

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

Boardwalk Glenville Apts.

DATE: July 13, 2007

Plaintiff

-vs-

CASE NO.: 2007 CVG 3065

Lonnie Cage

Defendant

JUDGMENT ENTRY

The Court, having reviewed the *Magistrate's Decision* of July 13, 2007 under Ohio Rule Of Civil Procedure 53(E)(4), adopts that decision.

The Court grants judgment to Defendant on Plaintiff's first cause of action. Plaintiff is ordered to recalculate Defendant's rent and to present to the Court a proposed schedule of rent payments based on Defendant's current rent obligation and his past due rent obligation. *Mazzarella v. McGinnes* (1991), 1991 CVG 30291 (Cleveland Mun. Ct.). The Court may adopt or modify the schedule into an order to Defendant concerning his future rent obligation.

To the extent that this decision will support Plaintiff's application for a subsidy from the U.S. Department of HUD based on Defendant's tenancy, Plaintiff is encouraged to forward a copy to HUD for its consideration.


JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this Judgment Entry was sent via regular U.S. Mail to the following on 7/16/07. AWT

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MAGISTRATE'S DECISION

The Court held a trial in this case June 21, 2007. Plaintiff appeared through counsel. Defendant appeared with counsel. The parties appeared before Magistrate David D. Roberts, Judge Raymond L. Pianka having referred the case to Magistrate Roberts to take evidence on all issues of law and fact. Defendant filed a post-trial brief June 28, 2007, *Post-Trial Memorandum, Displaying Plaintiff's Failure To Follow HUD Guidelines And Lonnie Cage's Basis For Judgment*.

The Court grants judgment for Defendant for the reasons set forth below.

Findings Of Fact

1. Plaintiff and Defendant are parties to a written rental agreement under a federally subsidized project-based section eight program; neither party introduced a copy into evidence.
2. Plaintiff sent Defendant notices reminding him to provide information needed for his annual recertification, copies introduced into evidence as *Defendant's Exhibit F, G and H*.
3. Defendant provided information to Plaintiff, including information about his employer.
4. Defendant's employer provided Plaintiff with information about Defendant's income on an Employment Verification form, a copy introduced into evidence as *Defendant's Exhibit L*.
5. Plaintiff concluded that the information on *Defendant's Exhibit L* was inconsistent with information that Defendant had provided.

6. Plaintiff attempted to contact Defendant's employer to discuss the apparently inconsistent information but Defendant's employer did not return calls from Plaintiff.
7. Defendant later provided pay stubs to Plaintiff, copies introduced as *Defendant's Exhibits A-1 through A-5*.
8. Plaintiff informed Defendant that the pay stubs were not enough information and that he would have to provide his 2005 tax return.
9. Defendant provided his 2005 tax return, a copy admitted into evidence, a copy admitted into evidence as *Defendant's Exhibit B*.
10. Plaintiff informed Defendant that his 2005 tax return suggested that he did not live alone.
11. Defendant met with Mr. Lon Vernier and explained that he did live alone, offering an explanation of why his 2005 tax return might suggest otherwise.
12. Plaintiff, through Mr. Vernier, told Defendant orally that he needed to provide state identification showing that the individuals shown on his tax return did not live with him.
13. Defendant did not provide state identification information to Plaintiff.
14. Plaintiff, relying on a decision by Mr. Vernier, raised Defendant's rent to market rent of \$551 per month retroactively effective to August 2007.
15. Plaintiff served other notices on Defendant introduced into evidence as *Defendant's Exhibits C, D and E* and *Defendant's Exhibits I, J and K*.
16. Plaintiff did not serve any other written notices on Defendant.

Conclusions Of Law

The Court concludes that Plaintiff is not entitled to evict Defendant because it did not have good cause to raise his rent to "market rent" and without good cause to do that, it lacked good cause to evict him for failing to pay market rent. The parties do not dispute that Plaintiff determined that Defendant's rent would be raised to "market rent" of \$551 per month, applied retroactively beginning in August 2006, that Defendant did not pay that market rent and that Plaintiff served a 10-day notice and 3-day notice to vacate on Defendant. *Defendant's Exhibit J and K*. The question for the Court is whether Plaintiff had good cause to raise Defendant's rent to market. The Court concludes that Plaintiff did not. The Court therefore grants judgment to Defendant on Plaintiff's first cause of action.

I. The Legal Issue Under Review

The overall question of law that this case presents is whether Plaintiff had good cause to evict Defendant. As a landlord of a project-based section eight program, Plaintiff must have good cause to evict a tenant. 24 C.F.R. § 880.607. Plaintiff argues that it had good cause because it correctly followed a two step procedure under federal regulations. First, it determined that it had good cause to raise Defendant's rent to market rent. It notified Defendant that he had the obligation to provide information to allow Plaintiff to determine the correct amount of his rent, provided him with the opportunity to provide that information and finally, having determined that he failed to provide the required information, began to charge him the "market rent" for his unit. Second, it served him with a notice for failure to pay that "market rent." Defendant argues that the first decision was wrongful because he did provide the required information. He does not dispute that he did not pay the "market rent."

The first issue for the Court is how to analyze this two step procedure. HUD regulations and procedures allow a project based section eight landlord to begin to charge an "economic rent" (or "market rent") if a tenant fails to provide the information the landlord needs to recalculate the tenant's share of rent. *Beckham v. New York City Housing Authority* (1985), 755 F.2d 1074, 1088 (2nd Cir.). The *Beckham* court found nothing in federal statutes or regulations that prevented the practice and judged it to be "a reasonable and practical method of calculating rent to be used in a situation not covered by the statute or by the regulations." *Id.* at 1079-1080. The court found the practice less draconian than terminating a tenancy and evicting a tenant for failing to provide the required information. *Id.* The practice can only be said to be reasonable and less draconian, however, if a tenant continues to have the right to dispute the landlord's determination that he failed to provide required information.

A landlord can evict a tenant for refusing to provide required information. *Trumbull Metro. Hous. Auth. v. Reid* (1987), 1987 WL 18019 (11th Dist.). A landlord can also evict a tenant for providing inaccurate information but only if the tenant was fraudulent. *U.S. Department of Housing and Urban Development, Occupancy Requirements of Subsidized Multifamily Housing Programs Handbook*, 4350.3 (Nov. 1981) as amended June and Sept. 1992 ("HUD Handbook 4350.3") at ¶¶ 5-18 to 5-22. The HUD Handbook 4350.3 is not identical to the current HUD Handbook quoted below from http://www.quadel.com/pdfs_03/qhdbk.pdf ("HUD Handbook"). A landlord can evict a tenant for nonpayment of a recalculated rent but the tenant's failure to pay that amount of rent is not good cause for eviction if the amount was improperly calculated. *Amherst Village Mgmt. v. Vestal* (2000), 2000 WL 1595719 (6th Dist.).

To preserve these tenants' rights, the two step procedure of raising a tenant's rent to market rent, then evicting for nonpayment of that rent, must allow a tenant to challenge in an eviction proceeding the basis for the landlord's decision to raise the rent to market rent. Only that conclusion preserves the tenant's constitutional due process rights. Even a tenant who has exhausted or abandoned the grievance procedure mandated by federal

regulations continues to have a due process right to challenge in court a landlord's finding of good cause. 24 CFR §§966.55(c), 966.55(e)(2), 966.56(d), 966.57(c). *Hunter v. City of Des Moines Mun. Housing Auth.* (2006), 2006 WL 2692591 (Iowa Court of Appeals).

The issue before the Court, then, is whether Plaintiff had good cause to increase Defendant's rent to market rent based on its determination that he had failed to provide required information or had fraudulently provided inaccurate information. The Court concludes that Plaintiff did not have good cause to increase Defendant's rent to market rent.

II. Plaintiff Lacked Good Cause To Raise Defendant's Rent To Market Rent

A. Defendant Provided Sufficient Information To Allow Plaintiff To Recalculate His Rent

Plaintiff argues that Defendant prevented it from recalculating the rent he should pay under HUD regulations because he did not provide required information about his income and family size. But Plaintiff's own witnesses testified that Defendant did provide all the required information. What Plaintiff objected to was the extent to which Defendant had provided verification of the information. The Court will consider that issue after reviewing the evidence supporting the conclusion that Defendant did provide the required information.

Defendant's first contacts were with Melissa Fort, an employee of the management company that Plaintiff uses to oversee its compliance with HUD regulations. Defendant came to see Ms. Fort to complete his annual recertification, that is, the process of providing information that would allow Plaintiff to recalculate his rent. Defendant provided his employer information so that Ms. Fort could obtain information directly from his employer about his income. But Defendant's employer did not respond. Ms. Fort then asked Defendant to bring in pay stubs from his job. Defendant brought in five pay stubs, copies admitted into evidence as *Defendant's Exhibit A-1 to A-5*. The stubs were for five half-month pay periods, the three most recent and consecutive pay periods, May 1 to May 15, May 16 to May 31 and June 1 to June 15, constituting slightly more than six weeks, and two earlier pay periods, February 15 to February 28 and March 1 to March 15, not consecutive with the most recent periods because of the gap from March 16 to April 30. Thus, the information covered five pay stubs from non-consecutive pay periods. Ms. Fort testified that she considered the documents inadequate because they did not represent "6 to 8 consecutive pay stubs" from the most recent pay periods as required by the HUD Handbook. Plaintiff did not introduce a copy of the HUD Handbook into evidence. But the *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs Handbook (4350.3 REV-1)* ("HUD Handbook") is published at http://www.quadel.com/pdfs_03/qhudbk.pdf. Defendant also provided pages from the HUD Handbook with his post-trial brief.

The Court initially notes that the HUD Handbook is published to provide guidance to landlords concerning their compliance with federal regulations. It does not by itself impose any legal obligations. It states, for example, that "[o]btaining accurate verification through a review of documents requires the owner to consider: b. Is the documentation complete?" HUD Handbook at 5-51. This language makes it clear that landlords are to use discretion in applying HUD regulations, treating the Handbook as a guide, not an inflexible set of requirements. In addition, the HUD Handbook does not state that a landlord must verify income from "six to eight consecutive pay stubs." It provides that "Owners may not accept pay stubs to document employment income unless the applicant or tenant provides *the most recent four to six weeks* of pay stubs to illustrate variations in hours worked." *Id.* (emphasis added). Defendant clearly did provide the "the most recent . . . six weeks of pay stubs" when he provided pay stubs for the periods from May 1 to June 15, 2006, a period slightly longer than six weeks. Defendant provided with his post-trial brief a copy of Appendix 3, p. 8 of the HUD Handbook which does state under "Verification Tips": "Require most recent 6-8 consecutive pay stubs." Where a "tip" is included to summarize a guideline but is somewhat different, a landlord should follow the guideline not the tip.

Plaintiff was also wrong to conclude that it could not accept the five pay stubs as verification of Defendant's income for the last six pay periods. The three recent stubs contain year-to-date information for 2006 as do the two earlier pay stubs. Plaintiff could therefore verify the amount of income from the three intervening pay periods and for all the earlier 2006 pay periods. Ms. Fort and Mr. Lon Vernier both testified that they understood that the reason the pay stubs needed to be consecutive was to ensure that a tenant would not be able to misrepresent his or her income by bringing in only stubs from weeks with less income. The year-to-date information on the pay stubs was sufficient to meet this goal. It made the information complete even if the form of the information was not the form suggested by the Handbook. Plaintiff could also have allowed Defendant to bring in the next three consecutive pay stubs so that he would have six consecutive stubs, adding the period June 16 to July 30, 2006 to the period May 1 to June 15 for a total of six stubs and twelve weeks. Defendant could have done this before his annual recertification August 1, 2007. Plaintiff could also have accepted from Defendant a notarized statement that the nonconsecutive pay stubs were representative. In the very next section, the Handbook allows "An owner may accept a tenant's notarized statement regarding the veracity of information submitted if the information cannot be verified by another acceptable verification method." HUD Handbook at 5-52. Surely the five non-consecutive pay stubs, with the year-to-date information and a notarized statement from Defendant, would have been the equivalent of the five consecutive pay stubs.

Plaintiff's management company was not completely inflexible. Ms. Fort asked Defendant to provide his income tax information to verify his annual income. Defendant did provide this information. At this point, Ms. Fort's participation ended. She referred Defendant to her supervisor Ms. Gonzales. Ms. Gonzales testified at trial that Defendant's tax information allowed Plaintiff to verify his income but raised questions about his family size. Defendant's tax return, *Defendant's Exhibit B*, lists two dependants: "Preston Robinson" and "Camron Conwell" and states on the Earned

Income Credit Form that Camron Conwell lived with Defendant in 2005. Ms. Fort and Ms. Gonzales testified that they understood that the Earned Income Credit form might refer to Defendant's daughter (though it states that Camron Conwell is Defendant's nephew). Ms. Gonzales testified that a form in Defendant's file made her think that his daughter lived with him. However, Ms. Gonzales did not speak to Defendant about whether his daughter or either of the persons listed on his tax return was currently living with him. She referred this issue to her supervisor Lon Vernier. Mr. Vernier met with Defendant concerning this issue, the last issue Defendant needed to resolve to complete his recertification.

Mr. Vernier testified that he met with Defendant who told him that neither of the two individuals listed on his 2005 tax return lived with him. Defendant told Mr. Vernier that he had hoped to have his daughter move in with him into a two bedroom unit but that Defendant had not been approved for a two bedroom so his daughter never moved in. Defendant also explained to Mr. Vernier that neither of the dependents listed on 2005 his tax return lived with him. The tax return itself states only that Camron Conwell lived with Defendant. Defendant testified to the Court that Preston Robinson was listed on the tax return by mistake because the tax preparer used a prior year's return as a draft for the 2005 return. Defendant also testified that he has custody of his nephew Camron, who was at Central State University in 2005, and that he was entitled to claim him on the Earned Income Credit form. Mr. Vernier testified that Defendant's explanation of his tax return was acceptable. It thus follows that Plaintiff has sufficient information to recalculate Defendant's rent. It knew his income and his family size.

Given this conclusion, Defendant's conduct is clearly distinguishable from the conduct at issue in *Beckham v. New York City Housing Authority* (1985), 755 F.2d 1074, 1088 (2nd Cir.). The plaintiffs in that case had failed to provide information necessary to allow their landlord to recalculate their rent. Defendant did not fail to provide such information. To the contrary, he provided all the income information that Plaintiff requested even though some of the requested information was unnecessary. Plaintiff therefore lacked good cause to raise Defendant's rent to market rent and cannot evict him for failing to pay that market rent.

B. Plaintiff Lacked Good Cause To Determine That Defendant Had Not Provided Proper Verification Of His Family Size

Plaintiff's representative, Mr. Vernier, concluded that Defendant had provided an acceptable explanation of his family size. Having concluded this, Mr. Vernier should have told Ms. Fort to calculate Defendant's rent based on his living alone and having the income estimated from his tax return. But Mr. Vernier did not take this step. He testified that, instead, he made the "business decision" to change Defendant's rent to market rent based on his conclusion that Defendant had been deceptive. He called the listing of the dependents on Defendant's tax return a "discrepancy" and said that Defendant had been "selective" in providing non-consecutive pay stubs. He said Defendant was not cooperating with his staff and that there was insufficient information to calculate Defendant's rent. Mr. Vernier reached these conclusions and made this decision despite

the fact that Ms. Fort and Ms. Gonzales had both concluded that Defendant had provided sufficient income information in the form of his tax return and needed only to account for the question of whether he lived alone.

The Court concludes, for two reasons, that Plaintiff lacked good cause under these circumstances to raise Defendant's rent to market rent. First, the lack of verification of family size did not constitute good cause. Second, Plaintiff failed to provide a termination notice stating that this failure was the underlying grounds for its decision to evict Defendant.

1. Defendant's Failure To Provide State Identification Showing That Cameron Conwell Did Not Live With Ilim Was Not Good Cause For Plaintiff To Raise His Rent To Market Rent

Mr. Vernier stated that he accepted Defendant's explanation about the fact that he lived alone but wanted Defendant to verify that the individuals did not live with him by providing state identification that showed that they resided elsewhere. It would seem Plaintiff is arguing that it had good cause to raise Defendant's rent to market rate because he did not comply with this request. The Court disagrees for five reasons. First, the Court concludes that Defendant had no obligation to provide this particular form of documentation. The HUD Handbook suggests that a landlord can require a tenant to provide documentation of family size only if the owner has a clear written policy to do so. HUD Handbook at Appendix 3, p. 9. In such a case, twelve acceptable sources of verification are listed, only one of which, drivers' licenses, is a state identification. *Id.* The Handbook thus contemplates that most landlords will not require any verification of family size apart from the tenant's own statement. Second, the Court concludes that a tenant's inaccurate statement of family size must be fraudulent to constitute good cause to terminate the tenancy. *HUD Handbook 4350.3* at ¶¶ 5-18 to 5-22. Allowing a landlord to raising a tenant's rent to market rent based on a failure to verify family size would allow the landlord to presume not only that the tenant's information was inaccurate but that the tenant was willful in providing the inaccurate information. Third, the Court concludes that a tenant is entitled to notice from his or her landlord if the landlord has determined that the tenant has misrepresented his or her family size so that the tenant can dispute the landlord's determination. Allowing a landlord to raise the tenant's rent to market rent for a failure to verify family size denies the tenant this due process right. Fourth, the Court concludes that Defendant was entitled to notice from Plaintiff that the basis for its decision to raise his rent to market was Defendant's failure to provide the state identification for the two family members listed on his 2005 tax return. This notice would have allowed Defendant to continue his efforts to provide Plaintiff with the information it was seeking. Fifth, the Court concludes that a landlord cannot raise a rent to market rent based on a failure to verify income or family size when the landlord can calculate the rent. In such a case, the landlord must charge the recalculated rent. The landlord's remedy, if tenant does not provide the required verification, is to serve a notice terminating the tenancy based on the tenant's failure to provide the information. The tenant can then defend by arguing that it complied with

verification requirements or that the missing requirements are not a material breach supporting good cause to evict the tenant.

For these reasons, Plaintiff was not entitled to raise Defendant's rent to market rent based on his failure to provide state identification verifying his family size.

2. Plaintiff's Notice Of Termination Failed To State With Specificity That The Reason It Had Raised Defendant's Rent To Market Rent Was His Failure To Provide State Identification Verifying His Family Size

A notice of termination in a federally subsidized assisted housing program must state with specificity the reason for the proposed termination of tenancy. 24 C.F.R. §966(l)(3)(ii). *Associated Estates Corp. v. Bartell* (1985), 24 Ohio App. 3d 6, 492 N.E.2d 841 (8th Dist.); *Owner's Mgmt. Co. v. Stern* (1995), No. 67445, 1995 WL 23152, at *2 (8th Dist.); *Cuyahoga Metro. Hous. Auth. v. Younger* (1994), 93 Ohio App. 3d 819, 639 N.E.2d 1253 (8th Dist.). The purpose of requiring specifics is to "insure that the tenant is adequately informed of the nature of the evidence against him so that he can effectively rebut that evidence." *Associated Estates Corp. v. Bartell*, 24 Ohio App. 3d 10, 492 N.E.2d 846 (Cuyahoga Cty. 1985) quoting *Escalera v. New York City Housing Authority* (C.A.2, 1970), 425 F.2d 853, 862, certiorari denied (1970), 400 U.S. 853, 91 S.Ct. 54, 27 L.Ed.2d 91. Plaintiff's notice fails in this respect. It makes no mention of the basis for Plaintiff's decision to raise Defendant's rent to market rent.

For the reasons stated above, the Court has concluded that the two step procedure of raising a tenant's rent to market rent, then evicting for nonpayment of that rent, must allow a tenant to challenge in an eviction proceeding the basis for the landlord's decision to raise the rent to market rent. It follows that the notice of termination for nonpayment of that rent must specifically state the reason the landlord raised the tenant's rent to market rent. Otherwise, a tenant can never be prepared to defend against the landlord's evidence of good cause for its decision to raise the rent.

The circumstances of this case make it painfully clear why a tenant needs notice of a landlord's reasons. Defendant met with three representatives of the company Plaintiff hired to manage its HUD compliance and made good faith efforts to provide his income information in three separate ways, through a third party verification (his employer failing to follow through), through pay stubs (that were sufficient even if Plaintiff's representatives did not think so) and finally through his personal tax return. It is hardly fair to ask such a tenant to prepare to defend his constitutionally protected substantial interest in a federal public subsidy with notice only that the end result of this complex process was Plaintiff's conclusion that Defendant had breached his lease through "nonpayment of rent." *Defendant's Exhibit J*.

A landlord may not cure the lack of specifics in a notice by explaining the specific reasons to the tenant in a later meeting. *Mt. Olive-Metro Hous., Inc. v. Craft*, No. 93-G-2858, slip op. at 7 (Mun. Ct. Cuyahoga Falls, Feb. 28, 1994). A landlord may not cure a

defective notice by subsequently providing an affidavit with more specific language. *S&F Mgmt. v. Horvath*, No. 98-CVG-25253 (Mun. Ct. Cleveland, May 6, 1999). Nor can the notice cannot rely on its own reference to other written notices as a way to provide the required specific information. *Cuyahoga Metro. Hous. Auth. v. Younger* (1994), 93 Ohio App. 3d 826, 639 N.E.2d 1257 (8th Dist.). (Even were this allowed, Plaintiff's earlier notices concerning recertification were themselves insufficient stating only that Plaintiff would raised Defendant's rent to market if he did not "provide . . . information" to complete his recertification. *Defendant's Exhibits C, D and E*. This language is too vague. The Court also concludes that a conditional notice is insufficient because it fails to inform a tenant that the landlord has determined that the tenant has failed to meet his obligation and thus made the final decision to terminate the tenancy or raise the tenant's rent to market rent.) A landlord can attempt to prove that the background circumstances of the case enable the tenant to understand a notice that might otherwise be too vague. *Northland Village Apts. v. Hamp* (1991), No. 12407, 1991 WL 108717 (2nd Dist.). *Forest City Mgmt., Inc. v. Tackett* (2002), 148 Ohio App. 3d 667, 775 N.E.2d 555 (11th Dist.). But here the opposite is true. Plaintiff's representatives left Defendant without any clear understanding of what it was specifically that drove their decision to raise his rent to market rent.

Plaintiff is not entitled to evict Defendant because it failed to serve him with a notice that stated with specificity the reasons behind the eviction.

III. Plaintiff Cannot Rely On Grounds Other Than Those Stated In Its Notice And Complaint

Landlords who receive federal subsidies may not rely on any ground for eviction that is not stated in the notice of termination unless the landlord lacked knowledge at the time the notice of termination was sent. 24 C.F.R. § 247.6(b). *Owners Mgmt. Co. v. Moore* (1996), 111 Ohio App. 3d 820, 677 N.E.2d 400 (6th Dist.); *Vistula Mgmt. Co. v. Singleton*, No. CVG-94-12643 (Mun. Ct. Toledo, Nov. 29, 1994); *Showe Mgmt. Corp. v. Stover*, No. M9306-CVG-17876 (Mun. Ct. Franklin Cty. Aug. 23, 1993). A landlord must also rely only on the grounds for eviction stated in the complaint. *M.L.R. Props., Inc. v. Baer* (1986), 1986 WL 6703, at *3 (6th Dist.); *Camry Gardens Park & Sales, Inc. v. Roe*, No. M8109-CVG-027176 (Mun. Ct. Franklin Cty. Nov. 6, 1981); *Inner City Hous. v. Sebastian*, No. 81-CV-15029 (Mun. Ct. Hamilton Cty. June 29, 1981). Plaintiff raised at trial issues that were not stated in the notice of termination or the complaint. Plaintiff's counsel suggested in closing that Defendant misstated his income because his pay stubs did not report sufficient tip income. Plaintiff did not lack knowledge of this issue when it served its notice and did not include it in the complaint. Plaintiff also presented no evidence that Defendant had ever failed to report tip income. Plaintiff's witness, Mr. Vernier, testified that Defendant had been deceptive or fraudulent in providing his income information. Plaintiff did not lack knowledge of this issue at the time it served the notice and did not include it in the complaint. Plaintiff also failed to prove any such thing. The Court concludes that Defendant was in good faith throughout the process of providing information about his income. Plaintiff also presented testimony that Defendant had failed to abide by a lease requirement that he not

install his own lock on the door of his apartment. Plaintiff knew about this issue when it served its notice and did not include it in its complaint.

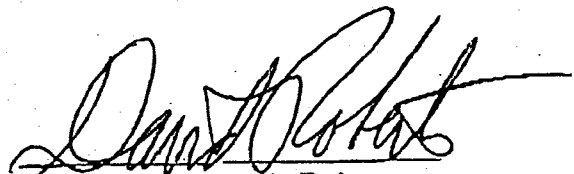
V. Conclusion

Plaintiff failed to prove that it had good cause to raise Defendant's rent to market rent either because of a lack of income information or lack of income verification or lack of verification of family size. Plaintiff also failed to prove that it provided Defendant with a notice stating specifically the grounds for raising his rent to market rent when it was evicting him for failing to pay that market rent.

Decision

The Court grants judgment to Defendant on Plaintiff's first cause of action. Plaintiff is ordered to recalculate Defendant's rent and to present to the Court a proposed schedule of rent payments based on Defendant's current rent obligation and his past due rent obligation. *Mazzarella v. McGinnes* (1991), 1991 CVG 30291 (Cleveland Mun. Ct.). The Court may adopt or modify the schedule into an order to Defendant concerning his future rent obligation.

To the extent that this decision will support Plaintiff's application for a subsidy from the U.S. Department of HUD based on Defendant's tenancy, Plaintiff is encouraged to forward a copy to HUD for its consideration.



Magistrate David D. Roberts

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.