

HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO



CINCINNATI METROPOLITAN HOUSING AUTHORITY,	:	CASE NO. 01CV24085
Plaintiff,	:	
	:	JUDGE ELIZABETH MATTINGLY
vs	:	
	:	JUDGMENT OF RESTITUTION
ERICA COX	:	AND ORDER FOR FURTHER
	:	PROCEEDINGS
Defendant,	:	

Joy E. Gazaway, Esq., Attorney for Plaintiff

Donita Parrish, Esq., Attorney for Erica Cox

This case involves a Complaint for Forcible Entry and Detainer filed by the Plaintiff Cincinnati Metropolitan Housing Authority (hereinafter "CMHA"), a federally subsidized housing authority, against Defendant Erica Cox (hereinafter "Cox") who currently resides at 2130 Millvale Court, #1259. Defendant Erica Cox has been a tenant of CMHA for a total of seven years, since she was eighteen. On or about September 17, 1999, Defendant Erica Cox became a resident in the Millvale Development of CMHA, having transferred from another CMHA family development. Defendant Cox occupies the described premises pursuant to the provisions of a Residential Lease Agreement and its subsequent revisions. Plaintiff seeks restitution of the premises at issue on two separate bases, to-wit: (1) Defendant Cox failed to timely comply with the mandatory

recertification process that is stipulated in her lease and in Federal regulation as a requirement for continued occupancy of the premises from and after 8/31/01 and (2) Defendant has violated the housekeeping obligations of the lease. Evidence on causes two and three of the Complaint and Defendant's Amended Counterclaim for damages will be determined at a later hearing.

The provisions of the lease relevant to decision of the matters raised herein are as follows:

CMHA Residential Dwelling Lease at Part II Section G(3)(b)

Tenant promises to supply CMHA, when requested, with accurate information about: family composition, age of family members, income and source of income of all family members, assets, community service activities, and related information necessary to determine eligibility, annual income, adjusted income, and rent.

Failure to supply such information when requested is a serious violation of the terms of the Lease and CMHA may terminate the Lease.

All information must be verified. Tenant agrees to comply with CMHA requests for verification by signing releases or third-party sources, or presenting documents for review. If third parties are uncooperative, tenant agrees to provide other suitable forms of verification.

CMHA shall give tenant reasonable notice of what actions tenant must take, and of the date by which any such action must be taken for compliance under this section. This information will be used by CMHA to decide whether the amount of the rent should be changed, and whether the dwelling size is still appropriate for tenant's needs.

CMHA Residential Lease Agreement at Part II Section P.

Tenant Responsibility: Tenant is required to abide by the standards set forth below. Failure to abide by the Housekeeping Standards that results in creation or maintenance of a threat to health of safety is a violation of the Lease terms and can result in eviction.

The specific housekeeping standards are set forth in the CMHA Residential Lease Agreement Part II Section P at pages 10-11.

As to the first alleged basis on which Plaintiff CMHA asserts it is entitled to restitution of the premises, the Court finds that Defendant Cox first received notice from CMHA that she had to timely report any changes in her household income and composition on June 4, 2001 when she was notified that such documentation would be required to be presented to CMHA Housing Specialist Jackie Lewis on June 14, 2001.¹ Ms. Cox failed without explanation to come to this interview. By letter dated July 6, 2001, Ms. Cox was notified of a re-scheduled interview date of July 19, 2001. She called to say that she could not come to that interview. Thereafter, a third interview for submission of the required documents was set for August 9, 2001. Defendant Cox was notified of this interview by letter dated August 2, 2001. Each of the notification of interview letters contained the statement that failure to appear for your review will result in the cancellation of your lease.

Defendant Cox came to the August 9, 2001 interview. Ms. Lewis informed her during this interview that she needed to provide CMHA with an original notarized statement of income to meet the requirements of the lease. A statement of income is needed to determine proper rent payable by the resident as well as to determine their continued eligibility for public housing. Ms. Lewis testified at trial without contradiction that Federal regulations require an original statement to be presented to preclude tampering with documentation that can more readily occur when copies are submitted. Immediately after the August 9 meeting, Ms. Lewis sent Defendant Cox a letter indicating what documentation was still required, to wit: Verification of income received

¹ This notice refers specifically to the 2001 recertification process. Defendant had been through the recertification process at least six times before as a resident of CMHA Housing for seven years. In addition, the requirement of completing the recertification process was listed in her lease.

for babysitting showing amount & how often paid (cancelled checks, receipts, etc.

Written statements must be notarized.

(1) Signed OWF verification form (enclosed)

Defendant Cox disagrees that the described letter indicated that the OWF form was due, testifying at trial that the letter she received stated only verification of income documentation was needed. She asserted that she had given a copy of this letter to her attorneys. Nevertheless, no such letter was produced at trial and the Court therefore declines to credit Ms. Cox' testimony on this issue.

Defendant Cox had difficulty securing the notarized statement of income from her mother². Then, two weeks after she was personally advised of the income documentation requirement, on August 22, 2001, Defendant presented Ms. Lewis with a copy of a statement, which purported to show income that she received from her mother for babysitting. Although the parties have referred to this document as a copy of a notarized statement, the document, on its face, is not properly notarized.³

A properly notarized original statement of income was not, in fact, produced by Defendant Cox until September 4, 2001, fully four days after her lease had expired and 34 days after Defendant had received a Notice of Eviction for failure to provide such information. Ms. Cox at no time relevant herein produced the documentation from the Ohio Department of Human Services (referred to as the OWF verification form) as to any income she may have received from welfare and/or the reason for not receiving welfare

² Defendant Cox babysat Patricia Cox' grandchildren every weekend so mother and daughter saw each other frequently.

³ Defendant's Exhibit A, while listing the stamp and signature of one Gina St. Charles, does not contain any language indicating that said Gina St. Charles witnessed Patricia Cox' signature on the document as required by R.C. 147.53.

benefits. In this regard, Defendant asserts that CHMA could have used a release form signed by Defendant Cox for the 2000 certification. Ms. Lewis, however, testified that information concerning welfare status could not be secured using an old consent form and that, in any event, she was precluded from dismantling the 2000 certification package to re-use the prior consent form since Federal regulations require the recertification packages to remain intact for auditing purposes.

Neither of the required documents was produced by Defendant by the date her lease was scheduled to end on August 31, 2001. Thus, on August 1, 2001, CMHA served Defendant Cox with a 30-day notice to vacate the premises. The Court finds that failure to provide the required documentation in a timely manner is a material breach of Defendant's lease and CMHA is entitled to restitution of the premises for Defendant's non-compliance with the provisions of the lease concerning recertification. CMHA on October 18, 2001 filed an eviction case based on failure to provide necessary information for recertification. Meanwhile, Defendant remained as a CMHA tenant.

As to the second basis alleged for eviction, Defendant Cox received notice that her apartment would be inspected for compliance with housekeeping standards during the week of December 17, 2001. This annual inspection is part of the lease requirements. On 12/20/01, this inspection was performed by Michelle McClain. At that time, Defendant Cox's housekeeping failed for a number of reasons, including dirty floors, slight grease splashes, a dirty refrigerator, dirty water sitting in the kitchen sink, clutter throughout the apartment and cluttered stairways, the presence of fire and safety hazards, refuse control and most notably, stove burners with an accumulation of old, hard grease. These

violations were more than amply demonstrated in the pictures taken during the inspection and in evidence as Plaintiff's Exhibit P.

When Defendant was notified that the apartment had failed the housekeeping inspection, she was given an opportunity to cure the deficiencies cited during a re-inspection done approximately 30 days later. The re-inspection was performed on February 1, 2002 by Property Manager Adrian Early and CMHA's social worker, Gina Stewart. Defendant again failed the inspection, this time for generally the same reasons cited in the 12/20/01 report and again documented by photographs in evidence herein as Plaintiff's Exhibit R. In addition to the conditions found in the first inspection, the safety hazard of having cardboard boxes in and on top of the stove burners of a gas stove was documented. Accordingly, Defendant was served with a Notice of Eviction for the cited housekeeping violations.

Based on the testimony and photographic evidence presented, the Court finds that Defendant was in material breach of her lease due to her failure to maintain the required housekeeping standards and that such breaches were repeated and constituted safety hazards. As a result of these breaches, the Court finds that CMHA is entitled to restitution of the premises on these grounds.

Nevertheless, the Defendant urges that equity abhors forfeiture and asks the Court to consider that subsequent to the expiration of the lease, she did present proper evidence of income. Moreover, Defendant presented evidence that the present status of her apartment is clean and organized. In specific terms, she presented pictures taken on March 26, 2002 and April 28, 2002 as Defendant's Exhibits P and Q. In effect, she urges

that the housekeeping in her apartment now is in compliance with the requirements of the lease.

The difficulty with the photographs presented to the Court by Defendant is that they were presented with no information as to the circumstances under which they were taken. Thus, the Court has no way of assessing whether the photographs were taken randomly or with several days' advance notice to Defendant as evidence for presentation in court. Thus, The Court can make no finding based on these photographs that the general and usual condition of Defendant's apartment has actually improved. Indeed, the five photographs taken of the exterior of Defendant's home on May 10, 2002 indicate that violations of the lease terms continue.

Further, in regard to equity, Defendant on a previous occasion had been found to have housekeeping deficiencies.⁴ Moreover, unlike the Defendant in Dayton Metropolitan Housing Authority v. Connie L. Williams, Case. No 88-CVG-1268 (Mun. Ct Dayton, July 8, 1988) cited by the Defendant, Ms. Cox on more than one occasion has declined offers to improve her housekeeping skills by attending free housekeeping classes offered by CMHA. At these classes, free cleaning supplies are also provided to participants.

Moreover, some of the conditions which caused Defendant's apartment to fail the inspection, were not just her problem but represented a very real threat to the health and safety of the more than 430 other families in her apartment complex.⁵ Specifically, the Court finds that the grease on the stove, the generalized clutter, both in the rooms and on

⁴ Per Defendant's Exhibit G, she passed the inspection on February 1, 2000 only with monitoring.

⁵ The Defendant makes the point that the safety hazards were not reported to the health department. However, these cited problems were due to poor housekeeping by Defendant and would shortly be remedied by Defendant's eviction from the premises.

the stairs of the apartment and the empty cardboard boxes in and on top of the Defendant's stove, constituted a fire and safety hazard to the other residences. Moreover, these conditions were found when Defendant had notice that an inspection that could result in termination of her lease was pending.⁶

In addition, unlike other cases involving considerations of equity, this case does not deal with the actions of others that may affect Defendant's ability to continue her tenancy. Rather, in this case it is Defendant's own actions or lack thereof that have resulted in material breaches of her lease. Defendant has failed to take the minimal steps required of her under the lease to maintain her tenancy. Had she come to the first recertification appointment, she would have had fully 2 and ½ months to secure the required notarized statement of income from her mother. Moreover Defendant, having had prior housekeeping difficulties during her CMHA tenancy, declined to take steps to improve her housekeeping skills on at least two occasions when she was offered assistance in this regard. Given the safety hazards posed to others by her inattention to housekeeping, the Court finds that the diligence required of those seeking equity is not present here. For these reasons, the Court finds that application of the principle of equity is not appropriate in this case.

Defendant Cox is therefore ordered to vacate the premises at 2130 Millvale Court, Apt. 1259 within 10 days of the date of this order. Plaintiff's second & third causes of

⁶ The cases cited by Defendant in her Pre-Trial Statement do not help Defendant here. In Williams, supra there was no testimony of a threat to health and safety. Indeed, there was testimony of an independent third party that there were no health and safety problems in the apartment. Moreover, Defendant in Williams, unlike Defendant here, did attend housekeeping classes and the inspectors themselves disagreed as to the severity of Defendant's housekeeping deficiencies. Likewise, in Madston Corporation v. Ahrens, Case No 87-CVG-815 (Mun. Ct. Port Clinton, February 5, 1988), the Court specifically found that the Defendant's poor housekeeping did not cause any public health hazard or danger to the other tenants.

action & Defendant's Amended Counterclaim shall be remanded to the open docket of the Magistrate for further action.

SO ORDERED this 4th day of June, 2002.

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JUDGE ELIZABETH MATTINGLY