

IN THE MUNICIPAL COURT OF TOLEDO, LUCAS COUNTY, OHIO  
Housing Division

FILED  
MAY 23 1994

Vistula Management Company,

Plaintiff,

vs.

Michelle Singleton,

Defendant.

REFEREE'S REPORT

Case #CVG-94-12643

REFEREE

Susan Hartman Muska

NATL.  
FOR EQUAL JUSTICE, INC.

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This matter came on for hearing before the Referee on November 14, 1994 upon Plaintiff's complaint for a writ of restitution of the premises located at 2275 Kent, Toledo, Ohio. Plaintiff was represented by Douglas A. Wilkins. The Defendant was represented by Thomas Goodwin.

After hearing all of the testimony, viewing all of the evidence presented, and weighing the credibility of each, the Referee makes the following findings of facts and recommendation.

1. Plaintiff, Vistula Management Company, manages a complex known as Moody Manor Apartments, including the unit located at 2275 Kent Street, Toledo, Ohio.
2. Michelle Singleton is a tenant at 2275 Kent Street under a written lease with Plaintiff.
3. Defendant's tenancy is subsidized under the Section 8 program under which Plaintiff receives a rent subsidy from the Department of Housing and Urban Development.
4. Defendant's lease with Plaintiff began February 1, 1993. Since February 1, 1994, the tenancy has continued for successive terms of one month each, until Plaintiff's service of a notice of termination of lease dated August 12, 1994.
5. The parties stipulate that Exhibits A, B and C attached to Plaintiff's complaint, consisting of the written lease, the notice of termination of tenancy dated August 12, 1994 and the notice to leave premises dated September 12, 1994 are true and accurate copies of the originals and that notices were duly served upon Defendant on the dates noted thereon.

6. Those notices assert that on April 26, 1994 and May 16, 1994 Steven Ford broke the patio door at Defendant's unit, and that on July 4, 1994, he broke the kitchen window. The notices describe Steven Ford as a "visitor".
7. Defendant acknowledges that on April 26, 1994 Steven Ford came to her back patio while she was sitting in her house; that she would not let Mr. Ford in, and that her company quickly left. Ms. Singleton also acknowledges that Ford struck at the patio door three times before it broke. As soon as he broke through the back patio door, she ran out the front door.
8. Kathy Keane, the Assistant Manager of Moody Manor, was not present at the apartment on April 26, 1994. Plaintiff offered no evidence to support its contention that Steven Ford was a "visitor" or was at the premises on April 26, 1994 at Michelle Singleton's invitation or with her consent.
9. Kathy Keane was not present at Ms. Singleton's apartment on May 16 or July 4, 1994. Singleton became aware of her broken window in May when a friend came over to visit. She immediately called 911. In July, Singleton was at a friend's house when the window was broken. Upon learning that the window had been broken, Singleton again called 911.
10. From the testimony presented, the Referee is unable to find that the tenant invited Steven Ford to her home on April 26, 1994, on May 16, 1994 or on July 4, 1994, or that he was present at her premises on any of those dates with her consent. The Referee finds that at the times of the incidents complained of, Defendant had no control over the actions of Steven Ford, and that the damage was not caused by her carelessness, misuse or neglect, and that the Defendant is therefore not in violation of paragraphs 10, 11 and 23 of the Lease.
11. The notices also set out two other grounds for eviction: "failure to use dwelling as your only residence" and "violating the peaceful enjoyment of neighbors/tenants".

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12. Neither of these grounds is stated with the specificity that the federal regulations and procedural due process require because they state the reasons in broad language and without referring to specific instances. Associated Estates Corp. v Bartell, (1985), 24 O App 3d 6, 492 NE 2d 841 (Cuyahoga County). For that reason the Notice as to these grounds is found defective and the testimony on these issues is not admissible.<sup>1</sup>
13. Exhibit C, the notice to leave premises served upon Defendant on September 12, 1994 to vacate by September 15, 1994, contains additional grounds for eviction. However, since those grounds were not set forth in the notice of termination of lease, they are not admissible, as paragraph 23(d) of the Lease requires a landlord to rely only upon those grounds cited in the termination notice if an eviction is initiated.
14. Plaintiff offered evidence that Defendant failed to pay the cost of repairs to the broken windows. Plaintiff seemed to argue that this is a breach of paragraph 11(a) of the Lease, thereby entitling Plaintiff to possession of the premises. However, these grounds are not cited with specificity in the termination notice. For this reason Exhibit D and the testimony about payment or non payment of the cost of repairs is inadmissible. See paragraph 23(d) of the Lease.

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<sup>1</sup>Kathy Keane testified that during a meeting with Singleton on July 7, 1994, Defendant said she had not been residing at her residence for "eight months" because of her fear of Steven Ford. Defendant, however, testified that at the time of the occurrence of the first event, April 26, 1994, she was sitting in her house. It is unclear from her testimony whether her friend came over to visit with her at the Kent Street Address or at some other location in May, 1994, the date of the second incident. One can draw no conclusions as to whether she was living at her apartment in July, the date of the third incident, from her statement that she was at her friend's house when her grandmother notified her that her window had been broken.

It is precisely for this reason that the federal regulations and procedural due process require Plaintiff to state the grounds with particularity. It is impossible to tell from the broad allegation in Plaintiff's notice to leave premises whether Plaintiff was alleging that the Defendant had not resided at her residence for eight months or for some shorter period of time.

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15. Having found that Michelle Singleton is not responsible for Steven Ford's actions at her premises on April 26, May 16, and July 4, 1994 and having found that Plaintiff has failed to comply with the procedural due process requirements in order to assert other violations of paragraphs 11, 13 and 23 of the Lease, the Referee concludes that Plaintiff is not entitled to restitution of the premises and recommends that the writ of restitution be denied.

Date:

November 18, 1994

*Susan Hartman Muska*  
Referee Susan Hartman Muska

The Court hereby adopts the Referee's Findings of Fact and Conclusion of Law, and the Referee's Recommendation is hereby made the order in this case.

Date:

11-28-94

*R. W. Walker*  
Judge