

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

MALIGA PROPERTIES)	CASE NUMBER: 92 CVG 2998
26949 CHAGRIN BLVD.)	
BEACHWOOD, OHIO 44122)	
)	
PLAINTIFF)	
)	
VS.)	<u>LANDLORD-TENANT</u>
)	
CLARA WILLIAMS)	
8620 WADE PARK, UNIT 66)	
CLEVELAND, OHIO 44106)	<u>REFEREE'S REPORT AND</u>
)	<u>RECOMMENDATION</u>
DEFENDANT)	

Plaintiff's first cause of action came to be heard on February 25, 1991 before Referee Barbara A. Reitzloff, to whom this case was assigned by Judge William H. Corrigan pursuant to Civil Rule 53, to take evidence on all issues of law and fact, regarding plaintiff's first cause of action.

Plaintiff in court with counsel.

Defendant in court with counsel.

As a preliminary matter, defendant made a motion for the appointment of Carol Hill & Associates, Inc. as the official court report of the proceeding. Plaintiff did not object to defendant's motion. Defendant's motion for appointment of court reporter was granted.

FINDINGS OF FACT

A number of the facts in this case are undisputed:

1. Plaintiff is the landlord of the rental premises located at 8620 Wade Park, Cleveland, Ohio 44106.

2. Defendant is a tenant of the plaintiff in Unit 66 of the rental premises.

3. Ms. Williams occupies the rental premises with her children and grandchildren.

4. Defendant occupies the rental premises pursuant to a written rental agreement. That agreement was not introduced into evidence by either party.

5. Ms. Williams' tenancy at the rental premises is federally subsidized through the Section 8 Moderate Rehabilitation ("Section 8") Program. Through the Section 8 Program, plaintiff receives a portion of defendant's monthly rent from the U. S. Department of Housing and Urban Development. Defendant remains responsible for a small portion of the rent.

5. On November 28, 1991, plaintiff delivered to defendant a letter informing defendant that plaintiff intended to terminate defendant's lease. A copy of this letter was admitted without objection as Plaintiff's Exhibit 1.

7. On or about January 2, 1992, plaintiff delivered to defendant a three-day notice to vacate containing the mandatory Revised Code 1923.04 language. A copy of this notice was admitted without objection as plaintiff's Exhibit 2.

8. Plaintiff did not accept rent from defendant for the month of January 1992.

In addition to these undisputed facts, plaintiff presented the following testimony:

9. Plaintiff called as a witness Detective Randy Bergeon, of the Cleveland Police Department.

10. Detective Bergeon testified that three "controlled buys" of illegal drugs took place at the premises prior to the execution of a search warrant in October 1991.

11. Detective Bergeon testified that on each of the three occasions when a "controlled buy" took place, he went to the rental premises with a "reliable, confidential informant." On each occasions the informant entered the premises alone, then exited the premises with a quantity of a white, waxy substance.

12. On one occasion, Detective Bergeon testified, he personally conducted a "field test" of the substance, which tested positive for cocaine. Detective Bergeon testified that he could not produce a copy of any report or documentation of the field test, as this test does not generate a written report.

13. Detective Bergeon testified that the substance received from the informant was tested at the police department's Scientific Investigations Unit (SIU) and tested positive for cocaine. Detective Bergeon did not conduct the test, and did not produce a copy of the SIU report.

14. Detective Bergeon did not on any of the three controlled buys enter the rental premises or witness the purchase of the controlled substance.

15. The individual who allegedly purchased the illegal drugs was not identified in court and was not present to testify.

16. Detective Bergeon also testified that on or about October 22, 1991, the Police Department of the City of Cleveland executed a search warrant at the premises.

17. Detective Bergeon testified that no criminal charges have been filed against defendant or other members of her household as a result of his investigation.

In addition to the foregoing, defendant presented the following:

18. Defendant testified that the Police Department did execute a search warrant at the premises on or about October 22, 1991, but that nothing was seized during the execution of the warrant.

19. Defendant testified that neither she nor any member of her household has been convicted of any drug offense.

20. Defendant testified that she has no knowledge of anyone in the household selling or possessing illegal drugs on the premises.

CONCLUSION OF LAW AND FACT

The grounds for this eviction, as stated by the plaintiff, in the notice of termination served upon defendant or about November 28, 1991, are defendant's alleged violation of both her lease and Revised Code 5321.05. While the notice is a bit unclear (it appears to allege that the grounds are the mere execution of a search warrant at the premises), the court is of the opinion that defendant was sufficiently apprised of plaintiff's concerns, and so will proceed to examine the merits of plaintiff's case.

First, plaintiff has alleged that defendant's conduct, or that of some member of her household, constitutes a violation of defendant's lease. Neither party, however, submitted a copy of the lease to the court, so the court cannot comment on the specific provision of the lease.

As a landlord and tenant participating in the Section 8 Program, however, defendant's tenancy is governed by the federal regulations set forth at 24 CFR 882.500 et. seq.

Pursuant to the federal regulations, defendant may be evicted for serious or repeated violation of federal, state or local law, or for "other good cause." 24 CFR 882.511.

Again, the court cannot determine whether defendant has violated her lease, as the lease was not presented to the court.

The evidence presented was not sufficient to establish a violation of federal, state or local law, as the only individual who could positively state that he purchased drugs from defendant or her household members, or, indeed, at the rental premises, is the "reliable, confidential informant," who was not present in court to testify. While Detective Bergeon's testimony was credible, he did not witness the purchase of the "white waxy substance" at the premises and has no other personal knowledge of the presence of illegal drugs at the premises. Plaintiff seeks to evict defendant based solely upon hearsay and, while the allegations raised in this case are serious, the court must have before it competent, credible evidence of the grounds alleged. Absent this evidence, plaintiff has failed to prove that defendant has violated federal, state or local law.

Nor is the court persuaded that the evidence presented regarding the alleged "controlled buys" and the fruitless execution of the search warrant absent more provide sufficient "good cause," to terminate defendant's tenancy. Plaintiff, in the notice of termination also states that it


seeks to evict defendant based upon defendant's alleged violation of Revised Code 5321.05(A)(9). To prevail in an eviction action under this provision in combination with Revised Code 1923.02, plaintiff must present evidence of the execution of a search warrant resulting in the seizure of a controlled substance. Revised Code 1923.02(A)(6)(a)(i). In this case, the plaintiff does not dispute defendant's assertion that execution of the search warrant produced no evidence of a controlled substance at the premises.

In conclusion, plaintiff has submitted insufficient evidence to establish by a preponderance of the evidence the existence of drug activity, sales or use, at the premises. Accordingly, defendant's motion to dismiss is granted.

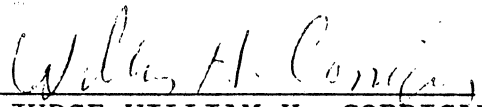
JUDGMENT

Plaintiff's first cause of action dismissed at plaintiff's costs.

RECOMMENDED:


BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

APPROVED:


JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION

SERVICE

A copy of the Referee's report was sent by ordinary United States mail to the Plaintiff's Attorney, Steven B. Chesler, 28601 Chagrin Blvd., Ohio Suite 440, Cleveland, Ohio 44122 and

to the Defendant's Attorney Neal Manly, Legal Aid, 5715
Woodland Avenue, Cleveland, Ohio 44104 this 3rd day of March
1992.

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*

BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

APPROVED: *William H. Corrigan*

JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION