

IN THE CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO  
HOUSING DIVISION

ANDREW WRIGHT, JR.  
1077 EAST 98TH STREET  
CLEVELAND, OHIO 44108

PLAINTIFF

VS.

PHYLLIS RASH  
9140 WADE PARK  
CLEVELAND, OHIO 44103

CLEVELAND

) CASE NUMBER 93 CVG 10748

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) LANDLORD-TENANT'

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) REFEREE'S REPORT AND

) RECOMMENDATION

This case came on to be heard on June 4, 1993, before Barbara A. Reitzloff, to whom this case was assigned pursuant to Ohio Civil Rule 53, 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 without counsel.

FINDINGS OF FACT:

1. Plaintiff is the owner of the residential rental premises located at 9140 Wade Park, Cleveland, Ohio, and has been at all times relevant to this action.

2. Defendant is a tenant participating in the federal rent subsidy program known as the Section 8 Housing Voucher Program, which is administered in Cuyahoga County by the Cuyahoga Metropolitan Housing Authority ("CMHA").

3. Defendant occupies the rental premises as a tenant of the plaintiff pursuant to a written rental agreement.

4. Plaintiff and CMHA have executed a Housing Assistance Payments ("HAP") contract. Through the HAP contract, plaintiff receives a portion of defendant's monthly rent from federal funds through CMHA.

5. In March 1993, plaintiff sent defendant written notice informing defendant that her lease was being terminated due to damage to the premises, excessive traffic, and nonpayment of rent prior to CMHA/Section 8 inspection and approval of the premises. The notice requested that defendant vacate the premises by May 1, 1993.

6. On May 1, 1993, plaintiff sent defendant a second notice informing defendant that her lease was being terminated.

7. Each of the notices served contained the mandatory language of the Revised Code 1923.04 notice to vacate.

8. Plaintiff accepted payment from CMHA for the subsidized portion of defendant's rent for all months through the month of June 1993.

#### CONCLUSIONS OF LAW AND FACT

To prevail in an eviction action, a landlord must serve a notice to vacate under Revised Code 1923.04. Proper service of an Revised Code 1923.04 notice to vacate is a jurisdictional requirement. Associated Estates Corp. v. Bartell 24 Ohio App.3d 6 (Cuyahoga County 1985).

Acceptance of future rent after service by the landlord of the Revised Code 1923.04 notice to vacate is inconsistent with


the landlord's attempt to evict the tenant, and voids the notice to vacate. Id.

In this case, plaintiff accepted a portion of rent from CMHA on defendant's behalf for the months of May 1993, and June 1993, after service of the Revised Code 1923.04 notice to vacate. Accepted at the beginning of each month for the upcoming month, those payments represented future rent, thus voiding the notice to vacate. This result is not altered by defendant's participation in the Section 8 Housing Voucher Program; acceptance of future rent from the Public Housing Authority on behalf of a tenant participating in a tenant-based subsidy program (e.g. Section 8 Existing Housing or Section 8 Housing Voucher) after service of the Revised Code 1923.04 notice to vacate voids the notice, and is a complete defense to the eviction. Accordingly, plaintiff's complaint is dismissed.

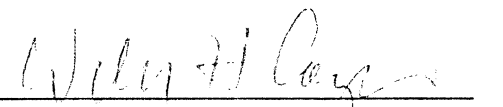
JUDGMENT

Plaintiff's first cause of action is 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 Andrew Wright, Jr., 1077 East 98th Street, Cleveland, Ohio 44113 and to the Defendant Phyllis Rash, 9140 Wade Park, Cleveland, Ohio 44103 this 23rd day of June 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.

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