

IN THE DAYTON MUNICIPAL COURT

CIVIL DIVISION

DAYTON METROPOLITAN \* CASE NO. 88-CVG-1268

HOUSING AUTHORITY, \*

Plaintiff, \*

vs. \*

DECISION AND ENTRY

CONNIE L. WILLIAMS, \*

Defendant. \*

\* \* \* \* \*

FILED  
DAYTON MUNICIPAL COURT

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The defendant, Connie Williams, is a resident of Parkside Homes, as a lessee of the plaintiff, Dayton Metropolitan Housing Authority (DMHA), in federally subsidized housing under the United States Housing Act, 42 U.S.C.A. 1401, et seq., and 24 C.F.R. 247 and 966, et seq. On May 21, 1987, Michael Buchanan, the assistant project manager of Parkside, inspected Connie Williams' home. In his report, Mr. Buchanan noted that all areas, surfaces and facilities were in satisfactory condition with the exception of the shower drain and faucets and the floors of the living room, the kitchen, the bathroom and the bedrooms, which needed to be cleaned. On the basis of his inspection, Mr. Buchanan recommended that Ms. Williams attend a four (4) session housekeeping course offered by DMHA.

On September 3, 1987, DMHA notified Ms. Williams that she was in violation of her lease for poor housekeeping, and that she could cure the situation and avoid termination of her lease by cleaning the

premises as described in the notice or by completing DMHA housekeeping classes.

DMHA conducted a follow-up inspection of Ms. Williams' home on or about December 2, 1987. The inspector's report was generally negative, and on January 12, 1988, DMHA served Ms. Williams with a three-day notice to vacate and leave the premises. DMHA then sued Ms. Williams to obtain possession of the premises.

Termination of tenancy in federally subsidized housing is governed by 24 C.F.R. 966.4(1) which states:

That the PHA shall not terminate or refuse to renew lease other than for serious or repeated violation of material terms of the lease such as failure to make payments due under the lease or to fulfill the tenant obligations set forth in section 966.4(f) or for other good cause.

The lease agreement in the present case contains a similar clause. The plaintiff's notice to terminate was based on the defendant's alleged "serious or repeated violation of" three tenant obligations listed in the lease which are quoted from 24 C.F.R. 966.4(f)(5)(6) and (7):

3. To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
4. To keep the premises and such other areas as may be assigned to him for his exclusive use in a clean and safe condition.
5. To dispose of all ashes, garbage, rubbish, and other waste from the premises in a sanitary and safe manner.

In its notice to the defendant on September 3, 1987, which was based on Mr. Buchanan's inspection of Ms. Williams' home on May 21, 1987, the plaintiff stated:

You are in violation of your lease for poor housekeeping. The following problems must be corrected before you will be allowed continued housing privileges at a DMHA home. You must keep your walls clean; you must clean your bathroom sink, tub and shower, and your toilet. In the kitchen, your stove and refrigerator are too dirty to be healthy. You are expected to dispose of bad food before it rots. You must keep the grease and food splatters off your stove and out of the oven. Poor cleanliness attracts bugs. Your dishes should not be stored with old food stuck to them. Rinse them if you're not going to wash them right away. You are not storing your things neatly. Cluttered floors attract dust and could cause someone to fall. Finally, your floors are not clean. The lease requires you to keep your home in a safe and sanitary condition and to properly dispose of garbage.

The notice then instructed the defendant that she could cure the situation and avoid eviction by attending the DMHA housekeeping course and by complying with the lease.

At trial and in her Brief, the defendant argued that the plaintiff's notice to the defendant was nonspecific and inadequate for enabling the defendant to defend herself. The language in the notice, according to the defendant, was mere "boiler plate bad housekeeping language" intended as a shotgun approach for any housekeeping cases which might arise in DHMA complexes," and that the notice failed to identify specific types and times of violations, thus depriving the defendant the ability to prepare a defense in her case. Defendant's Brief, p. 8.

Defendant further contended that the plaintiff failed to show that the defendant's alleged violations were serious or repeated, as required by 24 C.F.R. 966.4(1)(1), or that the alleged violations constituted a threat to health and safety, as required by 24 C.F.R. 966.4(f). Id. at 9.

The plaintiff defended the specificity of its notice to the defendant. The plaintiff claimed that the language of the notice clearly outlined the defendant's housekeeping problems, and that the defendant could read the notice and "determine whether or not she believed she had such a problem." Plaintiff's Brief, p. 3. The Plaintiff further claimed that specific dates of violations were not necessary because "A housekeeping habit creates a predictable course of conduct that remains in evidence on a daily basis." Id. To support the contention that the defendant's conduct was continuous, the plaintiff argues two points. First, the plaintiff referred to the two inspection reports as being in substantial agreement that Ms. Williams' apartment was always unclean. Second, the plaintiff noted the presence of cockroaches in the apartment, stating, "Roaches only live where the uncleanliness provides food spillage, crumbs and rubbish to feed them." Id. at 4.

Housing and Urban Development regulation 24 CFR section 247.4(a)(2) states that "the landlord's determination to terminate the tenancy shall...state

the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense..." The language of this regulation was applied (though not cited by section number) in Associated Estates Corp. v. Bartell, 24 Ohio App. 3d 6, 492 N.E.2d 841 (Ohio Ct. App. Cuyahoga County 1985). In Bartell, a public housing project sought to evict a tenant for "serious, repeated damage to unit. Repeated disturbance." (Emphasis omitted.) The Court found that the broad language of the notice failed to refer to specific instances of conduct, and that it therefore denied the tenant procedural due process. Id. at 10, 492 N.E.2d at 846.

In the present case, evidence and testimony at trial illustrated the nonspecificity of the plaintiff's notice to defendant. The notice was based on Mr. Buchanan's inspection of Ms. Williams' home on May 21, 1987. Mr. Buchanan's inspection report, however, did not include much of what was stated in the notice. For instance, Mr. Buchanan's report stated that the walls needed painting, an obligation of the management, whereas the notice referred to the walls as dirty; Mr. Buchanan indicated that the toilet and bathroom sink were satisfactory, while the notice stated that they needed cleaning; Mr. Buchanan indicated that the stove and refrigerator were satisfactory, but the notice said they were "too dirty to be

healthy;" Mr. Buchanan's report said nothing about rotting food, grease splatters on the stove and in the oven, unwashed dishes, improperly stored possessions, cluttered floors, bugs, or garbage, while the notice listed the presence of all these things. At best, the notice agrees with the inspection report only with regard to dirty floors and a dirty shower, thus supporting the defendant's contention that the notice was mere boiler plate and not accurately directed toward the defendant's alleged violations.

The notice, according to the plaintiff, was sufficient to enable the defendant to "determine whether or not she believed she had such a problem." Plaintiff's Brief, p. 3. The purpose of a notice, however, is to identify violations which actually exist, rather than to produce a comprehensive list of violations which the plaintiff may or may not have committed, or may commit sometime in the future. From the standpoint of the plaintiff, the notice could not have specifically identified alleged violations of the lease, because, based on Mr. Buchanan's report, the plaintiff had no knowledge that Ms. Williams had anything but a satisfactorily clean apartment. From the standpoint of the defendant, Ms. Williams understood from Mr. Buchanan's report that her house was satisfactory. She was unaware of having committed the violations listed in the notice, or what was necessary to cure them aside from attending the housekeeping course, which she did.

Under 24 CFR 966.4(1)(1), the plaintiff was required to show that the defendant's alleged violations of the lease were either serious or repeated. The plaintiff presented no evidence or testimony of the seriousness of Ms. Williams' alleged violations in terms of being a threat to health or safety. To support the contention that the defendant's conduct was continuous, however, the plaintiff argued two points. The plaintiff's first point was that the two inspection reports, one prior to the notice and one after the notice, were in substantial agreement, showing that Ms. Williams' apartment was always unclean. The plaintiff presented the testimony of Ms. Vonda Gaines, who inspected Ms. Williams' home after Ms. Williams completed the housekeeping classes. Ms. Gaines' inspection report was far harsher than Mr. Buchanan's, and was in as little agreement with Mr. Buchanan's report as was the notice given to Ms. Williams three months earlier. Such disagreement between reports does not show a repetition of violations; rather it shows an isolated violation.

Moreover, the defendant rebutted Ms. Gaines' testimony, explaining at trial that Ms. Gaines caught her while she was in the process of cleaning the apartment, and that the conditions Ms. Gaines observed were not typical of her apartment. The defendant supported her position with the testimony of Mr. Harlan Sims, an inspector from Dayton City Inspectional

Services. After a surprise inspection of the apartment on February 12, 1988, Mr. Sims noted a roach problem, but generally found Ms. Williams to be an average housekeeper, presenting no health or safety violations. Mr. Sim's report agreed with Mr. Buchanan's original report, indicating that Ms. William's housekeeping was consistently satisfactory, rather than consistently poor as contended by the plaintiff.

Finally in this regard, Ms. Juanita Jones, Ms. Williams' neighbor, concurred with Mr. Sim's report. Thus, Ms. Gaines' report was not only inconsistent with Mr. Buchanan's original report, but inconsistent with other testimony and evidence presented at trial. Therefore, the plaintiff, through Ms. Gaines, showed at least one instance of a violation by the defendant, but did not demonstrate repeated or serious violations as required by law.

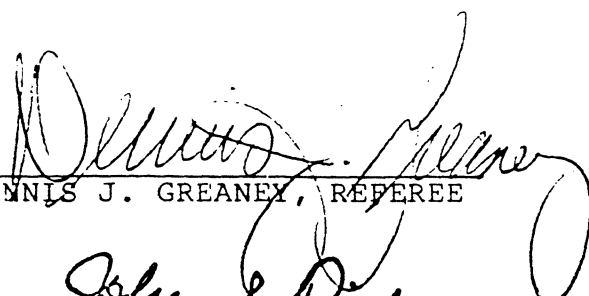
The plaintiff's second point emphasized that the admitted presence of roaches indicated a habit of poor housekeeping, stating that "Roaches only live where uncleanliness provides food spillage, crumbs, and rubbish to feed them." Plaintiff's Brief, p. 4. While cleanliness is the best defense against roaches, the presence of roaches does not necessarily indicate a habit of poor housekeeping. Boraiko, The Indomitable Cockroach, 159 National Geographic 130, 141 (January, 1981). Cockroaches may "dine on wallpaper or television cords...and



can (live) for three months on water alone, one month on nothing at all." Id. at 134. Twelve cockroaches "can live on the glue of a postage stamp for a week." Battling the Perfect Bug, 93 Science Digest 28 (October, 1985). By conservative estimates, 97.5% of low income housing in the southeastern United States is infested with a minimum of 160 roaches per unit and an average of 336 roaches per unit. Raloff, Roaches: The Battle Continues, 129 Science News 378 (June 14, 1986). Thus, the plaintiff's reliance on the presence of cockroaches to indicate that Ms. Williams was a habitually poor housekeeper is not supported by fact. Therefore, the plaintiff did not show that Ms. Williams repeatedly violated the lease.

The plaintiff's notice to the defendant was nonspecific and denied the defendant the opportunity to defend herself. The notice was nothing more than a list of general violations. There was no relationship between the violations listed in the notice and the defendant's situation as conveyed in the inspection report filed by DMHA. Thus, the plaintiff had no knowledge that the violations in the notice had been committed by the defendant, and the defendant had no reason to believe that she was in violation of the lease or to what extent. Also, the plaintiff failed to show that the defendant seriously or repeatedly violated the lease. The

evidence and testimony presented at trial indicated that the defendant violated the lease on only one occasion rather than repeatedly. Therefore, the plaintiff's action to regain possession of the defendant's apartment should be dismissed at plaintiff's costs.

  
DENNIS J. GREANEY, REFEREE

  
JUDGE

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