

ALBAINESE

HAMILTON COUNTY MUNICIPAL COURT

HAMILTON COUNTY, OHIO

INNER CITY HOUSING

NO. 81 CV 15029

Plaintiff

vs

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
FROM JUDGMENT ENTRY

ERIC SEBASTIAN

Defendant

*Entry:
6/24/81
Albainese, J.*

This cause involves a forcible entry and detainer action brought by Inner City Housing against one of its tenants, Eric Sebastian. Having considered the findings of fact and conclusions of law made by the referee in this case, this court adopts the referee's report and sets forth the following as the court's findings of fact and conclusions of law:

Findings of Facts:

1. Plaintiff Inner City Housing owns an apartment building located at 3655 Irving Street, Cincinnati, Ohio in Hamilton County.
2. Mr. Ernest Waites is the landlord of said apartment building and is authorized to receive rent from tenants of said building and to enter into agreements with them on behalf of Inner City Housing.
3. Said apartment building is a multifamily housing unit which receives the benefits of federal subsidies in the form of interest reduction payments pursuant to Section 236 of the National Housing Act, 12 U.S.C. Section 1701, et seq.
4. Defendant is a tenant of plaintiff and resides at the 3655 Irving Street address pursuant to an agreement entered into on or about October 1, 1980.
5. On or about April 27, 1981, plaintiff filed its complaint in this action seeking to evict defendant.

6. The sole ground listed in this forcible entry and detainer complaint is "Non-payment of Rent".

7. On April 15, 1981, Ernest Waites, as landlord for plaintiff, gave defendant, by hand, a Notice to Leave the Premises notifying him that he was to leave his apartment on or before April 20, 1981.

8. The grounds listed in said notice as reasons for the notice being given included "Non-payment of Rent, breach of agreement, and voluntary quit."

9. Said notice did not state the dollar amount of the balance of rent alleged to be due from the tenant and did not state the date of such a computation.

10. No other notice was provided to the defendant in regard to this action.

Conclusions of Law:

1. The court has jurisdiction of this action and the parties are properly before the court.

2. Plaintiff is a "subsidized project" as defined at 24 Code of Federal Regulations Section 450.2(e), promulgated pursuant to 42 U.S.C. Section 3535(d), in that it is a beneficiary and recipient of interest reduction payments under Section 236 of the National Housing Act, 12 U.S.C. Section 1715z-1.

3. Plaintiff is required to comply with the tenant eviction procedures contained in 24 C.F.R. Section 450.1-7. See 24 C.F.R. Section 450.1.

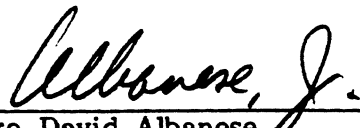
4. No termination of a tenancy governed by this regulation is valid if it does not comply with the procedures set forth in 24 C.F.R. Section 450.4. See 24 C.F.R. Section 450.3(a).

5. A Notice to Leave the Premises given to terminate a tenancy governed by this regulation which includes the ground of non-payment of rent must state the dollar amount of the balance alleged to be due on the rent account and must include the date on which such computation was made. See 24 C.F.R. Sections 450.4(a)(2) and 450.4(e).

6. Plaintiff's Notice to Leave the Premises given to defendant failed to comply in either respect with this regulatory requirement. See Leake v. Ellicott Redevelopment Phase II, 470 F. Supp. 600 (W.D. N.Y., 1979).

7. Although plaintiff's Notice to Leave the Premises contained two grounds in addition to non-payment of rent, the complaint in forcible entry and detainer asserts only the ground of non-payment of rent, thus barring plaintiff's testimony or reliance upon the grounds omitted from the complaint.

8. Because plaintiff's notice does not comply with 24 C.F.R. Sections 450.4(a)(2) and 450.4(e), defendant's motion to dismiss made following plaintiff's testimony is properly granted.



Judge David Albanese

Appearances:

Lee B. Kasson, Jr. for Plaintiff

Stephen H. Olden for Defendant