

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

FILED
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AKRON

Forest City Mgmt Inc.)
) CASE NO. 01 CVG 5026
)
) Plaintiff)
)
 V.) Magistrate: Suzanne Stephens
)
)
)
 Florence McDonald)
) MAGISTRATE'S DECISION WITH
 Defendant) FINDINGS OF FACT AND CONCLUSION
) OF LAW

This cause came to be heard before Magistrate Suzanne Stephens on June 19, 2001. Plaintiff was present with counsel. Defendant was present with counsel. Defendant made a motion to dismiss. After the hearing, each party submitted briefs in support of their positions. The last brief was submitted on July 12, 2001.

From the evidence presented by the parties, the Magistrate finds that the parties are landlord and tenant pursuant to a written lease agreement for property located at 710 White Pond Drive, Apartment 409, Akron, Ohio. Plaintiff receives federal government subsidization through the department of Housing and Urban Development (HUD) and is simultaneously governed by federal regulations and Ohio law.

Plaintiff did an inspection of defendant's apartment on February 9, 2001. On February 14, 2001 a copy of the inspection checklist was given to defendant. A rescheduling of the inspection was set for March 13, 2001. Defendant was notified of this inspection on March 9, 2001. On March 13, 2001, manager, Ms. Rhonda Simonton and maintenance worker, Michael Moore were present for the inspection. At the completion of the inspection, Ms. Simonton was explaining

household deficiencies and defendant became upset. Ms. Simonton testified that she was pushed by defendant. Mr. Moore testified that he stepped in between the parties and he and Ms. Simonton left the apartment. A three day notice was given to defendant on March 15, 2001 and a complaint was filed on March 23, 2001. This complaint was dismissed by the court because defendant had pay rent for the month of March of 2001.

On May 18, 2001, plaintiff served a new three day notice to vacate the premises and this current action was filed on May 29, 2001. Defendant claims that the three day notice given to her by plaintiff to terminate her tenancy does not meet the HUD requirements. Plaintiff made an oral motion to dismiss the complaint because of the deficient notice.

Paragraph 24 (c) of the Lease states:

“If the landlord proposes to terminate this agreement, the Landlord agrees to give the tenant written notice of the proposed termination. If the Landlord is terminating this agreement for “other good cause”, the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the tenant will be required to move from the unit. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law. All termination notices must:

- (1) specify the date this agreement will be terminated;
- (2) state the grounds for termination with enough detail for the Tenant to prepare a defense;
- (3) advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date of the notice was hand-delivered to the unit or the day after the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and
- (4) advise the Tenant of his/her right to defend the action in court.”

Plaintiff has provided a copy of the HUD handbook 4350.3 (*Occupancy Requirements for*

Subsidized Multifamily Programs which provides in pertinent part:

4-18. **GENERAL.**

*** c. Owners may evict tenants only for:

(1) material non-compliance with the lease

(2) failure to carry out obligations under any State landlord and tenant act

(3) "other good cause. (See paragraph 4-20.) The conduct of a tenant cannot be deemed other good cause unless the owner had given the tenant prior notice that said conduct shall henceforth constitute a basis for terminating tenancy. ***

4-19. **MATERIAL NON-COMPLIANCE**

The term material noncompliance with the lease includes:

(1) one or more substantial violations of the lease;

(2) repeated minor violations of the lease that:

a. disrupt the livability of the project,

b. adversely affect the health and safety of any person or the right of any tenant to quiet enjoyment of the leased premises and related project facilities.

c. interfere with the management of the project, ***

4-20. **OTHER GOOD CAUSE.** As per paragraph 4-18c an owner may terminate a tenancy for other good cause. "Other good cause" includes, but is not limited to, a tenant's refusal to accept the owner's proposed modification of the lease. HUD does not determine whether a particular situation constitutes good cause. Any issue regarding the existence of good cause is resolved by the landlord-tenant court in an action for eviction of the tenant. Whatever the cause, the owner must have given the tenant prior notice that such action would be grounds for termination of tenancy. Termination for "other good cause" may only be effective as of the end of any initial or successive term and in accordance with notice requirements set forth in paragraphs 4-21 and 4-22.

"4-21. **TERMINATION NOTICE.** If the owner proposes to terminate a lease, the owner

must give the tenant written notice of the proposed termination. If the owner is terminating the lease for "other good cause," the termination notice must be received by the tenant at least thirty days before the date the tenant will be required to move from the unit. This notice period may run concurrent with any comparable notice period required by State or local law. ***

- a. The owner's notice must: Specify the date the lease will be terminated; 2) state the grounds for termination with enough detail for the tenant to prepare a defense; 3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the owner may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense; and 4) advise the tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the owner. The 10-day period may begin on the earlier of the date the notice was hand delivered to the unit or the day after the notice was mailed.***
- c. The failure of the tenant to object to the termination notice shall not constitute a waiver of the tenant's rights to thereafter contest the owner's action in any court proceeding.
- d. A termination notice for "other good cause" must provide that the proposed termination will be effective at the end of the lease term, but no less than 30 days from the date of the notice. ***

4-23.* **EVICTION.**

- a. The owner may not evict any tenant except by judicial action pursuant to State or local law and in accordance with regulatory requirements."

The lease agreement states as follows:

24. Termination of Tenancy:

- b. Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulation, State and local law, and the terms of this Agreement. The Landlord may terminate this Agreement only for:
 - (1) The Tenant's material non-compliance with the terms of this Agreement;
 - (2) The Tenant's material failure to carry out obligations under any

State Landlord and Tenant Act; or

- (3) Criminal activity that threatens the health, safety, or right of peaceful enjoyment of the premises by other tenants or any drug-related activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control; or
- (4) Other good cause, which includes, but is not limited to, the Tenant's refusal to accept the Landlord's proposed change to this Agreement. Terminations for "other good cause" may only be effective as of the end of any initial or successive term.

Material non-compliance has the same definition as that stated above under the HUD regulations. The three day notice served on the defendant to leave the premises states the grounds as follows: "abusive behavior and threats toward and assault of manager Rhonda Simonton on March 13, 2001."

Plaintiff contends that neither federal nor state law required plaintiff to serve anything more than a R. C. Section 1923.04 notice to vacate. Plaintiff argues that this is a case of material non-compliance with the lease. Plaintiff states that for all notices, besides those for "other good cause", state and local laws control the time frames. Plaintiff contends that R. C. Section 5321.11, wherein a tenant is alleged to have violated one of the tenant's R. C. Section 5321.05 obligations that material affect health and safety, requires a thirty day notice to vacate. Plaintiff cites three cases which hold that: "(I)f there is a breach of an obligation imposed by a written rental agreement which obligation is not included in R. C. 5321.05, there is no requirement that there be a thirty day notice called for in R. C. 5321.11... (W)here the tenant has violated a section of a written lease which prohibits illegal conduct, the landlord need not give thirty days notice, as

there is no comparable counterpart in R. C. 5321.05 which prohibits general illegal conduct. See, **Lorain Metropolitan Housing Authority v. Fonseca** (1966), 110 Ohio App.3d 292, 295; (Defendant was given a notice to leave the premises and a notice of termination of lease giving her three days to quit the premises. Defendant was accused of assault with a steak knife and which was not a violation of any provision of R. C. 5321.05); **Portage Metropolitan Housing Authority v. Brown** (1966), 66 Ohio App.3d 737 (Defendant's apartment was under surveillance for four months where controlled drug buys were made. A warrant was obtained and crack cocaine, guns and other items were found in the apartment); **Akron Metropolitan Housing Authority v. Sistrunk** (February 12, 1986), Summit App. No. 12253, unreported, 1986 W. L. 2214 (Defendant's son Gregory had an altercation with another. Gregory went into the apartment and returned with a loaded shotgun and shot at the other man.) When addressing issues arising under the Landlord-Tenant Act, the Supreme Court has said it "must be interpreted in such a manner that fair and equitable treatment will be afforded to both landlords and tenants." **Sistrunk, supra, citing Vardeman v. Llewellyn** (1965), 17 Ohio St.3d 24, 28.

Plaintiff contends that if the allegations of abusive behavior, threats and assault of Simonton are found to be true, the defendant has violated lease paragraphs 19(b) and (c), which prohibit unlawful activities in the unit, and Paragraph 21, along with subparagraph 3 of the Resident's Handbook provision on Criminal Activity which states: "The Lease Agreement may be terminated based on the following criminal activity engaged in by the resident, any member of the resident's household, or any guest or other person under the resident's control: *** (3) Criminal activity that threatens the health and safety of any on-site staff responsible for managing the

premises; ***”. Plaintiff states that there is no requirement to provide a notice of termination only a notice to vacate the premises. However, each of the provisions cited by the plaintiff clearly has the word termination in them. None of the provisions have the words “notice to vacate.”

24 CFR 966.4 (k)(l) governs notices of termination of tenancy and eviction and states :
“***a reasonable time considering the seriousness of the situation (but not to exceed 30 days) when the health or safety of other residents or PHA (Public Housing Authority) employees is threatened.***”. It further states under paragraph (1)(3)(I) of this section that the notice of termination shall: “(A) State that the tenant is not entitled to a grievance hearing on the termination”. The notice clearly does not state that defendant is not entitled to a grievance hearing on the termination. Plaintiff contends that private landlords, like plaintiff, who accept subsidies from the federal government are required to comply with federal regulations, the requirements upon those landlords are less onerous than the requirements that must be followed by a Public Housing Authority. Plaintiff cites the HUD Handbook 4350.03. As noted above, this section has the same requirement as that of the regulations that cover Public Housing Authorities to notify the tenant that they have a right to a discussion with the landlord within ten days to discuss the termination.

To terminate the tenancy of a tenant who resides in Public Housing or subsidized housing, the landlord must serve the tenant with a notice of termination in accordance with federal requirements. When an assisted housing landlord seeks to evict a tenant, the landlord must - comply with the notice requirements of the applicable federal regulations. See, e.g. Cuyahoga

Metropolitan Housing Authority v. Younger (1994), 93 Ohio App.3d 819 (federal notice requirements of Section 966.4 (l)(3)(ii), Title 24 C.F.R., dealing with apprising tenant of reasons of termination); **Lee v. Handel**, No. 85-CVG 6674, (Akron Municipal Court), unreported (federal notice requirements of Section 882.511(c), Title 24 C. F. R., dealing with notice of an opportunity to respond); **Associated Estates Management Co. v. Barnett**, No. 99 CVG 7933 (Akron Municipal Court, November 9, 1999) unreported, (federal notice requirements of Section 966.4 (l), Title 24 C. F. R., dealing with failure to have notice state that tenant was not entitled to a hearing); **Canal Park Tower v. Brown**, No. 91 CVG 3327 (Akron Municipal Court, May 31, 1999). It is the opinion of the Magistrate that if these regulations require notice that there is an opportunity for a hearing, there also must be a notice that the tenant is not going to be given an opportunity to meet with the landlord.

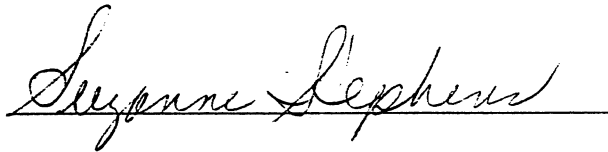
Plaintiff has provided the court with a copy of a police report made by Ms. Simonton. No charges were filed against the defendant. Ms. Simonton testified that she was pushed by the defendant. The police report states that defendant grabbed her arm and led her to the door. The police report stated that she made threats that she could make some calls and never be seen again. Ms. Simonton testified that defendant stated that she could make some calls and she would not be the manager.

Mr. Michael Moore, maintenance supervisor, testified that he saw defendant push Ms. Simonton two times and he stepped in between them. He then used a radio to call 911. He then left the parties at the apartment and went to get a camera to take pictures of the areas that had not

met the inspection criteria. He testified that he was gone two or three minutes. The police report states that the victim and a witness deny the allegations. Defendant nor any witnesses testified at the hearing. The cases cited where the courts have allowed a three day notice have dealt with guns, knives and drugs. The rationale for these cases had to do with the safety of the residents or other persons. In this case we have a sixty year old woman who has been a resident of this complex since 1994. The allegations are assault and menacing. The Magistrate finds that there is insufficient evidence of illegal conduct. However, if there would have been sufficient evidence of illegal conduct then the thirty day notice would not have been required.

It is the opinion of the Magistrate that the notice must comply strictly, not substantially, with the federal requirements. It is the further opinion of the Magistrate that plaintiff has failed to offer sufficient evidence of illegal conduct. Therefore, a thirty day notice of termination of the lease is the required notice under the particular facts of this case.

It is the decision of the Magistrate that a writ NOT BE allowed.

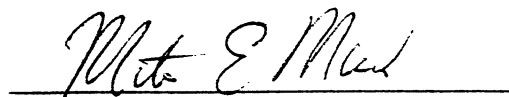


MAGISTRATE

JUDGMENT ENTRY

The decision of the Magistrate is approved. It is the judgment of the Court that a writ of restitution MAY NOT issue. Cost to be paid by the plaintiff.

9/4/01
DATE


JUDGE