

IN THE FRANKLIN COUNTY MUNICIPAL COURT  
 COLUMBUS, OHIO

COLUMBUS METROPOLITAN HOUSING AUTHORITY:  
 Plaintiff,  
 v.  
 KIMBERLY JOHNSON, ET AL.,  
 Defendants.

Case No. M9201CVG-00579

REFEREE'S REPORT

This matter came for hearing before Referee Kathleen E. Graham on February 4, 1992. Plaintiff was represented by attorney John Waddy. Defendant was represented by Molly Hennessey of the Legal Aid Society of Columbus. Defendant's Motion for a Continuance was overruled. The trial was delayed approximately one hour to permit defendant Kimberly Johnson and her attorney to speak with prospective witnesses for plaintiff.

The parties agreed that the basis of the eviction proceeding would be limited to claims of unauthorized occupants. Defendant's Motion in Limine to restrict evidence to the alleged unauthorized occupancy by Patricia Harris was overruled. The parties further stipulated that the lease agreements attached to the Complaint reflected the agreement between the parties. The parties further stipulated that all notice required by federal law to terminate the tenancy based upon the grounds alleged had been properly served upon defendant.

A court reporter was present. All witnesses were sworn. Plaintiff's Exhibit 5 was admitted into evidence.

Based upon the evidence presented the referee recommends the following Findings of Fact, Conclusions of Law and Recommendation:

FINDINGS OF FACT

1. Defendant occupies the premises located at 825 Buchanan Drive, Apartment B, in Columbus, Franklin County, Ohio, pursuant to a written "Dwelling Lease". The premises is federally subsidized housing. Defendant has lived at Sullivant Gardens most of her life. Defendant, who is approximately 18 years old, took possession in August 1991 with her two children. Defendant and her two children were the only ones authorized to live in the apartment.

2. Sometime shortly after defendant moved in, Defendant's friend, Patricia Harris, moved into defendant's apartment with her two small children. Defendant and Ms. Harris had known each other since defendant was 10. They watch each other's children on a regular basis and do many things together which relate to the raising of their children, like laundry, grocery shopping, etc.

3. Ms. Harris moved in with defendant at that time because she had been involved in a domestic dispute. Local police had suggested that Ms. Harris find another place to live. Ms. Harris lived with defendant for approximately two weeks.

4. On or about August 19, 1991 the fact that Patricia Harris had been living in the unit in violation of the lease agreement came to the attention of the property manager at Sullivant Gardens, Tonya Harden. Ms. Harden had a conference with defendant and advised her that Ms. Harris could not live at the apartment with defendant.

5. In late August 1991, defendant told Ms. Harris she could not live with defendant any longer. Ms. Harris left and went to live with another friend. Ms. Harris did not live with defendant after that time, but was a very frequent visitor to defendant's apartment. Ms. Harris

never received any mail addressed to her at defendant's apartment nor did she have any furniture in defendant's apartment.

CONCLUSIONS OF LAW

A. A party who brings an action and claims that certain facts exist has the duty to prove those facts by a preponderance of the evidence. This is called the burden of proof. "Preponderance of the evidence is the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it." 1 Ohio Jury Instructions (1983), Section 3.50, at 139.

B. Plaintiff alleged that defendant violated the terms of the lease by permitting an unauthorized "occupant" in the apartment. The term "occupant" implies a sense of permanency -- someone living in the apartment -- making it their home for a period of time.

C. Defendant admitted that Patricia Harris did live at her apartment in August 1991, but denied that she lived there after she told Ms. Harris to leave at the end of August. Plaintiff proved that defendant violated the terms of the lease agreement, based upon that short stay by Ms. Harris. However, the court should take into consideration defendant's age, her relationship with Patricia Harris and the circumstances under which Ms. Harris came to live with defendant. the court should invoke its equitable authority to avoid a forfeiture of the leasehold for a minor breach.

D. Plaintiff alleged that Ms. Harris has been living with defendant since August through at least as late as early December 1991. Weighing the evidence and the credibility of the witnesses, this referee must conclude that the plaintiff failed to prove that Ms. Harris had been living with defendant after August 1991. The testimony of both Reverend

William Wright and Mark Chandler, which was offered by plaintiff, although credible, was not specific enough to support a finding that Ms. Harris was an occupant rather than just a frequent visitor to the premises.

RECOMMENDATION

Judgment in favor of defendant on the First Cause of Action only. Costs to plaintiff.

February 13, 1992

Copies to:


John Waddy  
P. O. Box 29007  
Columbus, Ohio 43229

ATTORNEY FOR PLAINTIFF

Molly Hennessey  
Legal Aid Society  
40 West Gay Street  
Columbus, Ohio 43215

ATTORNEY FOR DEFENDANTS

KEG:dm



REFeree KATHLEEN E. GRAHAM