

IN THE WARREN MUNICIPAL COURT
WARREN, OHIO

FILED
JUL 1 2000

TRUMBULL METROPOLITAN
HOUSING AUTHORITY

)

CASE NO: 00 CVG 614

)

Plaintiff,

)

Vs.

)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

TANISHA REDD

)

Defendant,

)

FINDINGS

Case called. Plaintiff present represented by Attorney Swartz. Defendant represented by Attorney Nader.

Plaintiff's Complaint alleges Defendant violated the lease and the One Strike You're Out Policy, by having various drugs sold from her premises by authorized family members and other friends.

Plaintiff cited various dates and times when sales of cocaine were made from Defendant's residence to undercover agents. There is no indication that Defendant was actually present or took part in any sale except one referral to her as the "girlfriend".

Defendant denies she had any knowledge of the sales actually taking place, although she admits she allowed the people who were indicted to be in the premises.

Plaintiff has argued under the One Strike You're Out Policy, Defendant should be evicted and points out the difficulty in proving knowledge sometimes. Further, there is no requirement under the One Strike You're Out Policy for Plaintiff to prove knowledge.

Defendant has argued this Court has equity powers and this would be a great hardship to Defendant if she were evicted, along with her three children, one of which is a newborn.

Both sides have submitted cases to this Magistrate to review.

Plaintiff has cited a U.S. 9th Circuit Court of Appeals case, Rucker vs. Davis, which reversed the trial court decision and found that the Court had no discretion and must evict. There was a dissent.

Defendant filed a trial brief citing various cases including Syracuse Housing Authority vs. Boule, 658 NYS 2d 776, 172 Misc. 2d 254 (N.Y. City Ct. 1996) in which the Court refused to evict under HUD's "One-Strike Rule" based on similar facts as the instant case. Defendant also cited Cincinnati Metro Housing Authority vs. Foster, No. 97CV06298 (Ohio Mun. Ct. Hamilton Cty, Nov. 18, 1997) which did not allow the eviction because the tenant did not know and had no reason to know that a 17 year old member of her household would engage in a drug transaction.

My review of the case law shows a clear split in the decisions rendered. Further, there are no cases specifically from our Court of Appeals nor our Federal or Appellate District. I would encourage either side to have this issue reviewed so that we can receive direction from the appellate courts.

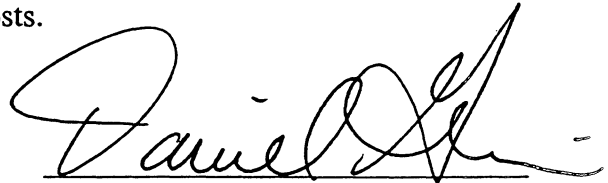
Having said that, I find that this Magistrate and this Court does have equity power and discretion to render decisions in this matter and, simply, does not have to accept the Housing Authority's Decision.

I find, in the instant case, that Plaintiffs have failed to prove that Defendant had any knowledge of the drug activity taking place. I, therefore, deny the eviction.

I am fully aware that it is difficult to prove Defendants, in these situations, are aware of what is going on and that they don't "simply turn their heads or close their eyes." However, eviction is a drastic and severe penalty. Defendant, in the instant case, is on notice of the results of her actions, especially if it occurs again. Further, I will look at the totality of circumstances in determining whether future evictions will take place. This means if individuals known to have been involved in drug-related activities are allowed in homes and/or to baby-sit, that fact will go far in the totality of circumstances involved in whether Defendants were aware of actions taking place in their residence.

MAGISTRATE'S DECISION

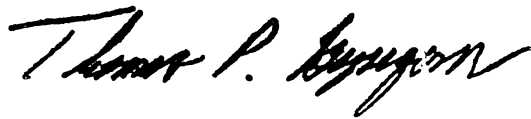
Magistrate dismisses case at Plaintiff's costs.



MAGISTRATE DANIEL GERIN

**MAGISTRATE'S DECISION APPROVED
AND ORDERED INTO EFFECT**

JUDGMENT ENTRY



JUDGE