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W.H. J. ZELLER
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IN THE DAYTON MUNICIPAL COURT

CIVIL DIVISION

DAYTON METROPOLITAN HOUSING AUTHORITY,	:	CASE NO. 80 CV G 9597
	:	(McCollum, J.)
Plaintiff	:	
vs.	:	<u>DECISION AND ENTRY</u>
EVELYN THOMPSON,	:	
Defendant.	:	

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This matter is before the Court upon the Motion of Defendant, Evelyn Thompson, to Dismiss Plaintiff's Action in Forcible Entry and Detainer for non-payment of rent on the grounds that the late tender of rent did not constitute the requisite good cause for eviction from housing owned by Plaintiff, Dayton Metropolitan Housing Authority (hereinafter PHA or Plaintiff). A trial on the merits was not held, as the parties entered into a stipulation as to all of the material facts on October 16, 1980. On said date, the Court GRANTED Defendant's Motion to Dismiss and denied restitution. The findings and conclusions of this Court are set forth herein below.

FINDINGS OF FACT

All material facts set forth herein were stipulated to by the parties at trial. Pursuant to said stipulation, the Court finds that Plaintiff is a body corporate and politic created and existing under the Housing Authority Law of the State of Ohio and that the Defendant was a tenant, residing in Plaintiff's property located at 414 Niles Place in the State of Ohio, County of Montgomery, pursuant to a written lease agreement. The premises are located in the Parkside Homes complex, which is defined by Title 24 C.F.R. as conventional public housing. Said agreement required that tenant pay the rent on the first day of each month of tenancy. The rent is thirty-three dollars per month. It is the policy of the PHA not to take any action against a tenant when he/she tenders payment by the tenth day of the month, although a late charge is assessed after the fifth day of the month.

The Court finds that Defendant had resided at said premises for more than seven years and that she had a history of numerous late payments of rent until October, 1979, when, pursuant to an action initiated against her, the parties entered into an agreement whereby Plaintiff would not pursue its action in forcible entry and detainer in exchange for Defendant's agreement not to tender rental payments late. From the date of that agreement through

August, 1980, Defendant made her rental payments before the tenth of each month of tenancy, but after the first, although there was one month in which rent was tendered on the first day of the month.

In August, 1980, Defendant formally adopted the minor child she had been caring for as a foster child at the premises in question. As a result of said adoption, Defendant lost her source of income as a foster parent and applied for Aid to Dependant Children, (hereinafter ADC), in order to support herself and her child. Her application was accepted by the Montgomery County Welfare Department, but Defendant was advised by the Welfare Department that she would not receive her first check until September 25, 1980.

On August 19, 1980, Defendant advised the manager of Parkside Homes, the complex within which Defendant's premises were located, that her source of income had changed and that she would be unable to pay her September rent until she received her first ADC check on September 25, 1980. Defendant promised payment on said date. On September 8, 1980, PHA served the 14-day notice to terminate required by the Code of Federal Regulations as a pre-condition to eviction of the Defendant. On September 10, 1980, Defendant provided the aforesaid complex manager with a written communication from her Welfare caseworker confirming her eligibility for ADC and advising that the first ADC check would be mailed to Defendant on September 24, 1980. Defendant again indicated that payment would be forthcoming on said date. On September 19, 1980, Plaintiff served upon Defendant the Notice to Leave Premises required by the Ohio Revised Code as a pre-condition to the initiation of an action in Forcible Entry and Detainer.

On September 25, 1980, Defendant received her ADC check, presented it to the aforesaid complex manager, and offered payment of her September rent. Said manager refused to accept the payment and on September 26, 1980, Plaintiff filed its Complaint herein.

CONCLUSIONS OF LAW

Since Goldberg v. Kelly, 397 U.S. 254 (1970), the Courts have consistently held that tenants of conventional public housing, such as the Defendant herein, have a property interest in continued occupancy. Caulder v. Durham Housing Authority, 433 F.2d (4th Cir. 1970), cert. denied, 401 U.S. 1003 (1971); Escalera v. New York City Housing Authority, 425 F.2d 853 (2d Cir. 1969), cert. denied, 400 U.S. 853 (1970).

Accordingly, the due process clause of the Fifth Amendment to the United States Constitution requires that a tenant's continued occupancy of a dwelling unit in conventional public housing, such as that occupied by the Defendant herein, be deemed a protected entitlement and property interest which cannot be terminated without a showing of good cause. Such a showing is required of

Plaintiff herein, as Plaintiff is a body politic established and operated pursuant to statute and the housing in question is conventional public housing operated by Plaintiff.

The circumstances regarding Defendant's September, 1980, rent indicated a high degree of diligence on the part of the Defendant in advising Plaintiff of her financial condition. Defendant notified the PHA as early as August 19, 1980, of a change in her source of income which would delay her receipt of money until September 25, 1980, thus necessitating a delay in the payment of her September rent. On September 10, 1980, the last day of the 10-day grace period for payment of rent pursuant to Plaintiff's policy, Defendant provided Plaintiff's agent with written documentation from the Welfare Department confirming the change in her financial circumstances and promising payment upon receipt of the check. On September 25, 1980, Defendant did, in fact, present the check to Plaintiff's agent and offer her rent payment. Thus, Plaintiff's claim is based not upon non-payment of rent, but rather upon late payment thereof.

Late payment of rent alone does not constitute good cause for eviction from privately owned, but federally subsidized housing. Belvoir Cliffs Apartments Ltd. v. Bemby, 56 Ohio Misc. 37, 383 N.E.2d 1170 (1970). Thus, it does not constitute good cause for eviction from publicly owned housing, such as the premises in question herein. The PHA was created to serve the housing needs of low income persons. Disruptions in the source of income to such persons, as occurred herein, are common occurrences to which the PHA ought to be sensitive. This is, a fortiori, the case herein where the disruption of income resulted from a foster parent adopting a child, a legal change clearly in the public interest, and where the tenant was diligent in providing the PHA with information on her changed circumstances.

In view of the good cause required by the Fifth Amendment to the United States Constitution for eviction from public housing and the fact that mere lateness in rent payments, as herein, does not meet that requirement, Defendant's Motion to Dismiss is well taken, and it is hereby ORDERED that said Motion to Dismiss be GRANTED, with costs assessed to Plaintiff.


ALYCE O. MCCOLLUM, JUDGE

THOMAS WHELLEY, Attorney for Plaintiff
ASHLEY BROWN, Attorney for Defendant