

IN THE MUNICIPAL COURT OF AKRON  
SUMMIT COUNTY, OHIO  
JAN 25 2 59 PM '91

SUMMIT MANAGEMENT SERVICES, INC. FILED )  
ARRON MUNICIPAL COURT ) CASE NO. 90 CVI 12598  
DAVID M. ZAMPELI )  
CLERK )  
PLAINTIFF )  
v. ) REFEREE L.T. TEODOSIO  
DENISE MARTIN AND OCCUPANTS )  
DEFENDANT ) REFEREE'S REPORT

This matter was scheduled for hearing before Referee Linda Tucci Teodosio on December 27, 1990. Both parties were present in court with counsel. Additionally counsel for both parties filed post-trial briefs on January 4, 1991.

Plaintiff Summit Management Services, Inc. seeks the eviction of Denise Martin from the premises owned by it at 1746 Nanaula #46, in Akron. As a basis for the eviction, Plaintiff claims that Defendant failed to pay for a screen door that either she, or someone under her control, damaged and that Defendant failed to pay a water bill in a timely fashion. In her defense to the eviction action Defendant claims that she was not properly served with notice of termination of the lease and notice to vacate the premises. Defendant also claims that she is not in breach of the lease.

Sylvia Steurer, the resident manager of the property occupied by the Defendant testified that she personally served the Defendant with both the three day notice required by R.C. 1923.04 and the ten day notice required by both the lease and HUD required by both the lease and HUD on November 9, 1990. Ms. Steurer testified that a

storm door was replaced at the Defendant's residence within the last four months.

Rick Nixon is the properties director for the Plaintiff. Mr. Nixon testified that he keeps the records of repairs and inspections made to properties owned by the Plaintiff. Mr. Nixon testified that Plaintiff's exhibit C, a move-in inspection report signed by the Plaintiff reveals that the property occupied by the Defendant did have a storm door at the time the lease was commenced on April 4, 1985. Defendant was billed \$165.00 for the storm door on October 5, 1990. In addition, at that time, Defendant was billed the amount of \$20.78 for third quarter water and sewage bills. No payment was received on either item prior to the expiration of the notice period. Defendant attempted to make a payment of \$45.00 by check in December but, as this was a partial payment, it was returned to her.

Mr. Nixon presented inspection reports for the property occupied by Defendant dated May 1, 1985, and December 10, 1985 which reveal no problems with the storm door. The inspection report dated June 13, 1986 reveals that the storm door need adjustment and repair to the kick panel. The report dated April 17, 1987 reveals that the storm door had no locks. The March 9, 1988 report states that the door needs replaced. On December 6, 1989, the inspection report states that the apartment need a front storm door. On September 21, 1990 the report records the storm door as "NEW". Mr. Nixon testified that the storm door was replaced during mid-September, 1990. Mr. Nixon testified that the records of the apartment were reviewed and it was determined that the Defendant was responsible

for the storm door and charged for its replacement cost. Mr. Nixon also received a letter signed "Denise Martin" dated October 22, 1990, refusing to pay for the door and stating that there was no door on the premises when she moved in.

The Defendant presented the testimony of her fiance, Mr. Ali who stated that he helped her move into the apartment in 1985. Mr. Ali testified that the storm door was present but damaged when the Defendant moved in. Marie Holloway, Defendant's mother,, cooberrated Mr. Ali's testimony.

The Defendant testified that she was told by the property owner, Mr. Newman that she would not be charged for the replacement of the door. Defendant testified that throughout the occupancy of the apartment, the storm door was damaged in that it hung down from its hinges, the kick plate panel was damaged, the door handle wouldn't lock and that the chain was missing. Defendant denied writing or sending the letter dated October 22, 1990.

The Referee finds that the door of Defendant's property was damaged at the time she began her occupancy of 1746 Nanaula #46. The door hinges caused the door to hang down and the kick panel, lock, and chain were either missing or damaged. The Defendant did have a door, however, until it was removed sometime between April 17, 1987 and March 9, 1988. The Referee further finds that the Defendant was delinquent in her water bill. Defendant was billed for the replacement of the storm door and delinquent water bill on October 5, 1990.

The Referee further finds that the notices to vacate the premises, however, are not adequate. First, the ten day notice is

required by both the lease and HUD to "advise the tenant of his/her right to defend the action in court." Lease, Paragraph 23(c)(4); HUD Manual 4350.3, paragraph 4-20. No such language is contained in the ten -day notice served on the Defendant by the Plaintiff.

Further, the Referee finds that two different termination dates are contained in the notices served on the Defendant by the Plaintiff. The three-day notice states that the lease will terminate on November 12, 1990. The ten-day notice states that the lease shall terminate on November 19, 1990. While the lease specifies that the time frames required by State Law and HUD may run concurrent, the recitation of two different dates of lease termination is confusing at best. In the case of Sandefur Co. v. Jones (1982), 9 Ohio App. 3d 85, Paragraph 2 Syllabus, the Court of Appeals for Franklin County noted that the notice requirements of State Law and HUD may, be given contemporaneously and, in fact, in the same document. However, in that case, a single date of termination was noted which complied with both state and federal regulations.

Because of the failure of the ten-day notice to advise Defendant of her right to defend an action in court, and because of the inconsistent dates contained in the notices to terminate lease, it is the recommendation of the Referee that a writ not be allowed.

  
Linda Tucci Teodosio  
Referee

JUDGMENT ENTRY

The report of the Referee is hereby approved.

It is the judgment of the Court that a writ of restitution MAY  
NOT issue.

Cost to be paid by PLAINTIFF/DEFENDANT.

A handwritten signature in cursive script, appearing to read 'W. A. ...', is written over a horizontal line.

Judge, Akron Municipal Court

Date: