

FILED

COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO

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*Russell J. ...*  
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WANDA MARTIN

PLAINTIFF : CASE NO. 91CV1215

VS. :

GRANDVIEW APARTMENTS, : DECISION  
AN OHIO GENERAL PARTNERSHIP, ET AL. :

DEFENDANTS. :  
:

Sandra M. Scott, Legal Aid Society of Clermont County, 558  
Kilgore Street, P. O. Box 135, Batavia, OH 45103.

Stephen H. Olden, Legal Aid Society of Cincinnati, 901 Elm  
Street, Cincinnati, OH 45202.

Kelly Farrish, 601 Main Street, Third Floor, Cincinnati, OH  
45202.

This cause came on for trial to the Court upon Plaintiff's  
complaint, Defendant's answer and counterclaim. The Court  
thereafter took the matter under advisement and renders this  
written decision.

The Court finds the following facts have been established by  
a preponderance of the evidence. Joint Exhibit #4 represents a  
valid lease between Grandview Apartments, an Ohio general  
partnership, and Wanda Martin for Unit #115 located at 300  
University Lane, Batavia, Ohio 45103, in the project known as  
Bella Vista Apartments. That pursuant to the terms of such lease  
the Plaintiff was occupying the apartment on a month to month  
tenancy on August 13, 1991. Further, the Plaintiff had paid rent  
for the month of August, 1991.

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On August 13, 1991 a major fire caused substantial destruction of Building 300 and rendered Apartment #115 uninhabitable. The origin of the fire was not within Apartment #115 and not in any way caused by Plaintiff. Approximately twenty families were displaced by the fire and attendant smoke and water damage.

Defendant Grandview Apartments through its agent Showe Management Company set about reconstruction of Building 300 in two phases: Phase I for those apartments with minimal damage which could be rendered habitable in less than two weeks, and Phase II for those apartments which required more extensive reconstruction lasting several months. Apartment #115 of Building 300 was rendered habitable on or about December 10, 1991.

Though request and demand for occupancy has been made by Plaintiff, Defendant Grandview Apartments through Showe Management Company and Joan Holbert, Agent, have denied Plaintiff access to or permission to reinhabit such apartment.

The Bella Vista Apartment Complex is a federally subsidized housing complex subject to the restrictions upon termination of tenancy contained in 24CFR Section 247.

Section 24 of the lease (Joint Exhibit #4) states:

Hazards:

The tenant shall not undertake, or permit his/her family or guests to undertake, any hazardous acts or do anything that will increase the project's insurance premiums. If the unit is damaged by fire, wind or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the tenant, the tenant will be responsible for rent only up to the date of the destruction. Additional rent will not accrue until the unit has been repaired to a livable condition. Landlord is not responsible for damage

to tenant's personal property due to fire, theft, flood, sewage, roof leaks, water leaks or any acts beyond the control of the landlord. (emphasis added)

Defendants encourage the Court to find that the destruction of the premises by fire rendered the lease terminated. In this Court's view, the plain terms of the lease anticipate reconstruction upon the premises being rendered uninhabitable by fire and rehabilitation of the premises by the tenant. Paragraph 24 of the lease can be given no other construction than its plain meaning and should be given force and effect.

Defendants also rely upon the defense of abandonment. However, the burden of proving abandonment of a lease is upon the party seeking to interpose it as a defense. The Court would note that no specific defenses were pled in the answer, however the Court is considering such based upon the evidence produced at trial. Considering all evidence produced at trial the Court cannot say that it is convinced that the Defendant abandon her rights in the apartment. She requested to be relocated and was advised that no apartments were available at that time in the complex. She surrendered her keys only upon request. Through counsel she notified the apartment complex of her intention to reinhabit apartment #115 upon its reconstruction promptly and well in advance of its being completed and ready for occupancy.

Defendants also claim that the Plaintiff may not occupy two rent subsidy apartments simultaneously. This is a correct statement. However, the Plaintiff may terminate her relationship with Owensville Manor Apartments and reinhabit the apartment under the lease of Bella Vista when available.

Further, Section 23 of the lease captioned "Termination of Tenancy" tracks the language of 24CFR Section 247 and prevents the landlord from terminating the lease agreement without compliance with HUD regulations, state and local law and the terms of the agreement. No evidence was produced at trial which would support termination of the tenancy nor was a counterclaim for forcible entry and detainer filed on behalf of Defendants.

The Court finds, as a matter of law, that the Plaintiff is entitled to possession of Unit #115, 300 University Lane, Batavia, Ohio 45103, in the project known as Bella Vista Apartments.

Turning to Plaintiff's claim for damages, the Court is not persuaded by a preponderance of the evidence that Plaintiff suffered any physical or emotional damage as a direct and proximate cause of the actions of Defendants. While certainly the Plaintiff suffered emotional distress at losing her personal belongings in a fire and further stress at being required to relocate, it would appear those are not through the fault of the Defendant. The Defendant had only two apartments available of the category which Plaintiff occupied at the time of the fire and, had a reasonable plan for allocation of those apartments on a first come first serve basis. The Court is not satisfied that the Plaintiff has shown any compensable emotional injury for distress since December 10, 1991, the date the apartment was available for occupancy. Therefore, the Court finds for the Defendant on the issue of damages for emotional distress.

The Court finds, as a matter of law, that the actions of the

Defendant do not constitute a lock out pursuant to Section 5321.15.

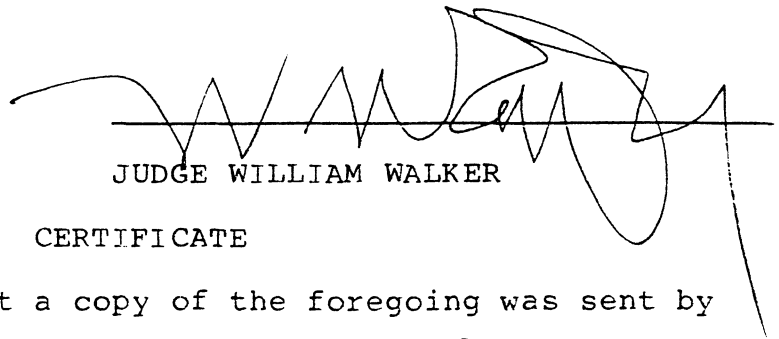
Paragraph A reads as follows:

No landlord of residential premises shall initiate any act, including termination of utilities or services, exclusion from the premises, or threat of any unlawful act, against any tenant, or a tenant whose right to possession has terminated, for the purpose of recovering possession of residential premises, other than as provided in Chapters 1923, 5303, and 5321 of the Revised Code.

In the case at bar, the act of the Defendants, excluding Plaintiff from rehabilitation, was not initiated "for the purpose of recovering possession of residential premises". Possession of the residence was obtained by virtue of a fire which rendered the premises uninhabitable. After repair, Defendants maintained possession but took no action to recover possession. Neither can it be said that the fire was in any way the cause or fault of the Defendants. This Court chooses to strictly construe the statute and its plain meaning.

Turning to the Defendant's counterclaim the Court is satisfied by a preponderance of the evidence that the damage to the closet door and bathroom door were caused by the negligence of the Plaintiff. However, the Court is not satisfied by a preponderance of the evidence that the damage to the walls and graffiti were caused by the Plaintiff or someone under her care and control. Defendant is therefore granted judgment against the Plaintiff in the amount of \$100 on its counterclaim.

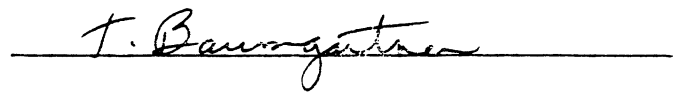
Costs taxed to the Defendant.

A large, stylized handwritten signature in black ink, appearing to be 'W. Walker', is written over a horizontal line.

JUDGE WILLIAM WALKER

CERTIFICATE

I hereby certify that a copy of the foregoing was sent by regular U.S. Mail to all counsel of record this 9th day of March, 1992.

A handwritten signature in black ink, appearing to be 'T. Baumgartner', is written over a horizontal line.