

IN THE CAMBRIDGE MUNICIPAL COURT
GUERNSEY COUNTY, OHIO

CAMBRIDGE MUNICIPAL COURT
CAMBRIDGE, OHIO
93 APR 27 11 13 23
JANE S. PETERSON
CLERK OF COURT

WILLS CREEK VALLEY APARTMENTS
PLAINTIFFS
vs

CASE NO. 93CV0006
CASE HEARD: 4/20/93

KATHY MARLATT
DEFENDANT

REPORT AND
RECOMMENDATIONS OF REFEREE

This matter came for hearing before the Referee on April 20, 1993. Plaintiff appeared through Jennie Wilson, resident manager, and was represented by Attorney Jeremy W. Brockwell. Defendant, after proper service by certified mail, appeared represented by Attorney Robert R. Romaker. The nature of the matter is a forcible entry and detainer action filed by Plaintiff. In addition, Defendant's motion to dismiss was heard at the same time. Evidence was adduced.

FINDINGS OF FACT:

1. On or about November 1, 1992, pursuant to a written lease, Defendant leased for a term of one (1) year, apartment C-35 owned by Plaintiff.
2. The leased property is a HUD regulated project and is HUD subsidized. (Plaintiff's Exhibit A)
3. On or about January 25, 1993 Plaintiff served a ten (10) day notice of termination (Plaintiff's Exhibit C) and a three (3) day notice of eviction upon Defendant. (Plaintiff's Exhibit B)
4. The reasons given for such termination and notice was unauthorized person living in the unit and disorderly conduct which disturbed quiet enjoyment of neighbors living around Defendant.

5. After a discussion with the landlord, during which the substance of the complaints was conveyed to and understood by Defendant, it was determined, based upon assurance of no further incidents by Defendant, that Defendant could remain in the premises.

6. Subsequent thereto, Resident Manager continued to receive complaints from other residents concerning noise in Defendant's apartment.

7. On or about March 14, 1993, resident manager went to unit below that of Defendant and heard a loud thump noise. When defendant was confronted she said her boyfriend had accidentally fallen off a bench onto the floor.

8. The next day, Plaintiff gave Defendant a proposed termination of tenancy (Plaintiff's Exhibit E) and a notice of eviction (Plaintiff's Exhibit D).

9. Defendant continued to remain in the premises after the termination date and Forcible Entry and Detention action was filed against Defendant on March 26, 1993.

10. Evidence was presented that Defendant attempted to pay April's rent (subsequent to receipt of notices) but payment was refused by resident manager, the person who normally received rent payments. Defendant then sent the rent by mail to United Property Management, which received it, but no evidence exists as to its application.

ISSUES:

- 1) Was there a material non-compliance with the terms of the lease by Defendant?

- 2) Was the information in Plaintiffs Exhibit E, as to the cause of the termination, specific enough for Defendant to prepare a defense?
- 3) Was the three (3) day notice timely served upon Defendant?

CONCLUSION OF LAW:

This lease agreement, involving a HUD subsidized project, requires adherence to both State and Federal Law. This Referee concludes, based upon the testimony of the resident manager and the admission of Defendant, that a material non-compliance of the lease occurred in that serious or repeated interference with the rights and quiet enjoyment of other tenants has occurred. This Referee further finds that, based on the history of this tenant only, that the language used in the proposed termination of tenancy, was sufficient to allow Defendant to prepare a defense. The ten (10) day notice does appear to be defective in that no language indicated that landlord may seek termination only by bringing a judicial action. However, the three (3) day eviction notice did advise that if the premises were not vacated an eviction action may be instituted. By way of dicta, the Referee suggests a modification of the ten (10) day notice to comply with the above requirements.

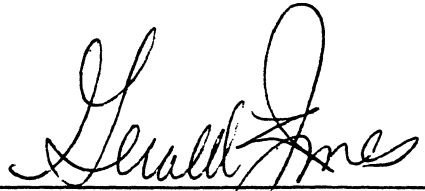
This Referee concludes that Voyager Village Limited v Williams 3 Ohio App 3d 288, 444 NE2d 1337 (Court of Appeals, Green County, 1982) which requires the three (3) day eviction notice to be served subsequent to the actual termination of

the tenancy not to be directly on point as to this case as Voyager was not a HUD subsidized unit. This Referee can imagine some instances where the notice to terminate the tenancy and notice to evict can be given at the same time. However, at the case at bar, the termination of tenancy is "proposed" with an opportunity for discussion as to whether the tenancy will in fact be terminated. The three (3) day notice given herein on March 15, 1993 demands that Defendant leave the premises on or about March 18, 1993 clearly one week before her tenancy would terminate. In addition, the three (3) day notice as given herein seems to work against the HUD policy of working out differences within the ten (10) day termination period. This Referee concludes that under the circumstances of this case, it is not proper to serve the three (3) day notice prior to expiration of the ten (10) days given in the termination notice and that therefore this Court lacks jurisdiction to grant the relief demanded by Plaintiff and that the motion to dismiss of Defendant should be granted. Evidence was insufficient as to payment of rent and acceptance thereof subsequent to service of notices.

RECOMMENDATION:

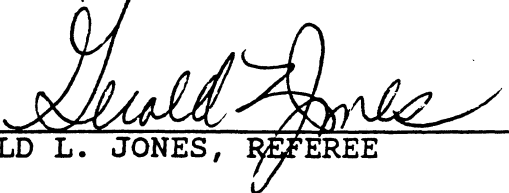
The Referee recommends that the motion of Defendant to Dismiss be granted and that this case be dismissed and that costs be taken from deposit.

DATE: April 27, 1993.


GERALD L. JONES, REFEREE

CERTIFICATION

I, GERALD L. JONES, REFEREE, DO HEREBY CERTIFY THAT THE WITHIN REPORT IS A TRUE REPORT OF THE FINDINGS AND RECOMMENDATION MADE AT THE HEARING OF THE ISSUES IN THE ABOVE CAUSE, AND THAT A COPY OF THIS REPORT WAS MAILED THIS 27th DAY OF APRIL 1993 TO PARTIES/COUNSEL OF PARTIES HEREIN.


GERALD L. JONES, REFEREE

JUDGMENT

UPON CAREFUL AND INDEPENDENT EXAMINATION AND ANALYSIS OF THE REFEREE'S REPORT AND RECOMMENDATION, THE COURT FINDS THE FINDINGS OF THE REFEREE ARE SUFFICIENT FOR THE COURT TO MAKE AN INDEPENDENT ANALYSIS OF THE ISSUES AND TO APPLY APPROPRIATE RULES OF LAW IN REACHING A JUDGMENT. THEREFORE, THE COURT ADOPTS THE REPORT, APPROVES AND ENTERS THE SAME AS A MATTER OF RECORD, AND INCLUDES THE SAME AS THE COURT'S FINDINGS AND JUDGMENT HEREIN. THE COURT FURTHER FINDS THERE IS NO ERROR OF LAW OR OTHER DEFECT ON THE FACE OF THE REPORT.

THE COURT INCORPORATES BY REFERENCE THE FINDINGS AND RECOMMENDATION OF THE REFEREE. THE COURT HEREBY ORDERS AND MAKES THE SAME JUDGMENT OF THIS COURT.

DATE: 27 April, 1993


JUDGE, JOHN MARK NICHOLSON