FILED
MUNICIPAL COURT

IN THE MUNICIPAL COURT IN THE CITY OF DAYTON, OHIO
CIVIL DIVISION

OCT 10 3 47 PM '85

WILLIAM J. ZELLER,
CLERK

DAYTON METROPOLITAN HOUSING AUTHORITY, * CASE NO. 85-CV-G-7589

Plaintiff, * (Acting Referree Dennis)

vs. * DECISION AND JUDGMENT ENTRY

BETTY G. CANTRELL, *

Defendant.

* * * * * * *

This case came before the Court for trial on the merit on August 23, 1985. It involves an attempted forcible entry and detainer action for restitution of leased premises by plaintiff against defendant as well as a claim for repair of a screen in existance upon said premises. Because no evidence was presented with regard to the screen in question, judgment for defendant is granted on the second claim for relief in plaintiff's Complaint.

With regard to the first claim for relief, the Court finds that based upon a proponderence of the evidence, plaintiff has not met its burden of proof. Plaintiff contends that defendant was late with a rental payment in February, March, May and July, 1985 and that its reason for desiring restitution of the premises was for chronic late rental payments. However, each time, except for July, 1985 it accepted defendant's late payment. Moreover, no written warning letter stating to defendant that plaintiff would no longer accept late rental payments or that defendant would be evicted was ever served upon her prior

to plaintiff serving defendant with the e tion notice out of which the instant case arises on/or about July 22, 1985. Defendant had been a tenant of plaintiff's public housing complex for about 3 years prior to the current dispute. She apparently had no problem paying her rent prior to February, 1985. Plaintiff knew that defendant's sole source of income from which her rent was to be paid was derived from her monthly A.D.C. check which sometimes arrived late. (i.e. after the first of the month when the rend was due). Even more interesting is the fact that it is plaintiff's custom to apparently allow a tenant up to 19 late rental payments over a 2 year period before attempting to evict said tenant for chronic late payment of rent. See DMHA vs. Betty McClure, Dayton Municipal Court, August 23, 1985. Indeed, plaintiff even claimed that defendant violated other clauses of her lease on other occasions such as having a dog on the premises or having another person living with her on the premises - both of which were apparently unsubstantiated and not pursued further - and made no attempt to evict her or even threaten same.

It appears that the real reason why plaintiff wanted to evict defendant was because of her involvement in an altercation with another tenant. This altercation resulted in defendant being stabbed. It was uncontroverted that defendant was not the agressor in said altercation but rather the victim and became injured when she attempted to defend herself. Plaintiff ordered no objection or evidence to rebut defendant's evidence that this other tenant was criminally charged and adjudicated to be guilty in this incident although it did claim that it had instituted an eviction action against this other tenant also.

. S. GALLON
ASSOCIATES
TORNEYS AT LAW
MI VALLEY TOWER
YTON, OHIO 45402

XECUTIVE BUILDING
INNATI, OHIO 45202

The evidence adduced at trial also indicated that defendant was willing to tender her July, 1985 payment 3 days late but plaintiff would not accept same. It further showed now only had defendant's welfare check arrived late but also that she had taken measures to have her rent paid, including going to plaintiff's office in downtown Dayton and contacting a charitible religious organization in an attempt to obtain funds for this purpose, as well as contacting the welfare department. This was unrebutted by plaintiff at trial.

Therefore, based upon the evidence as well as the exhibits and applicable law, this Court must find that plaintiff has failed to prove the allegations in the first claim for relief in the Complaint by the required proponderence of the evidence. Its lease with defendant provides that there can be no termination except for serious or repeated violations of the lease or other good cause and this is simply not born out by the evidence put forth at trial. It appears that the altercation in question was the real reason why plaintiff desired to evict defendant because it perceived her as the trouble maker even though the evidence was uncontroverted that the incident was not precipitated by her. Such a "knee jerk" reaction is not an equitable or lawful solution to such a perceived problem, especially by a party such as plaintiff which is in the public rental housing business particularly designed to attract lower socio-economic tenants such as defendant. Indeed, it appears that plaintiff did not even care that defendant was blameless in this incident nor make any investigation in this regard. Public housing projects, just as any type of dwelling situation, are not going to be without problems and disputes. This is especially true

E. S. GALLON
& ASSOCIATES
ATTORNEYS AT LAW
MIAMI VALLEY TOWER
DAYTON, OHIO 45402

3 EXECUTIVE BUILDING
INCINNATI, OHIO 45202

where, as here, an urban setting is involved. The maxim that one cannot expect the solitude of the Sylvan Glen in an urban environment seems particularly applicable herein. Plaintiff cannot use a purported pretext of chronic late payment of rent as a substitute for a lawful eviction of a tenant, just because it purportedly perceives said tenant as undesireable due to an involuntary participation in an altercation in which she was the victim. This is particularly glaring in the instant case where it appears that plaintiff has a custom of permitting other similarly situated tenants many more late payments and the luxury of formal written warnings before an eviction is even attempted against them. Simply put, to hold otherwise would deny a person, such as defendant, the equal protection of the law among other constitutional and other legal safeguards.

Notwithstanding the foregoing, this Court must also find against plaintiff because the evidence indicates a valid justification for defendants late payment of rent for the reason set forth above such that plaintiff has failed to show by a preponderence of the evidence that it had good cause to terminate this lease. Although there is an apparent lack of reported Ohio case law to assist the court on this issue, the lease coupled with a well-reasoned decision of another jurisdiction provides assistance. See Maxton Housing Authority vs. McLean, 328 SE 2d 290 (N.C. 1985).

It is therefore ORDERED that judgment is rendered for defendant and costs are to be paid by plaintiff.

Copies of the foregoing Decision and Judgment Entry were

E. S. GALLON
& ASSOCIATES
ATTORNEYS AT LAW
MIAMI VALLEY TOWER
DAYTON, OHIO 45402

EXECUTIVE BUILDING
CINCINNATI, OHIO 45202

served upon counsel for parties listed ow on the date same was filed with the Clerk of this Court.

BY: _____
JAMES D. DENNIS
Acting Referree

Gary J. Carter
340 West Fourth Street
Dayton, Ohio 45402
Attorney for Plaintiff

Carl Goraleski
117 South Main Street
Room 525
Dayton, Ohio 45402
Attorney for Defendant

E. S. GALLON
& ASSOCIATES
ATTORNEYS AT LAW
VALLEY TOWER
DAYTON, OHIO 45402

EXECUTIVE BUILDING
CINCINNATI, OHIO 45202