

IN THE CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO  
HOUSING DIVISION

MORRIS POLSTER	)	CASE NUMBER 91 CVG 29009
23901 TIMBERLANE	)	
BEACHWOOD, OHIO 44122	)	
	)	
PLAINTIFF	)	
	)	
VS.	)	<u>LANDLORD-TENANT</u>
	)	
VALERIE LEWIS	)	
8611 DETROIT AVENUE,	)	
SUITE E-10	)	
CLEVELAND, OHIO 44102	)	
	)	
DEFENDANT	)	<u>REFEREE'S REPORT AND</u>
	)	<u>RECOMMENDATION</u>

This matter came to be heard on December 6, 1991, on the court's own motion to vacate the judgment entry of November 15, 1991, which granted judgment to plaintiff on his first cause of action. The case was heard by Referee Barbara A. Reitzloff, to whom this case was assigned by Judge William H. Corrigan, to take evidence on all issues of law and fact regarding plaintiff's first cause of action.

Plaintiff in court without counsel.

Defendant in court with counsel.

FINDINGS OF FACT:

1. Plaintiff and his witness testified to the following facts, which are not in dispute:

A. Plaintiff is the owner and/or manager of the Franklin Manor Apartment (hereinafter "Franklin Manor"), located at 8611 Detroit Avenue, Cleveland, Ohio.

B. 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 Franklin Manor under the federal housing program known as Section 8 Moderate Rehabilitation (hereinafter "Section 8"). 42 U.S.C. Sec. 1437f; 24 C.F.R. Part 882 (1989).

C. Defendant occupies a dwelling unit (hereinafter "the rental premises") at Franklin Manor pursuant to a written lease. Her rent for the rental premises is federally subsidized under the Section 8 program. The contract rent for the rental premises is Five Hundred Sixty-Two Dollars (\$562.00) per month. Defendant is responsible for paying Sixty-Five Dollars (\$65.00) per month of the contract rent.

D. Plaintiff filed the instant action in forcible entry and detainer against defendant for her alleged nonpayment of rent.

E. On October 9, 1991, plaintiff delivered to defendant a letter requesting defendant to leave the premises (hereinafter "notice of proposed termination"). The notice of proposed termination read as follows:

In accordance with the Section 8 Housing Assistance Payments Program Regulations-subpart E-Special Procedures for Moderate Rehabilitation-Program Development and Operation Part 822.511 termination of tenancy Section C-notice of termination of tenancy paragraph (1i) this notice shall

serve as your written notice of our intent to terminate your tenancy for failure to pay rent. The date of the termination shall be October 17, 1991. The total amount due us is reflected on the attached statement.

The attached statement contained only the date, the tenant's name and address, and a recitation of the amounts owed by the tenant.

F. On October 20, 1991, plaintiff served defendant with a second notice, a "Notice to Leave Premises," (hereinafter "notice to vacate"). The notice to vacate contained the language that R.C. 1923.04 requires for a notice to vacate. It demanded that defendant vacate the rental premises within three days.

G. Plaintiff served upon defendant no other relevant notices regarding this termination of her tenancy.

2. Plaintiff and his witness also testified that plaintiff last received payment from defendant on October 8, 1991, and that that payment was applied to unpaid late charges and/or rent from months prior to October 1991. Plaintiff denied receiving any subsequent payment from defendant.

3. Defendant testified that she mailed plaintiff a money order for Two Hundred Fifty Dollars (\$250.00) on November 13, 1991. She testified that the mail was not returned by the Post Office. Defendant argued that the October 1991 payment have been applied to the unpaid rent, and not the late charges, thereby leaving defendant current in her rent, defeating plaintiff's first cause of action.

4. Plaintiff filed his complaint in forcible entry and detainer on October 25, 1991, and was granted judgment on his first cause of action on November 15, 1991. Thereafter the court, on its own motion, set this case for hearing on December 6, 1991.

CONCLUSIONS OF LAW AND FACT

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 App3d 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 882

A landlord participating in the Section 8 Moderate Rehabilitation Program 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, with enough specificity to enable the tenant to prepare a defense, the specific date on which the landlord proposes the termination of the tenancy to be effective, and that if a judicial proceeding for eviction is instituted, the family may present a defense in the proceeding. 24 C.F.R. 882.511(C)(2).

The tenancy of a Section 8 tenant is not terminated until she has been served with a notice of proposed termination, and that notice has expired, and then is terminated only if the tenant and landlord have failed to reach an accommodation regarding the dispute. Oppman Properties v. Jackson, No.

90-CVG 9118, Slip op. at 4 (Mun. Ct. Cleveland, May 29, 1990); Deerwood Management Co v. Flint, No. M85 CVG-24397, slip op. at 2 (Mun. Ct. Franklin Cty., October 15, 1985).

In the present case, on October 9, 1991, plaintiff served defendant with a notice of proposed termination. The notice did not comply with the requirements of 24 C.F.R.

822.511(C)(2), as it failed to advise the defendant of her right to present a defense in a judicial proceeding for eviction, if such proceeding were instituted. Absent service of a notice of proposed termination in compliance with 24 C.F.R. 822.511, defendant's tenancy has not been terminated.

The R.C. 1923.04 notice to vacate may not be served until after the termination or expiration of the tenancy. FMJ Properties v. Hinton, No. 50314 (Ct. App. Cuyahoga Cty. April 10, 1986); Gibbes v. Freeman, No. 52745 (Ct. App., Cuyahoga Cty. Sept. 3, 1987); Sieglar 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.

Plaintiff's service of the R.C. 1923.04 notice to vacate prior to the termination of defendant's tenancy constitutes improper service. FMJ Properties v. Hinton, supra; Sieglar 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).

JUDGMENT

Judgment entry of November 15, 1991 is hereby vacated. Plaintiff's first cause of action is dismissed at plaintiff's costs.

RECOMMENDED: Barbara A. Reitzloff  
BARBARA A. REITZLOFF  
HOUSING COURT REFEREE  
CLEVELAND MUNICIPAL COURT

APPROVED: William H. Corrigan  
JUDGE WILLIAM H. CORRIGAN  
CLEVELAND MUNICIPAL COURT  
HOUSING COURT

SERVICE

A copy of the Referee's Report and Recommendation was sent by ordinary United States mail to the Plaintiff, Morris Polster, 23901 Tomerland, Beachwood, Ohio 44122 and to the Defendant Valerie Lewis, 8611 Detroit Avenue, Cleveland, Ohio 44102 this 24th day of December 1991.

IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE REFEREE'S REPORT MUST BE IN WRITING WITHIN FOURTEEN (14) DAYS OF FILING AND MUST COMPLY WITH THE OHIO RULES OF PROCEDURE AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

RECOMMENDED: 

BARBARA A. REITZLOFF  
HOUSING COURT REFEREE  
CLEVELAND MUNICIPAL COURT

APPROVED: 

JUDGE WILLIAM H. CORRIGAN  
CLEVELAND MUNICIPAL COURT  
HOUSING COURT