

IN THE DAYTON MUNICIPAL COURT
CIVIL DIVISION
NOV 20 1 57 PM '85

DAYTON METROPOLITAN HOUSING AUTHORITY, :
Plaintiff, : CASE NO. 85-CVG-9998
vs. :
ELLA D. LAWSON, : DECISION & ENTRY
Defendant. :

This case came on for trial on Plaintiff's claim for forcible entry and detainer on October 25, 1985. Both Plaintiff and Defendant were present in court represented by their respective counsel of record. The following exhibits were admitted into evidence:

Plaintiff's exhibit 1, being a dwelling lease executed between the parties November 15, 1983;

Plaintiff's exhibit 2, being a tenant ledger regarding Ella Lawson;

Plaintiff's exhibit 3, being a notice of termination for non-payment of rent dated September 9, 1985;

Plaintiff's exhibit 4, being a notice to vacate and leave the premises dated September 23, 1985.

From the exhibits admitted into evidence and the testimony adduced at trial, the Court finds the facts to be substantially as follows: Defendant Ella Lawson began renting from the Dayton Metropolitan Housing Authority on November 15, 1983. During her period of occupation of the premises in question, Defendant was late with the rent at least four times. On August

13, 1985, Plaintiff sent Defendant a letter stating that in the future rent payments would not be accepted if they were tendered after the 5th of the month.

In the month of September, prior to the 5th of that month, Defendant notified the assistant manager of Parkside Homes that her rent would be late because of a problem with her welfare check. On September 9th Defendant offered full payment to Plaintiff's co-manager and such offer was rejected.

Defendant's sole source of income is Aid to Dependent Children and her rent payments come out of that check. Defendant's periodic evaluation with the Welfare Department had been scheduled for August 18th or 19th. Prior to the interview the Welfare Department sent six or seven items of verification to the Defendant for her to have filled out by the appropriate persons or agencies. Defendant testified that she had all of the verifications completed including a verification from her landlord. There was no testimony presented that would contradict this. Defendant attended her re-evaluation interview at the Welfare Department, presented the items of verification and was told that everything was all right. On August 24th or 25th Defendant received a letter from the Welfare Department claiming that she didn't turn in her landlord's statement. On the same day she received

the letter from Welfare Defendant went down to the Welfare Department, got a new landlord verification statement and took it to her landlord's office where it was filled out. Defendant then took the statement to the Welfare Department on the following day and was told she would receive her check by the first of the month. Defendant in fact received her check December 7th, a Saturday; and has been stated, presented it to Parkside Management on the following Monday, September 9th.

It is clear that Defendant is not "at fault" for failing to pay her rent on time. Her undisputed testimony indicates that she completed all of the requirements of the Welfare Department to be recertified and that the delay in such recertification was in fact the fault of the Welfare Department. The testimony further indicates that upon being notified of the problem by the Welfare Department she immediately took all necessary steps to remedy that problem. The question before the Court then is whether Defendant's lack of fault can provide a defense to the Plaintiff's claim of eviction for late payment of rent.

The courts which have considered this question are split with regard to the rights of a public housing tenant. One approach, perhaps best summarized in Lancaster Housing Authority v. Gardner, 240 A. 2d 566, 211 Pa. Super. 502 (Pa. Super. 1968) holds that "tenants

in public housing projects have no vested right in their tenancy and . . . they are subject to the same laws that govern landlords and tenants generally." See, also, Housing Authority of the City of Newport v. Massey, 335 A. 2d 914 (R.I. 1975), Holt v. Richmond Redevelopment and Housing Authority, 266 F. Supp. 397 (D.C. Va. 1966).

The other approach to public housing tenants is best summarized in Maxton Housing Authority v. McLean, 328 S.E. 2d 290 (N.C. 1985) which holds that " . . . In order to evict a tenant occupying public housing for persons with low incomes for failure to pay rent as called for in the lease, there must be a finding of fault on the part of the tenant in failing to make the rental payment." 328 S.E. 2d 290 at 292. Maxton goes on to cite with approval Tyson v. New York City Housing Authority, 369 F. Supp. 513, 518 - 19 (S.D.N.Y. 1974):

"Implicit within the concept of due process is that liability may be imposed on an individual only as a result of that persons's own acts or omissions


There must be some causal nexus between the imposition of the sanction of eviction and the plaintiff's own conduct."

The Maxton holding is based upon a finding that there is some "entitlement" to continued occupancy in a public housing project. This Court

finds that the approach taken by the Maxton court indeed best effectuates the obvious purposes of public housing. Public housing exists to provide people that otherwise might not be able to afford it, sanitary and safe housing. Further, public housing improves the conditions of the entire community by making available an alternative to unsafe, unsanitary and unsightly private housing. Allowing the vicissitudes of life on public assistance to result in eviction would install a revolving door on our Public Housing Projects and undermine their essential purposes.

This Court finds that in order to evict a low income public housing tenant for failure to pay rent on time there must be some finding of fault on the part of the tenant for failing to make timely rental payment. Once the landlord shows late payment the burden then shifts to the Defendant to prove lack of fault of her part. Defendant has met her burden of establishing that she was without fault for failing to pay her September rent on time and so the Plaintiff's claim for restitution of the premises must be denied.

APPROVED:



ELLIS JACOBS, Referee



JUDGE

Copies to: Gary J. Carter, Attorney for Plaintiff,
340 W. Fourth St., Dayton, Ohio, 45402.
Carl J. Goraleski, Attorney for Defendant,
117 S. Main St., Rm. 525, Dayton, Ohio, 45402.

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