

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

Jun 12 9 44 AM '01

AKRON MUNICIPAL COURT
JIM LARIA
CLERK

ALPHA PHI ALPHA HOMES, INC.)
) CASE NO. 2001 CVG 2773
)
) Plaintiff)
)
) V.) Magistrate: THOMAS F. LYNETT
)
)
) CHRISTINE & MICHAEL SMITH)
)
) Defendant) MAGISTRATE'S DECISION WITH
) FINDINGS OF FACT AND CONCLUSION
) OF LAW

This matter was scheduled for hearing before Magistrate Thomas F. Lynett on the 11th day of April 2001. Plaintiff was present in Court with counsel. Defendants were present in Court with counsel.

From the evidence presented by the parties the Court finds the facts to be that plaintiff was found to have a possessory interest in the premises as set forth in the complaint as owner of the premises at 134 Tate Terrace, Akron, Ohio. Defendants were tenants pursuant to a lease dated May 6, 1994. Plaintiff served it's notice of termination on defendants on January 23, 2001 and served it's ten day notice on February 23, 2001 which was at least three days prior to the filing of the complaint.

Defendants filed their motion to dismiss alleging plaintiff's notice of termination was not in compliance with the applicable provisions of state and federal law. After testimony the Court allowed time for post hearing briefs. Defendants filed their post hearing brief April 18, 2001. As of the date of this finding, plaintiff failed to respond to defendant's brief.

The Court finds that the lease at paragraph 23 follows the 24 CFR Section 247.4(a) in requiring that the requisites of a termination notice are that it be in writing and shall;

- (1) State that the tenancy is terminated on a date specified therein;
- (2) State the reasons for the landlord's action with enough specificity so as to enable 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 landlord may seek to enforce the termination only by bringing a judicial action at which time the tenant may present a defense;
- (4) Be served on the tenant in the manner prescribed by paragraph (b) of the Section.

The Court finds that both the January 23, 2001 and the February 23 notice failed to "advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense". The Court finds that the language of 24 CFR Section 247.4(a) is mandatory and requires strict compliance. Omission of the mandatory language renders the notice invalid. See Park Lane v. Rogers (November 23, 1983) Hamilton App. Number C830006, unreported. Also see Associated Estates Management v. Barnett (November 8, 1999) Akron Municipal Court Number 99CVG7993 also unreported.

Accordingly, having found the notices omitted the mandatory language, the Court finds no strict compliance and finds the notice invalid. Having found the notice invalid this Court finds it is without jurisdiction.

It is the decision of the Magistrate that a Writ of Restitution not be allowed.

Thomas F. Lynett

Magistrate Thomas F. Lynett

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CLERK

The decision of the Magistrate is approved it is the judgment of the Court that a Writ of Restitution may not issue. Costs to be paid by the plaintiff.

86-08-01

Date

Mark E. ...

Judge

cc: Alpha Phi Alpha Homes, Inc.
Michael & Christine Smith