

FILED

IN THE MUNICIPAL COURT OF ATHENS COUNTY, OHIO

ATHENS COUNTY MUNICIPAL COURT

MAR 11 1991

Plains Plaza Ltd., dba
Plains Plaza Apartments

CLERKS OFFICE
ATHENS COUNTY, OHIO

Plaintiff,

vs.

Case No. 90 CVG 11-43

Vicky L. Rupe, et al.,
Defendants.

DECISION ON MOTION FOR
SUMMARY JUDGMENT AND
JOURNAL ENTRY

This cause came on for consideration on a Motion for Summary Judgment. The court, having the benefit of the affidavits and attachments and the arguments and the memoranda of counsel herein, finds that there is no material issue of fact and that movant is entitled to final judgment as a matter of law.

The Court finds the following material facts and conclusions are established herein and in Case No. 90 R.E. 156A:

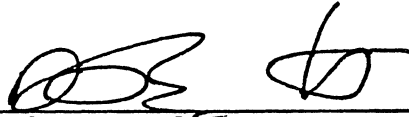
1. Vicky L. Rupe and her four minor children are tenants of Plaintiff at Apt. 50, Plains Plaza Apartments, The Plains, Ohio and the tenancy is federally subsidized.
2. On April 11, 1990 Plaintiff served Ms. Rupe with a 10 day notice to terminate the lease.
3. On April 16, 1990, Ms. Rupe, through counsel, made a timely written request for a conference with Plaintiff to discuss the proposed termination and no conference was scheduled or held.
4. On May 2, 1990, Ms. Rupe, through counsel, gave written notice to Plaintiff of her intent to escrow her rent due to Plaintiff's failure to respond to the April 16, 1990 request for a conference, its failure to recertify

Ms. Rupe's rent and its failure to accept her tenders of rent.

5. On June 18, 1990, Ms. Rupe filed an escrow case in this Court under Case No. 90 RE 156A.
6. On July 2, 1990, Ms. Rupe's counsel deposed Ms. Cathy Carter, then the manager at the Plains Plaza Apartments and Plaintiff's counsel deposed Ms. Rupe. This discovery took place in the escrow proceeding and the Carter deposition was done pursuant to a subpoena. Counsel for the parties engaged in settlement discussions which were unsuccessful.
7. On August 29, 1990, Plaintiff served Ms. Rupe with a Notice to Leave Premises.
8. On September 6, 1990, Ms. Rupe, through counsel, timely requested a conference to discuss the August 29 proposed termination and none was ever held.
9. On November 28, 1990, Plaintiff filed its eviction complaint without ever having a conference with Ms. Rupe to discuss the proposed termination and resolve them without litigation.
10. Plains Plaza Apartments is a multifamily housing project subsidized under Section 8 of the National Housing Act.
11. Terminations of the tenancy herein are governed by: a) 24 CFR Sec. 880.607; b) Sec. 4350.3, para. 4-20 of the HUD Handbook; and c) para. 23 of the lease between the Plaintiff and Ms. Rupe.
12. Plaintiff failed to meet with the tenant to discuss the proposed terminations of tenancy and failed to provide the tenant with any meaningful opportunity to resolve the disputes before litigation and said failures are breaches by Plaintiff of para. 23 of the lease and they are violations of Sec. 4350.3, para. 4-20 of the HUD Handbook and 24 CFR Sec. 880.607(c)(1).
13. Settlement discussions between counsel for the parties and discovery proceedings are not a substitute for an informal meeting with the tenant and they do not constitute compliance with the aforesaid mandatory requirements of the lease, the HUD Handbook and the federal regulations.

14. Where a landlord in federally subsidized housing fails to follow the procedures required by the HUD Handbook and the federal regulations, the landlord denies due process of law to the tenant. Thorpe v. Housing Authority, 393 U.S. 268 (1969).
15. A meaningful opportunity to be heard encompasses the concept of being listened to by an impartial decision maker. See Crossroads Somerset Ltd. v. Newland, 40 Ohio App. 3d 20, 531 N.E. 2d 327 (Franklin Co. 1987); Dial v. Star City Public Housing Authority, 8 Ark. App. 65, 648 S.W. 2d 806 (Ark. App. 1983).
16. Where there is a failure by the landlord to meet and meaningfully discuss the proposed termination, this Court has no jurisdiction to evict the tenants. Crossroads Sommerset Ltd., supra.

It is therefore ORDERED, ADJUDGED and DECREED that final judgment be and is hereby rendered against Plaintiff and this action is hereby dismissed with prejudice. Costs taxed to Plaintiff.



Judge Douglas J. Bennett

cc: Thomas R. McGuire
Southeast Ohio Legal Services
Attorney for Defendant Vicky Rupe

DIRECTION TO CLERK
PER CIVIL RULE 58 (B)

and

Bradley C. Smith
Flanagan, Lieberman, Hoffman and Swaim
Attorney for Plaintiff