

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

ROCKEFELLER PARK TOWERS, LTD.

DATE: JANUARY 3, 2006

Plaintiff(s)

-VS-

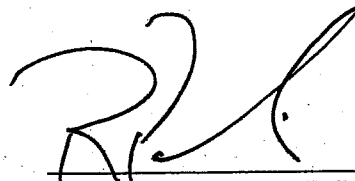
CASE NO.: 05-CVG-24239

MELTON WHITE

Defendant(s)

JUDGMENT ENTRY

After review, the magistrate's decision is approved and confirmed. Plaintiff having failed to serve a proper notice of termination, judgment is entered for defendant on plaintiff's complaint for restitution of the premises.



JUDGE RAYMOND L. PIANKA
HOUSING DIVISION

A copy of this Judgment Entry was sent by regular U.S. mail to counsel for the parties on 1 / 5 / 06.

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MAGISTRATE'S DECISION

- {1} Trial in this case was held on December 12, 2005, before Magistrate Barbara A. Reitzloff, to whom this case was referred by Judge Raymond L. Pianka, to take evidence and issue a decision on plaintiff's complaint for restitution of rental premises.

Findings of Fact:

- {2} Plaintiff Rockefeller Park Towers, Ltd. is the landlord of the multi-unit residential rental premises located at 1588 Ansel Road, Cleveland, Ohio 44106.
- {3} Defendant Melton White occupies Apartment No. 501 as a tenant of Rockefeller Park pursuant to a written lease.
- {4} Mr. White's tenancy is federally subsidized.
- {5} Mr. White's sole source of income is Social Security benefits.
- {6} Mr. White's Social Security benefits were increased in September 2004. This increase was less than \$200.00 per month.
- {7} In November 2004 Mr. White received a letter from the Social Security Administration ("SSA"), notifying him that his monthly benefits again would increase in January 2005.
- {8} The proposed monthly increase in benefits was more than \$200.00.
- {9} The parties disagree about whether Mr. White notified Rockefeller Park in 2004 of the proposed January 2005.
- {10} Mr. White testified that he submitted a copy of the letter from the SSA to the management office in November 2004. This testimony, however, was inconsistent with other testimony offered by Mr. White, who at one point testified

that he only told Rockefeller Park about the increase in 2005 because he "knew they were going to find out."

- {11} Property manager Veronica Youngblood testified that no such document had been received, but acknowledged that this was based primarily upon a review of her file. She acknowledged that there is no process by which tenants can get a receipt for documents submitted.
- {12} Based upon the credibility of the witnesses, their demeanor when testifying, and degree of internal consistency of the testimony of each, the Court concludes that Mr. White did not notify Rockefeller Park of the anticipated increase in 2004.
- {13} Mr. White's annual recertification was to be completed by August 2005.
- {14} Rockefeller Park began the recertification process in April 2005.
- {15} As part of the recertification process, in April 2005, Mr. White signed a form authorizing the SSA to release information about his benefits to Rockefeller Park.
- {16} In June 2005, Rockefeller Park received notice from the SSA that Mr. White's benefits had increased in September 1, 2004, and again in January 2005.
- {17} The January 2005 increase was greater than \$200.00 per month, and so was significantly large to trigger both a duty on behalf of Mr. White to notify Rockefeller Park, and an increase in Mr. White's rent.
- {18} Rockefeller Park sent a letter to Mr. White on June 10, 2005 notifying him that his rent was being increased based upon the increase in his benefits.
- {19} The increase, according to the letter, was retroactive to January 1, 2005. The amount of the retroactive increase to be paid was \$366.00; in addition, Mr. White's monthly rent was to increase to \$164.00.
- {20} In the letter, Rockefeller Park gave Mr. White thirty days to pay the past due amount and become current in his rent.
- {21} In July 2005, Mr. White submitted a payment of \$164.00 to Rockefeller Park. Rockefeller Park returned the payment to Mr. White.
- {22} No other payments were submitted.
- {23} On August 31, 2005, Rockefeller Park served Mr. White a ten-day Notice of Termination, citing nonpayment of rent arrearages as the basis for the proposed termination.
- {24} On September 14, 2005, Rockefeller Park served Mr. White a three-day Notice to Leave Premises containing the mandatory R.C. 1923.04 language.
- {25} After service of the notices, no rent was tendered by Mr. White or accepted by Rockefeller Park.

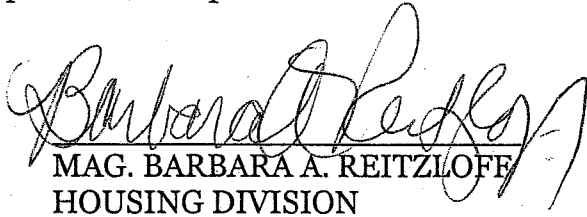
Conclusions of Law

- {26} Rockefeller Park is asking the Court to grant an order evicting Mr. White from the premises based upon his alleged non-payment of rent. As a tenant in federally subsidized housing, Mr. White is entitled to written notice of the proposed termination of his tenancy. The notice of proposed termination must set forth the grounds for the termination with sufficient specificity for the tenant to prepare a defense. 24 CFR 247.4(a); HUD Handbook 4350.4, Section 8-13(B),(C)(2)(c). For example, a notice of proposed termination for nonpayment of rent that includes the dollar amount of the rent due and the date of computation is sufficiently specific to satisfy the requirement. 24 CFR 247.4(e); HUD Handbook 4350.4, Section 8-13 (C)(2)(e).
- {27} Changes in tenant income may prompt changes in rent. An increase in the tenant's income of \$200.00 or more per month triggers the tenant's obligation to report the change to the landlord, and may trigger a rent increase.
- {28} In this case, the parties agree that the September 2004 increase in Mr. White's benefits were less than \$200.00 per month, and so did not need to be reported; similarly, the parties agree that the January 2005 increase was more than \$200.00, and triggered the duty to report.
- {29} It is undisputed that by June 2005, Rockefeller Park had in its possession information about the January 2005 increase. The date when Rockefeller Park first received this information remains in dispute. Rockefeller Park asserts that it did not receive the information until June 2005; Mr. White claims that he supplied it in November 2004. As indicated in the findings of fact, the finding made in this case is that Mr. White did not provide the information until June 2005.
- {30} The next issue to be determined is the effective date of the increase. If the increase was to be effective January 2005, then Rockefeller Park served Mr. White with an accurate notice of termination and is entitled to its eviction. If the increase, however, did not take effect until February 1, 2005, the notice served was inaccurate, and Mr. White must prevail.
- {31} Rent increases based upon increases in the tenant's income generally are preceded by thirty days notice to the tenant. HUD Handbook 4350.4, Section 7-13(C)(1). Should the tenant fail to report the increase in income in a timely manner, the tenant loses the benefit of the thirty day advance notice. Under those circumstances, the rent increase is retroactive to the first of the month following the date that the action causing the rent increase occurred. Section 7-13(D)(1)
- {32} Mr. White failed to report the increase in his income in a timely manner. Accordingly, the increase is to be retroactive to the first of the month following the date that the action causing the rent increase occurred. The action causing the rent increase was the increase in Mr. White's Social Security benefits, which occurred on January 1, 2005. Therefore, the increase was to take effect on the first of the following month, or February 1, 2005.

{33} Rockefeller Park served Mr. White with a notice of termination outlining rent due from January 1, 2005 in the increased amount. The assessment of the increase effective January 1, 2005 was an error, and led to the issuance of an inaccurate notice. Rockefeller Park, having failed to serve Mr. White with an accurate notice of termination, has failed to terminate Mr. White's tenancy. Accordingly, judgment on the plaintiff's complaint must be entered for Mr. White.

Magistrate's Decision:

{34} Judgment is entered for defendant on plaintiff's complaint.


MAG. BARBARA A. REITZLOFF
HOUSING DIVISION

A copy of this Magistrate's Decision was sent by regular U.S. mail to counsel for the parties on 1/15/06.



OBJECTIONS

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.