

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

CMHA
1441 WEST 25TH STREET
CLEVELAND, OHIO 44113

PLAINTIFF

VS.

LEONA MALLETT
1300 SUPERIOR
CLEVELAND, OHIO 44115

DEFENDANT

) CASE NUMBER 93 CVG 09659

)

)

)

)

)

) LANDLORD-TENANT

)

)

)

)

)

) REFEREE'S REPORT AND
RECOMMENDATION

This case was heard on November 19, 1993 by Referee Barbara A. Reitzloff to whom it was assigned by Judge William H. Corrigan, pursuant to Ohio Civil Rule 53, to take evidence on all issues of law and fact regarding defendant's motion to dismiss or, in the alternative, for summary judgment on plaintiff's first cause of action.

Both parties represented in court by counsel.

FINDING OF FACTS:

The relevant facts in this case are undisputed:

1. Plaintiff Cuyahoga Metropolitan Housing Authority ("CMHA") is a public housing agency which owns and operates the Bohn Tower Public Housing Estate ("Bohn Tower"), located at 1300 Superior Avenue, Cleveland, Ohio.

2. CMHA owns and operates Bohn Tower with assistance from the U.S. Department of Housing and Urban Development under the Public Housing Program of 1937. 24 C.F.R. Title IX (1989).

3. On or about October 17, 1991, CMHA and defendant Leona Mallett entered into a written rental agreement for lease of apartment 808 at Bohn Tower. A copy of the written rental agreement is attached to CMHA's complaint as Exhibit A.

4. On or about March 23, 1993, CMHA served Ms. Mallett with a thirty day notice of termination and invitation to explain ("termination notice"), a copy of which was attached to CMHA's complaint as Exhibit B.

5. The termination notice informed Ms. Mallett that she had the right to request a grievance hearing within three days of the date of the notice.

6. CMHA's Administrative Order 38 in effect on March 23, 1993 set forth the procedure and time limits for tenant grievances. With respect to proposed evictions, the order stated:

A grievance relating to a proposed eviction is deemed waived unless it is filed within ten working days from the date on which CMHA gave the resident the notice of termination.

Administrative Order 38, Section III, paragraph A, effective April 1, 1982.

7. Ms. Mallett did not file a grievance with respect to the proposed eviction.

8. On or about April 23, 1993, CMHA served Ms. Mallett with a "notice to leave premises" ("notice to vacate"). The notice to vacate contained the mandatory language of R.C. 1923.04. It demanded that Ms. Mallett vacate the rental premises within three days.

9. CMHA produced no other notices served upon Ms. Mallett regarding the proposed termination of her tenancy. On April 29, 1993, CMHA commenced this action in forcible entry and detainer.

10. It is undisputed that CMHA's proposed termination of Ms. Mallett's tenancy is subject to CMHA's grievance procedure.

CONCLUSIONS OF LAW AND FACT:

To terminate the tenancy of a tenant who resides in public housing, the public housing authority ("PHA") must serve the tenant with a written notice of proposed termination. 24 C.F.R. §966.4(1)(2). The notice must state the specific grounds for the proposed termination, inform the tenant of the tenant's right to reply to the notice, and inform the tenant of the right to examine PHA documents directly relevant to the termination or eviction. 24 C.F.R. §966.04(1)(3)(ii). The notice must also inform the tenant of the right to request a hearing in accordance with the PHA's grievance procedure, or, in the alternative, state that the tenant is not entitled to a grievance hearing on the termination. 24 C.F.R.

§966.04(1)(3)(ii), (v). The tenant's lease does not terminate until the expiration of the notice of proposed termination, 24.C.F.R. part 966, Vol. 56 Fed. Reg. 51560 (1991)(§ 3.1.); Lakeview Terrace v. Smith, No. 92 CVG 8034 (Mun. Ct. Cleveland, May 21, 1992).

In this case, CMHA's notice of termination did advise Ms. Mallett of her right to request a grievance hearing. The notice, however, inaccurately informed Ms. Mallett that she was required to file any grievance within three days of the date of the notice of termination; CMHA's administrative order provided Ms. Mallett with ten working days within which to file grievance. The requirement that the notice of termination inform Ms. Mallett of the availability of the grievance procedure surely contemplates that the information provided in the notice be accurate. The inaccurate information provided by CMHA effectively shortened by seven days the time within which Ms. Mallett could file a grievance in response to her proposed eviction; she had no incentive or reason to believe that filing after the three day period specified in the notice would be effective.

CMHA, in response, argues that a typographical error caused the notice to read "three" and not "ten" days within which to request a grievance hearing. CMHA, however, in its response to Ms. Mallett's motion, failed to offer evidence that a typographical error occurred. Moreover, even if it were established that the provision of three days and not ten

was accidental, the same result would occur; Ms. Mallett was not provided with accurate information regarding the availability of the grievance procedure.

CMHA also argues that Ms. Mallett was not harmed by the error, as she did not request a grievance hearing. This argument is not persuasive, for two reasons. First, Ms. Mallett had no reason to request a hearing after the expiration of the three days. Second, the federal regulations governing Ms. Mallett's tenancy specifically require that she be provided with information regarding CMHA's grievance procedure. The regulations do not provide for a waiver of this requirement if the failure to serve the notice does not result in harm to the tenant, and the court is not willing to impose such a modification.

CMHA has failed to serve Ms. Mallett with a notice of proposed termination in compliance with the federal regulations. Absent the service and expiration of a notice in compliance, Ms. Mallett's tenancy has not been terminated. 24.C.F.R. part 966, Vol. 56 Fed. Reg. 51560 (1991) (§ 3.1.1.); Lakeview Terrace v. Smith, Supra.

CMHA's service of the R.C. 1923.04 notice prior to the expiration of Ms. Mallett's tenancy constitutes improper service. Absent proper service of the R.C. 1923.04 notice to vacate, this court lacks jurisdiction to proceed, and dismisses CMHA's first cause of action accordingly.

JUDGMENT:

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

RECOMMENDED:

Barbara A. Reitzloff
BARBARA A. REITZLOFF
HOUSING COURT
REFEREE

APPROVED:

William H. Corrigan
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, M. Neal Cox, 1441 West 25th Street, Cleveland, Ohio 44113 and to the Defendant's attorney, Sree Naidu, 1223 West Sixth Street, Cleveland, Ohio 44113 this 7th day of January 1993.

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.