

the premises for "nonpayment of rent (3 months)". Prior to delivery of the three-day notice, the Plaintiff did not communicate to the Defendant in reference to her delinquent May and June rent.

Defendant's rent has been late on numerous occasions in the past, and on one occasion in 1984 she was two months delinquent. During this tenancy the Plaintiff has acquiesced in the late payment practice and never insisted that they be made timely. On only one occasion did the Defendant receive a late payment notice from the Plaintiff and that was in 1984. The Defendant's only present source of income is \$238.00 per month from Aid to Dependent Children, she is now pregnant and presently occupies the apartment with her children.

On June 28th Defendant mailed Plaintiff a \$15.00 check for May, June and July rent and told the Plaintiff of this payment when she received the three-day notice, but said he would refuse payment. Plaintiff received the check in early July and approximately the day he filed this action, but returned it to the Defendant. On July 5, 1985, Plaintiff commenced this action to evict the Defendant from the premises.

Many of the relevant facts are not in dispute, and the principal issue between the parties is whether the Plaintiff complied with the notice of termination requirements prior to commencing this action. This determination requires a review of Ohio law, the Code of Federal Regulations and relevant provisions of the lease and addendum.

The three-day notice satisfied the requirements of Ohio law, and in particular, R.C. 1923.04. The parties agree that 24 C.F.R. §882.511 captioned "Termination of Tenancy" is applicable to this case. Pertinent subsections of that regulation are as follows:

24 C.F.R. §882.511(c) Notice of Termination of Tenancy.

(1) The owner must serve a written notice of termination of tenancy on the Family which states the date the tenancy shall terminate. Such date must be in accordance with the following:

(i) When termination is based on failure to pay rent, the date of termination must be not less than five working days after the Family's receipt of the notice.

...

(2) The notice of termination must:

(i) State the reasons for such termination with enough specificity to enable the Family to prepare a defense.

(ii) Advise the Family that if a judicial proceeding for eviction is instituted, the tenant may present a defense in that proceeding.

...

(3) Substitution of State and Local Requirements.

In the case of failure to pay rent, a notice of termination which is issued pursuant to State or local law or is common practice in the locality and which satisfies paragraph (c)(2) may be substituted for or run concurrently with the notice required herein.

Defendant argues that the Plaintiff should have waited five working days before commencing this action as required by 24 C.F.R. §882.511(c)(1)(i), but the Plaintiff contends that 24 C.F.R. §882.511(c)(3) allows for the time limits under Ohio law to be substituted for that requirement, and this Court agrees with that interpretation. Further, Plaintiff minimally complied with the requirements in 24 C.F.R. §882.511(c)(2)(i) & (ii).

However, consideration must be made of the provisions in the addendum, and in particular, paragraph f., which provides in part as follows:

. . . The Owner must give the Family a written notice of any proposed termination of tenancy, stating the grounds and advising the Family that it has an opportunity to respond to the Owner. . . . In addition, a copy of the notice must be furnished simultaneously to the PHA. . . .

There is no evidence that Plaintiff gave Defendant written notice that she had "an opportunity to respond to the Owner". There is nothing in the three-day notice that can be construed as giving such notice and further, there was no evidence that a copy of the notice of termination was given to the PHA, the Akron Metropolitan Housing Authority, or other agency or agent of the United States Government. This failure is not merely a lapse in a technical requirement as these provisions are in furtherance of the basic principles in the Federal legislation providing for such supplemental payments from the United States Treasury. Federally subsidized landlord-tenant relationships are in a much different posture than normal, and a tenant has been selected for such assistance because such individual meets certain specified qualifications and to remove such tenant deprives her of that special status. One of the specific purposes of the Federal Housing Acts is to provide decent shelter for individuals who lack the financial means to provide the same without governmental aid. When the Plaintiff accepted the Section 8 moderate rehab subsidy and entered into the agreements with the Defendant, Defendant became an occupant of the Plaintiff's premises on a basis different from an ordinary tenant and by receiving the benefits he must also accept its burdens.

Finally, the Defendant presented a strong argument for denial of the forfeiture on equitable grounds, but for the reasons already stated, there is no reason to pursue that issue. However, it should be noted that Defendant deposited all delinquent rent with the Clerk of Akron Municipal Court, that the Plaintiff has Defendant's \$37.00 security deposit, and the monthly delinquency was a very small portion of the total

rent received by the Plaintiff (\$5.00 as compared to approximately \$295.00). Plaintiff's Writ of Restitution should be denied and the Complaint dismissed.

Judgment accordingly.

cc: Mr. Walter J. Vogel, Attorney for Plaintiff
Mr. Dennis Nealon, Attorney for Defendant