

IN THE DAYTON MUNICIPAL COURT  
CIVIL DIVISION

FREDERICK E. SMITH, :  
Plaintiff, : Case No. 85-CVG-6928  
vs. :  
CYNTHIA JOHNSON, : DECISION & ENTRY  
Defendant. :

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This matter came on for a continuation of the trial originally commenced on August 15, 1985, on September 5, 1985, with each of the parties appearing by their respective attorneys of record. The Court does hereby overrule a motion to continue filed by the Defendant on September 4, 1985.

The additional evidence presented on September 5, 1985, includes a copy of the lease agreement between the parties executed on or about June 10, 1985, and marked as joint exhibit 1. The parties further stipulated that the subject lease agreement was governed, in part, by the provisions of 24 CFR Section 882 which governs Section 8 Housing Assistance Payments Program for Existing Housing.

From the above-mentioned exhibit and the testimony elicited at trial, the Court finds the facts to be substantially as follows: The Defendant had rented the premises located at 1813 Arlene Avenue in the City of Dayton from the Plaintiff

for a period approximating three years. Defendant explained that she had never paid any rent to the Plaintiff in that her lease payments were wholly subsidized by a Federal subsidy program administered by Dayton Metropolitan Housing Authority. Defendant further explained that she was receiving welfare benefits for the entire duration of the lease term.

At some time prior to May of 1985, Plaintiff imposed a charge for certain repair obligations for which the Defendant was alleged to be responsible. Because the Defendant was unable to pay the entire balance due for the repairs (there remained a balance of One Dollar and Fifty Cents (\$1.50) owing), Plaintiff refused to sign a document known as a Landlord Statement on May 16, 1985, which was presented to Plaintiff in his professional office. The Landlord's Statement is required to be submitted by the Defendant to the welfare authorities in order to enable her to receive payments. Defendant, who was angered by the Plaintiff's refusal to sign, assaulted Plaintiff in his waiting room and refused to leave. The evidence revealed that the Defendant had pled guilty to the charge of assault in the criminal division of this court.

The following exhibits were admitted into evidence:

Plaintiff's exhibit 1, being a three-day notice which indicates on the reverse side that it was left at the Defendant's usual place of abode on June 17, 1985;

Plaintiff's exhibit 2, being a letter from a Mrs. Johnson to the Defendant concerning a bill for plumbing services and warning that failure to pay by May 1, 1985, will result in the termination of her lease;

Defendant's exhibit A, being a copy of the subject Landlord's Statement.

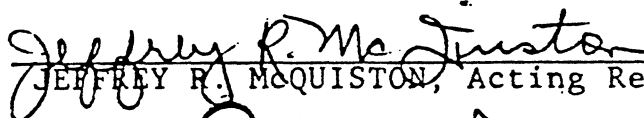
The Court is unable to determine the terms and conditions governing the rights and obligations of the parties at the time of the altercation on May 16, 1985, for the reason that the lease agreement admitted into evidence as an exhibit and marked joint exhibit 1 was not executed until a later time, specifically on June 10, 1985. The provisions of 24 CFR part 882 shed little light on what is meant by the term "other good cause" which allows the lessor to terminate the tenancy. It is the Defendant's position as is indicated in his memorandum in support that an altercation which does not occur on the rental premises does not constitute a breach of the covenant of quiet enjoyment and does not provide grounds for a termination of the lease nor for eviction. In support of that contention, Defendant cites the case of Poulos v. Toledo Labor Bldg. Co. (1925), 154 N.E. 57 where it was held that criminal activity which occurred on the premises could

constitute grounds for termination. Defendant reasons that implicit in that holding is that criminal activity which occurs off the premises does not affect the tenant's ability to continue in his tenancy.

While the Court is satisfied that the Plaintiff may very well have a civil cause in damages for the assault committed by the Defendant, such fact does not establish grounds for an eviction particularly in light of the Plaintiff's failure to produce any evidence as to the lease provisions in effect at the time of the altercation which would establish permissible grounds for a termination. Moreover, the Court is of the opinion that the Plaintiff waived any rights that he might have had to seek the eviction when he entered into a new lease agreement with the Defendant on June 10, 1985.

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiff's claim for restitution of the premises be dismissed at his costs. Plaintiff's claim for money damages is ordered continued for further proceedings.

APPROVED:

  
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JEFFREY R. McQUISTON, Acting Referee

  
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JUDGE

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