

**STATE OF OHIO, WARREN COUNTY
COUNTY COURT**

3002 NOV -6 PM 4:39
WARREN COUNTY COURT

**Warren Metropolitan Housing Auth.,
Plaintiff**

Case No. 2002CVG00593

vs

Magistrate's Decision

**Stephanie Sizemore,
Defendant**

This forcible entry and detainer action was tried to the court on October 23, 2002. Defendant subsequently, on October 25, 2002, filed a counterclaim in this action. The court will not allow such a pleading at this stage in the proceedings, and the counterclaim is accordingly dismissed, without prejudice.

The Warren Metropolitan Housing Authority is federally subsidized and must therefore comply with any applicable federal regulations as well as any non-preempted Ohio statutes. Defendant, Stephanie Sizemore, urges that the Housing Authority has failed to comply with federal regulations in pursuing this eviction, and that its acceptance of rent from her on September 12, 2002 vitiated any right it had to evict her up until that time.

The court finds that the August 16, 2002 Notice of Adjustment, (Plaintiff's Exhibit A) while it notes that Ms. Sizemore should report the beginning date of her unemployment benefits, it does not comport with federal regulations governing notices to terminate a tenancy. See *Forest City Mgt., Inc. v. Tackett* (2002), 148 Ohio App.3d 667. The August 1, 2002 Notice of Termination was testified about, but was not introduced as an exhibit. From testimony, it appears that the basis for termination given in the Notice was Ms. Sizemore's failure to retrieve her monthly utility check. These are different grounds from those given in the Complaint, which were "failure to provide information." The August 1 Notice is also inadequate for this reason. The September 11, 2002 Notice of Termination (Defendant's Exhibit B) is based on yet another alleged violation, the nonpayment of September's rent. It states, "you owe \$151.00 for September." Ms. Sizemore responded to this last Notice by paying \$151 rent, and a \$20 late fee, on September 12, 2002. See Defendant's Exhibit C.

The Housing Authority's acceptance of this rent payment from her on September 12, 2002 vitiates any prior Notice of Termination. See *Associated Estates v. Bartell* (1985), 24 Ohio App.3d 6. The court is unpersuaded that this payment was merely a payment on

account for some as yet uncalculated retroactive rent increase of which Ms. Sizemore was never notified. Even as of the time of trial, the Housing Authority had not placed Ms. Sizemore on notice of a rent increase, or of a retroactive date of a rent increase prior to September 2002.

Because the Housing Authority continued to accept rent for prospective occupancy, and because none of the three Notices it served on its tenant comply with federal regulations governing such notices, the court finds for the Defendant. The Housing Authority shall bear the costs of this action.


MAGISTRATE
Warren County-County Court

Notice of Right to Object

Either party may object to this Decision by filing written objections with the court within fourteen days of the journalization of this Decision.

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WARREN COUNTY COURT