

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
JUDGE RAYMOND L. PLANKA

W. McCuller
Plaintiff(s)

DATE 7-28 2000

-VS-

CASE NO. 00 CVG 13529

T. Taylor
Defendant(s)

MAGISTRATE'S REPORT
& RECOMMENDATION

Referred for Hearing per Civ. R. 53 to Magistrate:

Sandra R. Lewis Martha R. McCorkle Ruben E. Pope, III Barbara A. Reitzloff

First Cause Of Action

Plaintiff in Court ^{McCuller} Defendant in Court Neither Party in Court

Plaintiff rep'd by counsel Defendant rep'd by counsel

Continued At Request Of Pltf (COPR) Deft (CODR) Court (COCR)
until ___/___/___, at ___ AM/PM in Courtroom 3A.

Findings of Fact

1. Plaintiff(s) is (are) the owner(s) landlord (acting on behalf of Joy Achebeh) of the premises described in plaintiff's complaint. (name of owner)
2. Defendant(s) is (are) the tenant(s) of the residential commercial premises pursuant to an oral a written rental agreement.
3. Defendant's tenancy is not federally subsidized.
 Defendant's tenancy is federally subsidized, as follows § 8 existing SFD.
4. Plaintiff(s) did did not serve defendant(s) with a three day notice. Notice was admitted as Plaintiff's Exhibit B, and was served on the date contained in the notice.
5. The grounds alleged for this eviction are:
 Nonpymt Term'n of Periodic T'cy Expir. of Lease Non-Color of Title
 Foreclosure Violation of R.C. 5321.05(A)(9)(Drug Activity) Violation of R.C. 5321.05 Breach of Lease (other than nonpymt) Other _____.

6. Grounds = Nonpayment

Defendants last paid rent on _____ for the month of _____.

Plaintiff(s) was not (were not) required to serve deft(s) add'l notices (in add'n to 3 day) or

Plaintiff(s) was (were) required to serve deft(s) add'l notices, which

were not served or were served on the date contained in the notice, and admitted as Plaintiff's Exh. _____.

or

Grounds = Termination of Periodic Tenancy

Periodic rental date = _____, pursuant to the parties' written oral rental agreement.

Plaintiff(s) was required to serve defendant with a notice of termination of tenancy, which was not served or was served on the date contained in the notice, and admitted as Plaintiff's Exh. _____.

or

Grounds = Expiration of Lease

The parties' written lease expired on _____.

Plaintiff(s) was not (were not) required to serve deft(s) add'l notices (in add'n to 3 day) or

Plaintiff(s) was required to serve deft(s) add'l notices, which

were not served or were served on the date contained in the notice, and admitted as Plaintiff's Exh. _____.

or

Grounds = Foreclosure

Defendant lost title through foreclosure on or about _____

Defendant has entered into no rental agreement with plaintiff.

or

Grounds = Violation of R.C. 5321.05(A)(9)(Drug Activity)

Illegal drug activity occurred at the premises on or about _____

Additional findings: _____.

or

Grounds = Violation of R.C. 5321.05 (other than drug activity)

Defendant(s) has (have) violated/failed to fulfill the tenants' obligations under R.C. 5321.05, which materially effects health and safety, as follows: _____

Plaintiff(s) was required to serve deft(s) add'l notices, which

were not served or were served on the date contained in the notice, and admitted as Plaintiff's Exh. _____.

Defendant did did not cure the breach, after service of the notice.

or

Grounds = Breach of Lease (other than nonpayment)

Defendant(s) has (have) violated the terms of the rental agreement, as follows: _____

Plaintiff(s) was required to serve deft(s) add'l notices, which

were not served or were served on the date contained in the notice, and admitted as Plaintiff's Exh. _____.

- a. 58 K effective 11/99 w/ K rent at \$605/mo HAP portion \$599/mo; t portion 6/mo
 b. Δ moved into premises in November 1999.
 c. Effective 2/1/00 HAP portion ↑ \$605/mo; t's portion ↓ Zero 00 CVG 13529
 d. Effective 6/1/00 HAP portion ↓ \$373/mo; t's portion ↑ \$232/mo
 7. Additional Findings: e. Parties agree that Δ has paid at least \$2250 in rent money (this does not include security deposit or amounts asserted by only one party)
 f. Total rent due from t to date of filing complaint is \$250.
 g. HAP K forbids payment in excess of K rent.

Conclusions Of Law

1. Plaintiff(s) has (have) has (have) not established by a preponderance of the evidence that s/he served defendant(s) a three day notice as required by law, vesting this court with jurisdiction to proceed.
2. Plaintiff(s) has (have) has (have) not established by a preponderance of the evidence that plaintiff is entitled to judgment on the first cause, on the following grounds:
 Nonpymt Term'n of Periodic T'cy Expir. of Lease Non-Color of Title
 Foreclosure Violation of R.C. 5321.05(A)(9)(Drug Activity) Violation of R.C. 5321.05 Breach of Lease (other than nonpymt) Other _____
3. No other notices were required or
 Plaintiff(s) served defendant(s) with all other notices as required by law.
 Plaintiff(s) did not serve defendant(s) with all other notices as required by law, as follows:

4. Additional Conclusions: *a. It is landlord for purposes of jurisdiction. Court notes Δ likely would not have sufficient 1st hand knowledge to provide said notice.*
b. Δ has paid at least \$2000 in excess of K rent; court will not enforce agreement for payment in excess of HAP K rent amount.

Recommendation

Based upon the foregoing, the Magistrate recommends the following:

- Judgment For Defendant. (HJEFD1)
 Judgment For Plaintiff. Writ Of Restitution To Issue. (HJEFP1)
 Forthwith Move Out Ordered _____
 Move Out To Take Place On Or After _____
 By Order Of Court, Dismissed w/ Prej. 1st Cause 2nd Cause Both Causes
 By Order Of Court, Dismissed w/o Prejudice. 1st Cause 2nd Cause Both Causes
 For Want Of Prosecution, Dismissed w/o Prejudice. 1st Cause
 Second Cause Default Hearing Reset For ____/____/____, At 1:30 P.M., 3A.
 Additional Findings/Recommendation(s) _____

Jack R. Lewis

 MAGISTRATE

Copies to parties 8/6/00 SKL