

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO

AUG 1 91999

EARLE B. TURNER, CLERK

CMHA

DATE: AUGUST 19, 1999

Plaintiff(s)

-VS-

CASE NO: 98-CVG-05998

RONALD BLAKE

Defendant(s)

JUDGMENT ENTRY

Plaintiff CMHA has filed objections to the Magistrate's Report and Recommendation issued on March 31, 1999. Plaintiff asserts that the court erred in adopting the findings of fact and conclusions of law submitted by the magistrate involving plaintiff's first cause of action.

When objections are filed to a magistrate's report and recommendation, the trial court must undertake the equivalent of a de novo determination, independently assessing the facts and conclusions contained in the report. Such de novo determination is based upon available evidence and testimony. Wade v. Wade, 113 Ohio App.3d 414, 680 N.E.2d 1305 (1996); DeSantis v. Soller, 70 Ohio App.3d 226, 590 N.E.2d 886 (1990). In the instant matter, the court finds plaintiff's objections to be well taken with regard to the basis for the eviction and the framing of the issue, and vacates the earlier judgment for defendant on the first cause. The reasons for the Court's modified rationale regarding eviction based upon criminal activity are set forth below. The basis for vacating the court's earlier first cause judgment for defendant is also set forth below.

I.

Plaintiff's primary objection to the magistrate's report focuses on the framing, and subsequent analysis, of the stated issue in this case. The magistrate's report and recommendation frame the issue as "If a public housing tenant commits a crime other than [in] that person's home, may that tenant be evicted?" Plaintiff assert that the conclusions of law, and

the judgment in this case, in fact turn upon an underlying issue; the lease's definition of the term "illegal." Further, plaintiff asserts that the magistrate's analysis of the underlying issue was inaccurate.

The magistrate's report finds that: plaintiff's complaint asserts violation of the lease, based upon defendant's arrest for violation of the state drug law; the language of the lease term regarding eviction based upon "drug related criminal activity" was ambiguous; under relevant contract law, non-specific or ambiguous terms in contracts must be construed against the drafter of the contract, in this case, plaintiff C.M.H.A., and; under the interpretation most favorable to the non-drafter, the magistrate concluded that prior to activity being deemed "criminal," there must be a finding of guilt on the criminal charges by a court.

In interpreting the terms "criminal activity" and "illegal," the magistrate concluded that "[T]he lease states that such drug related activity must rise to the level of being illegal" and that illegality and criminality are determinations to be made by a court. Therefore, defendant must be convicted by a court before an eviction may be commenced based upon the lease term prohibiting tenants from engaging in criminal activity. After a review of the magistrate's report, plaintiff's objections and the relevant portions of the Code of Federal Regulations (CFR), the court finds merit in plaintiff's objection to the conclusions of law set forth in this case.

The preamble to 24 CFR 966 discusses the interplay between civil actions and criminal proceedings in the eviction context. In discussing §966, a portion of the preamble entitled "Relation Between Civil Eviction Action and Criminal Proceeding" explains;

Under this rule, the PHA may proceed with a civil eviction action for criminal activity by family members or guests regardless of whether a criminal prosecution has commenced or completed, and regardless of the stage of any criminal proceeding. In the civil eviction proceeding, the tenant is entitled to a fair judicial hearing on the existence of legal and factual grounds for eviction . . . . In an action for termination of tenancy -- whether for the specific criminal activities enumerated in the Federal statute, or for other serious or repeated lease violation or other good cause -- the decision of the court in the civil

possessory actions leads to a common remedy: eviction from the unit.

The commentary goes on to say;

If the PHA claims in the civil eviction action that “crime” by a household member is ground for eviction, then the PHA must prove the elements of crime by the civil standard of proof (generally by a preponderance of the evidence). . . .**There is no injustice or denial of proper process in allowing the PHA to proceed with civil eviction before conviction of a crime.** (Emphasis added).

While this commentary regarding eviction from public housing may not have the force of law, the Court finds this rationale persuasive, and finds that similar rationale has guided this Court’s decisions in past eviction actions involving violation of the Housing Authority’s “no criminal activity” lease provision. As noted in plaintiff’s objections, the Court has, historically, granted evictions based upon violation of the “no criminal activity” lease provision, and has never required a criminal conviction prior to initiation of eviction proceedings for violation of the lease. The commentary on the HUD regulations indicates that criminal conviction was not intended to be a prerequisite to commencement of an eviction based upon criminal activity in violation of the lease. Based upon the reasoning set forth in the HUD regulations, and this Court’s application of this analysis to evictions based upon criminal activity, the Court acknowledges the merit of plaintiff’s objection and finds that the Court’s previous conclusions must be modified.

Further, as plaintiff notes, the Ohio Revised Code specifically requires that landlords take affirmative action to evict tenants who are, or who they believe to be, involved in criminal drug activity. Plaintiff asserts that by requiring a criminal conviction prior to commencing eviction proceedings under the “no criminal activity” lease provision, the Court will be creating a nearly insurmountable obstacle to plaintiff’s obligations under the Revised Code to take immediate, affirmative action against tenants who are involved in drug activity. Further plaintiff asserts that this conclusion would eviscerate the plaintiff’s ability to evict disruptive tenants, and thus provide for the safety and well-being of other CMHA residents. The Court acknowledges the merit of this objection and finds that the Court’s previous conclusions must be corrected.

For these reasons, the court finds that plaintiff's objection to the analysis contained in the magistrate's report and recommendation is well founded and the rationale behind the decision in this matter must be adjusted. The court corrects its previous interpretation to reflect both the preamble to 24 CFR 966, and a consistent interpretation of the subject lease provision, holding that this Court, as the court in which the eviction action was filed, may determine whether illegal conduct has occurred.

## II.

Having determined that conviction on a criminal charge is not required prior to initiation of a civil eviction action based upon violation of the lease term prohibiting criminal activity, the court now turns to a review of plaintiff's first cause of action. With regard to the first cause judgment in favor of defendant, the Court reverses its prior judgment, and enters judgment for plaintiff for the reasons set forth below.

Plaintiff's Lease, together with the "Lease Addendum and Grievance Procedure" set forth the obligations and rules between CMHA and its residents. Section IX. of this addendum is entitled "Resident's Obligations," and sub-section (K) sets forth the CMHA's policy regarding specific prohibited activities. Sub-section (K) provides two possible grounds for termination based on criminal activity, stating that tenants shall not engage in:

1. Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the Authority's public housing premises by other residents or employees of the Authority;
2. Any drug-related criminal activity on or near such premises.

Plaintiff's complaint alleges that defendant violated both these provisions and seeks restitution of the premises based upon these violations. At trial, the court found that defendant was a resident at plaintiff's estate located at 4100 Central Ave., Cleveland, Ohio. On or about December 12, 1997, defendant was arrested by CMHA police officers at 1275 West 25th, another CMHA property located across town. Forensic analysis of objects recovered from the scene during the arrest tested positive for cocaine. Defendant was charged with violation of the state drug law, and breaking and entering into a CMHA unit not his own.

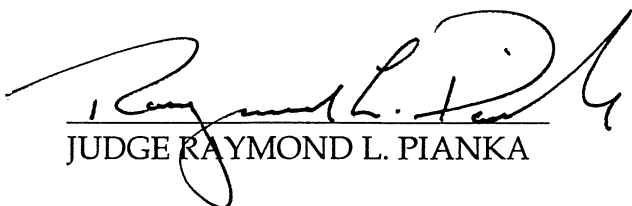
As a result of these occurrences, defendant was served a Notice of Termination of Tenancy on January 7, 1998.

The Notice of Termination, served on defendant by regular U.S. Mail, listed two bases for the termination under Section IX.(K): 1) violation of the lease term based upon "criminal activity that threatens the health, safety or peaceful enjoyment of CMHA's premises," and; 2) violation of the lease involving "drug-related criminal activity on or off CMHA premises." According to the addendum language, this provision applies to the Authority's "public housing premises," that is, any and all public housing premises controlled by CMHA.

The basis for service of the three-day notice is listed as "for cause," for violation of the lease addendum. Plaintiff obtained residence service of the three day notice at defendant's apartment. Plaintiff was represented by counsel at trial. Defendant was present *pro se*.

The basis for the court's earlier decision was the initiation of the eviction for violation of the lease term, prior to a conviction on the alleged criminal activity. Having determined that conviction on a criminal charge is not required prior to initiation of a civil eviction action based upon criminal activity, the court now finds that defendant was properly served a three day notice and complaint in forcible entry and detainer. Plaintiff properly brought this eviction action for cause, based upon Section IX., subsection (K) of plaintiff's lease addendum. Plaintiff properly served the three day notice on February 13, 1998, and filed the complaint on March 17, 1998. Accordingly, the court finds that plaintiff's objections to the previous judgment in this case to be well taken.

WHEREFORE, based upon plaintiff's objections to the magistrate's report, this court's earlier decision, journalized on March 31, 1999, is ordered vacated. Judgment is issued for plaintiff on the first cause of action. Writ of restitution to issue. Defendant must vacate the premises no later than August 31, 1999. Hearing on plaintiff's second cause of action is reset for September 8, 1999, at 1:30 p.m. in Courtroom 3-A.

  
JUDGE RAYMOND L. PIANKA

A copy of this judgment entry was sent by regular U.S. mail to counsel for plaintiff, William H. Armstrong, CMHA, 1441 West 25th Street, Cleveland, Ohio, 44113, and to defendant, Ronald Blake, 4100 Central Ave., #2600, Cleveland, Ohio, 44104, on August 17, 1999.

**IN THE CLEVELAND MUNICIPAL COURT**  
**CUYAHOGA COUNTY, OHIO**  
**HOUSING DIVISION**

**CUYAHOGA METROPOLITAN  
HOUSING AUTHORITY**

1441 West 25<sup>th</sup> Street  
Cleveland, Ohio 44113

Plaintiff(s)

vs.

**RONALD BLAKE**

4100 Central Avenue, #2600  
Cleveland, Ohio 44104

Defendant(s)

**CASE NO. 98-CVG-05998**

**DATE: March 25, 1999**

**JUDGE RAYMOND L. PIANKA**

**MAGISTRATE'S REPORT AND  
RECOMMENDATION**

The case came to be heard on April 7, 1998. Additional testimony was taken on July 30, 1998 and August 27, 1998. Magistrate Ruben E. Pope, III was assigned this case by Judge Raymond L. Pianka pursuant to Ohio Civil Rule 53 to take evidence on all issues of law and fact, including Plaintiff's claim for forcible entry and detainer.

Plaintiff was in court with counsel and Defendant was in court without counsel.

**FINDINGS OF FACTS:**

1. Plaintiff is the Landlord of the premises located at 4100 Central Avenue, #2600, Cleveland, Ohio.
2. Plaintiff and Defendant entered into a written lease for the premises.
3. Said lease provides in pertinent sections with reference to Resident's Obligations that:

The Resident shall be obligated:

(K) To insure that the resident and any member of the household, guest or another person under Resident's control, shall not engage in:

1. Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the Authority's public housing premises by other residents or employees of the Authority, or;

2. Any drug-related criminal activity on or near such premises. Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy and for eviction from the unit (For the purpose of this lease, the term drug-related criminal activity means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell distribute, or use of a controlled substance as defined in Section 102 of the controlled substance act.)

3. According to the Police Report offered as evidence by Plaintiff, the following events occurred on or about December 12, 1997.

At approximately 9:04 p.m., CMHA Police Officers Shaughnessy and Stringfellow, along with the canine, Argo, were on foot patrol near 1275 West 25th Street in the Lakeview Homes Estate. Mr. Blake was allegedly observed holding an open can of Colt 45 Malt Liquor, in violation of Ohio Open Container Laws. As the CMHA Police Officers approached, Mr. Blake allegedly began to run. The officers advised him to stop. Mr. Blake allegedly fled up a flight of stairs. Mr. Blake slipped and fell and reached into his coat and allegedly threw several small objects. Detective Stringfellow picked up the objects, which he suspected were rocks of crack cocaine. Mr. Blake was placed under arrest for violation of state drug law and breaking and entering, and also issued a minor misdemeanor citation for the open container. Upon a search of the defendant, a small metal pipe with suspected residue was discovered in his pocket.

4. A forensic analysis of the objects discarded by Mr. Blake revealed that they, in fact, contained 0.08 grams of cocaine. Also, the metal pipe contained burnt residue, which tested positive for cocaine.

5. As a result of this incident, Defendant was served a Notice for Termination of Tenancy on January 7, 1998.



6. He was given a three-day notice to vacate the premises on January 13, 1998, in connection with the incident.

7. As of the date of his eviction hearing, he had not been indicted or charged with a crime, nor had he been convicted in connection with incident.

8. Mr. Blake was current in paying his rent.

9. No evidence was presented that Mr. Blake has been previously convicted of committing a crime.

### **CONSLUSIONS OF LAW AND FACTS:**

The main issue presented here is:

- If a public housing tenant commits a crime other than that person's home, may that tenant be evicted?

The Ohio Revised Code clearly allows a landlord to evict a tenant suspected of using drugs in the tenants home. The statue **requires** such a landlord to serve a Notice of Termination upon such tenant:

...If the landlord had actual knowledge of or reasonable cause to believe that the tenant, any person in the tenant's household or any person(s) in the RESIDENTIAL PREMISES has or presently is engaged in a violation as described in division (A)(6)(a)(I) of section 1923.02 of the Revised Code, whether or not the tenant has pleaded guilty to or been convicted of ...a violation as described in division (A)(6)(a)(i) of Section 1923.02. (Emphasis added) **Section 5321.04 (A)(9) Ohio Revised Code.**

Under the forcible entry and detainer statutes, Section 1923.02 (A)(6)(a)(i) of the Ohio Revised Code, the Landlord **must** evict the Tenant if the premises are being used for a violation of the Ohio drug laws. The purpose of the statute is to prevent a person from using another person's property to commit an alleged, illegal act.

The immediate case is unique for the following reasons:

1. The case was not brought as a violation of Ohio Statutes.
2. Mr. Blake was not at home when arrested. (He was, however, on another property managed by Plaintiff.

The lease defines the term drug related criminal activity as "the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use of a controlled substance as defined in Section 102 of the controlled substance act."

While the lease, as drafted by the Plaintiff defines "criminal activity", yet it fails to define the term "illegal." and does not state whether or not a tenant must be simply arrested, indicted or actually adjudged guilty of such behavior before being subject to eviction.

When interpreting ambiguous contracts, the court must make a legitimate effort to determine the intentions of the parties. If this cannot be accomplished, then ambiguous provisions of a contract...will be construed against the lessors as the drafters of the contract (Cline v. Rose, (1994), 96 Ohio App. 3d 611).

The lease states that such drug related activity must rise to the level of being illegal, it is implicit that a tenant be convicted of drug related criminal activity before being evicted. Since the terms of a contract must be construed most favorably for the party who did not draft the lease, and the lease does not make clear whether a tenant must be convicted of a criminal activity to be subject to eviction, this Court must come down on the side of the non-drafting party and refuse Plaintiff's request for an eviction.

HUD has mandated that Public Housing Authorities vigilantly pursue the eradication of drugs from their projects. This is an admirable goal and this court has no desire to hamper such efforts. This is a serious problem for which there is no easy solution. HUD and CMHA also recognize this fact, for the lease and Regulations also provide:

- B) In deciding to evict for criminal activity, the Authority shall have discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by or awareness of household members, and the effects that the eviction would have both on household members not involved in the proscribed activity and on the household's neighbors. In appropriate cases, the Authority may permit continued occupancy by remaining household members and may impose a condition that household members who engaged in the proscribed activity shall neither reside in nor visit the unit. The Authority may require a household member who has engaged in the illegal use of drugs to present credible evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit.

This further illustrates the ambiguity of the lease. The lease should state, unequivocally, whether or not a conviction or indictment of drug related criminal activity is required for termination of tenancy, i.e. an indictment or conviction based on a violation of any section of Chapter R.C. 2925. If an exception is provided for the tenants who enroll in a drug rehabilitation program, that exception should be clearly stated.

Mr. Blake may remain in possession of the premises. At the time of the eviction hearing, Mr. Blake has not been convicted of a crime, and, under the terms of the lease as written, he cannot be evicted until he is.

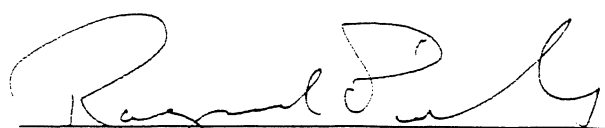
**JUDGMENT:**

Judgment is for the Defendant on the first cause.

RECOMMENDED:

  
RUBEN E. POPE, III  
MAGISTRATE

APPROVED:

  
JUDGE RAYMOND L. PIANKA  
CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION

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

**SERVICE :**

A copy of the Magistrate's Report and Recommendation was sent by ordinary U.S. mail on this \_\_\_\_\_ day of March 1999, to the following:

**CUYAHOGA METROPOLITAN HOUSING AUTHORITY**  
1441 West 25<sup>th</sup> Street  
Cleveland, Ohio 44113

**RONALD BLAKE**  
4100 Central Avenue, #2600  
Cleveland, Ohio 44104