA") which administers 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 must be given to the tenant: at least fourteen days (14) prior to the termination of the lease in cases on nonpayment of rent; within a reasonable time prior to the termination considering the seriousness of the situation when the health and safety of other residents is threatened; 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 of the right to examine PHA documents directly relevant to the termination or eviction. 24 C.F.R. 966.4(1)(3)(ii). The notice must also inform the tenant of the right to request a hearing in accordance with the PHA's grievance procedure or, in the alternative, state that the tenant is not entitled to a grievance hearing on the termination. 24 C.F.R. 966.4(1)(3)(ii), (v). The tenant's lease does not terminate until the expiration of the notice of proposed termination 24 C.F.R. Part 966, Vol. 56 Fed. Reg. 51560, 51560 (1991)(§3.1.1.)

A review of plaintiff's complaint indicates that plaintiff relies upon the February 10, 1992 notice to serve as its notice of proposed termination. The February 10, 1992 notice fails as a notice of termination, for several reasons. The notice does not inform the tenant of the tenant's right to reply to the notice, the tenant's right to examine documents relevant to the eviction, or the tenants right to request a grievance hearing.

In addition to these defects on the face of the notice, defendant argues that the February 10, 1992 notice does not state the grounds for defendant's eviction with sufficient specificity.

The notice of lease termination must state the specific grounds for the eviction. 24 CFR 966.44(1)(3)(ii). Compliance with this requirement ensures that the tenant is

apprised of the allegations against her, and has an opportunity to respond to or defend against these allegations. Without knowledge of the specific allegations against her, the tenant's rights to reply to the notice, examine relevant documents and request a grievance hearing are meaningless.

The Cuyahoga County Court of Appeals addressed this issue in a similar situation in Associated Estates Corp. v. Bartell, 24 Ohio App. 3d 6, 492 N.E.2d 841 (Cuyahoga County 1985). The tenant in Bartell occupied the rental premises pursuant to a federal housing subsidy program known as "section 8 New Construction." 24 CFR Part 880. The federal regulations governing this Section 8 Program require the landlord in the notice of termination to state the grounds for the eviction. 24 CFR § 880.607. The Court of Appeals held that plaintiff's statement of the grounds for Bartell's eviction as "serious, repeated damage to the unit" and "repeated disturbance" were not sufficiently specific comply with the federal regulations and procedural due process.

Plaintiff, in this case, used similar terms in its February 10, 1992 notice to state the grounds for the eviction: "To refrain...from destroying, defacing, damaging or removing any part of the premises or the estate." The notice does not refer to dates, locations specific events, or individuals involved. In fact, the notice does not even mention the fire, which plaintiff's manager testified was the incident to which the notice referred! Absent at least some of these details, the notice informing defendant of the

proposed termination meaningless, and the notice fails as a notice to terminate defendant's tenancy.

Plaintiff also introduced the August 5, 1991 notice, ostensibly as another notice of termination. Plaintiff did not refer to this notice in its complaint, so it is unclear whether the court should consider it in ruling on defendant's motion to dismiss. However, even if the notice is considered, plaintiff's case still fails for lack of a proper notice of termination. In August 1991, the applicable federal regulations did not require plaintiff to inform defendant of her right to examine documents or to request a grievance hearing. However, the regulations did require plaintiff to state the reasons for the termination of the tenancy. 24 CFR 966.4(1)(3). The August 5, 1991 notice merely stated the ground as "destroying property". For the reasons set forth above, the grounds as stated in the August 5, 1991 notice are not sufficiently specific, and the August 5, 1991 notice fails as a notice of termination. In the present case, plaintiff failed to serve defendant with the notice of proposed termination as required by the federal regulations, and defendant's lease which incorporates the regulations. Defendant's tenancy has therefore not been terminated.

Plaintiff's service of the Revised Code 1923.04 notice to vacate prior to the expiration of defendant's tenancy constitutes improper service. 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).

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, Michael L. Nelson, 75 Public Square, Suite 1210, Cleveland, Ohio 44113 and to the Defendant's Attorney, Gail White and James W. Satola, 3408 Lorain Avenue, Cleveland, Ohio 44113 this 19th day of May 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