

JUDGMENT ENTRY RECEIVED  
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MAY 29 1990

BENNY BONANNO, Clerk

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO

OPPMANN PROPERTIES	)	CASE NO. 90-CVG-9118
d/b/a CARTER MANOR APARTMENTS	)	
	)	JUDGE WILLIAM CORRIGAN
Plaintiff	)	
	)	<u>JUDGMENT ENTRY</u>
	)	<u>AND OPINION</u>
-vs-	)	
	)	
JOSEPH JACKSON	)	
	)	
Defendant	)	

This is an action in forcible entry and detainer to recover possession of residential rental premises. Pursuant to Ohio R. Civ. P. 56, defendant filed a motion for summary judgment on plaintiff's complaint. For the following reasons, this court grants defendant's motion for summary judgment.

Plaintiff is the owner of the Carter Manor Apartments (hereinafter "Carter Manor"), located at 1012 Prospect Avenue, Cleveland, Ohio. Plaintiff has entered into a contract with the United States Department of Housing and Urban Development (hereinafter "HUD") pursuant to which HUD provides rent subsidies to Carter Manor under the federal housing program known as Section 8 Loan Management Set-Aside (hereinafter "Section 8"). 42 U.S.C. Sec. 1437f; 24 C.F.R. Part 886 (1989).

Defendant occupies a dwelling unit (hereinafter "the rental premises") at Carter Manor pursuant to a written lease. His rent

J# 169, Pg. 496

for the rental premises is federally subsidized under the Section 8 program. The contract rent for the rental premises is \$470 per month. Defendant is responsible for paying \$64 per month of the contract rent. The Section 8 subsidy pays the remainder of the contract rent.

Plaintiff filed the instant action in forcible entry and detainer against defendant for his alleged nonpayment of March 1990 rent. On March 16, 1990, plaintiff served defendant with a "Notice to Leave Premises Within 10 Days," (hereinafter "notice of proposed termination"). The notice of proposed termination contained the following language:

Your lease is being terminated for the following reasons: Failure to pay rent. Rent due \$75.00 computed as of the 1 day of March, 1990.

You have 10 days within which to discuss the proposed termination of your tenancy. The 10 day period begins on the date marked above as date of service. If you request a meeting, the landlord must meet with you to discuss this matter.

On the same day, March 16, 1990, plaintiff served defendant with a second notice, a "Notice to Leave Premises," (hereinafter "notice to vacate"). The notice to vacate contained the language

J# 169, Pg. 497

that R.C. 1923.04 requires for a notice to vacate. It demanded that defendant vacate the rental premises by March 26, 1990.

Plaintiff served upon defendant no other relevant notices regarding this termination of his tenancy. On March 29, 1990, plaintiff commenced this action in forcible entry and detainer.

When a landlord participates in a federal rent subsidy program, it obligates itself to act in accordance with the applicable federal rules and regulations. Associated Estates Corp. v. Bartell, 24 Ohio App.3d 6, 10, 492 N.E.2d 841, 846 (Cuyahoga County 1988). The federal rules and regulations prescribe procedures a Section 8 landlord must follow when it proposes to terminate a tenant's lease. 24 C.F.R. Part 886 (1989); HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Programs, Ch. 4 (1981, and revisions as of February 1990) [hereinafter "HUD Handbook 4350.3, Ch. 4"], Sections 1,5; Defendant's lease.

The Section 8 landlord is required, inter alia, to give the tenant a written notice of any proposed termination of the tenant's tenancy. The notice must state the grounds for the proposed termination, the specific date on which the landlord

J# 169, Pg. 498

proposes the termination of the tenancy to be effective, and that the family has 10 days within which to respond to the owner. The purpose of the notice of proposed termination and the meeting opportunity that it references is to provide the landlord and tenant an opportunity "to discuss the proposed termination of tenancy", HUD Handbook 4350.3, Ch. 4, Section 5, Paragraph 4-20(a)(4), and possibly reach an accommodation regarding the dispute, which would avoid the necessity for filing an eviction action. Deerwood Management Co. v. Flint, No. M85 CVG-24397, slip op. at 2 (Mun. Ct. Franklin Cty., October 15, 1985) (copy attached). When a Section 8 tenant has been served with a notice of proposed termination, the tenancy is not terminated until the expiration of the notice, and then only if the tenant and landlord have failed to reach an accommodation regarding the dispute. Deerwood Management Co. v. Flint, supra.

The Section 8 landlord is also required to comply with the applicable State law. 24 C.F.R. Sec. 247.6(c) (1989). Under Ohio law, to maintain an action in forcible entry and detainer, a landlord must serve a notice to vacate in accordance with the requirements of R.C. 1923.04.

J#169, Pg. 499

The R.C. 1923.04 notice to vacate may not be served until after the expiration of the tenancy. FMJ Properties v. Hinton, No. 50314 (Ct. App. Cuyahoga Cty. April 10, 1986) (copy attached); Gibbes v. Freeman, No. 52745 (Ct. App. Cuyahoga Cty. Sept. 3, 1987) (copy attached); Siegler v. Batdorff, 63 Ohio App.2d 76, 408 N.E.2d 1383 (Cuyahoga Cty. 1979); Voyager Village Limited v. Williams, 3 Ohio App.3d 288, 444 N.E.2d 1337 (Greene Cty. 1982). As the Cuyahoga County Court of Appeals stated in FMJ Properties, slip op. at 6:

A notice to vacate may not be served until the expiration of the tenancy and it may not instruct the tenant to vacate the premises by a date that precedes the termination of the tenancy.

Therefore, in a Section 8 tenancy, the R.C. 1923.04 notice to vacate may not be served before the expiration of the notice of proposed termination. Knoll Group Management v. Brown, No. 83-CVG-9624, slip op. at 5-6 (Muni. Ct. Dayton, February 8, 1984) (copy attached). Cf. Cincinnati Metropolitan Housing Authority v. McCollum, 45 Ohio App.2d 197, 199, 341 N.E.2d 857, 859 (Hamilton Cty. 1975). This conclusion is consistent with the federal rule that permits the notice of proposed termination to run concurrent with any comparable notice period required by State or local law. HUD Handbook 4350.3, Ch. 4, Section. 5,

J# 169, Pg. 500

Paragraph 4-20. The R.C. 1923.04 notice to vacate is not a comparable notice to the notice of proposed termination. Cf. Cincinnati Metropolitan Housing Authority v. McCollum, 45 Ohio App.2d at 199, 341 N.E.2d at 859. The notice of proposed termination proposes to, but will not necessarily, terminate the tenancy; whereas the R.C. 1923.04 notice to vacate directs the tenant to leave the premises because the tenancy already has terminated. A State notice comparable to the notice of proposed termination is the R.C. 5321.11 notice of proposed termination.

In the present case, on March 16, 1990, plaintiff simultaneously served defendant with the notice of proposed termination and the R.C. 1923.04 notice to vacate. Based on the service date of the notice of proposed termination, defendant's tenancy could not terminate before March 26, 1990, and would terminate on March 26, 1990, only if no prior accommodation were reached by defendant and plaintiff. Therefore, the R.C. 1923.04 notice to vacate could not properly be served before March 27, 1990. Its service on March 16, 1990 resulted in its service before the termination of defendant's tenancy.

Plaintiff's service of the R.C. 1923.04 notice to vacate prior to the expiration of defendant's tenancy constitutes

J# 169, Pg. 501

improper service. FMJ Properties v. Hinton, supra; Siegler v. Batdorff, supra. Absent proper service of the R.C. 1923.04 notice to vacate, the trial court lacks jurisdiction to proceed. FMJ Properties, slip op. at 6; Dayton Metropolitan Housing Authority v. Russell, 16 Ohio Op.3d 94 (Ct. App. Montgomery Cty. 1980); Sternberg v. Washington, 113 Ohio App. 216, 177 N.E.2d 525 (Summit Cty. 1960).

For this reason, defendant's motion for summary judgment is hereby granted.

  
JUDGE WILLIAM CORRIGAN

G# 169, Pg. 502