

TOM HARMON, CLERK
CANTON MUNICIPAL COURT
CIVIL DIVISION

1995 MAY 15 PM 1:16

IN THE CANTON MUNICIPAL COURT
STARK COUNTY, OHIO

STARK METROPOLITAN HOUSING
AUTHORITY

Case No. 95 CVG 0676

Plaintiff

Judge John A. Poulos

vs.

EADLINA MARSHALL AND
OCCUPANTS

JUDGMENT ENTRY

Defendants

This matter came on for hearing before the Court on May 10, 1995 upon the Defendants' written "Objections to Report of Referee" filed April 17, 1995. Prior to the hearing (on May 9, 1995), the Court listened to the tape of the original trial before the Referee on March 6, 1995. Although a written transcript was not ordered by either party, the Court was able to clearly hear the entire trial that occurred before the Referee.

Plaintiff was represented by Attorney John B. Wirtz. The Defendants were represented by Attorney Jonathan E. Morris. Both counsel represented their respective parties at both the trial of this matter before the Referee and the "Objections" hearing before the Court.

FINDINGS OF FACT

1. Plaintiff and Defendant Eadlina Marshall (hereinafter referred to as "Defendant") are landlord and tenant respectively, for the rental of the premises located at 1460 Robin Court S.E., Canton, Ohio 44707. This is federally assisted housing for which the United States, through the Department of Housing and

Urban Development, provides a subsidy.

2. Plaintiff filed this action in forcible entry and detainer on February 9, 1995.

3. Defendant has lived at the above described premises for approximately 30 years. Defendant lives with her 18 year old son.

4. On November 1, 1994, Defendant was served with a 30 day "Notice to Vacate" pursuant to HUD regulations. The reason for the eviction was stated in the "Notice" as follows:

Failure to personally refrain or forbid any other person physically in or on the leased premises with your permission from harassing, intimidating or interfering with the rights of other residents or family members.

5. On January 26, 1995 a "Three Day Notice to Leave the Premises" was served on the defendant stating the same reasons.

6. Trial was held before the Referee of this Court on March 6, 1995. Paul Kelly was the primary witness for the Plaintiff. Mr. Kelly is head of security for the Plaintiff. He testified that on September 5, 1994, Ernest Marshall was involved in a shooting incident in which several shots were fired in the housing development. Ernest Marshall is the 25 year old son of the Defendant. Furthermore, Mr. Kelly testified on September 11, 1994, that Ernest Marshall was involved in another shooting incident at the housing development. Mr. Kelly further testified that on September 14, 1994 the same Ernest Marshall entered the apartment of another resident at the housing development and caused further problems.

7. Mr. Kelly testified that there has been constant

surveillance of Mrs. Marshall's unit. According to Mr. Kelly, Ernest Marshall was seen on many different occasions entering the Defendant's unit between November 1, 1994 (the original Notice date) and February 5, 1995. Furthermore, Mr. Kelly stated that other individuals who were friends with Ernest Marshall entered the Defendant's premises. According to Mr. Kelly, these other individuals had many arrests and convictions for crimes between them.

8. Mr. Kelly finally testified that on September 30, 1994, he interviewed the Defendant. According to Mr. Kelly, Mrs. Marshall stated that "she did not know how she could keep her son and his friends from the premises."

9. On cross-examination, Mr. Kelly admitted that the incidents that occurred on September 5, 1994, September 11, 1994, and September 14, 1994 did not occur at 1460 Robin Court S.E. Also, Mr. Kelly stated that Defendant was not present when any of these incidents occurred.

10. Mr. Kelly further testified that his investigation revealed that Ernest Marshall was involved in a shooting as he exited Defendant's apartment on February 24, 1995. According to witness accounts, Ernest Marshall left the apartment of the Defendant and shot one of the neighbors. Defendant's counsel raised a hearsay objection, asking that the testimony of Mr. Kelly be ruled inadmissible. In response, the Referee said that he would take the objection under consideration.

11. Defendant testified on her own behalf. She admitted to

receiving several visits from her son, Ernest Marshall. She adamantly denied that her son Ernest Marshall lives with her. According to the Defendant, Ernest Marshall has not resided with her since he was fifteen years old.

12. Defendant testified that she was unfamiliar with the February 24, 1994 incident. She further went on to explain that her son and his friends grew up in the housing development. She indicated that her son friends frequently stopped by to "help her" and refer to her as "Mom."

CONCLUSIONS OF LAW

1. Plaintiff's Complaint filed February 9, 1995 and both "Notices" state the reason for the eviction as follows:

Failure to personally refrain or forbid any other person physically in or on the leased premises with your permission from harassing, intimidating or interfering with the rights of other residents or family members.

2. A tenant in federally assisted housing has a property entitlement to continue occupancy and cannot be evicted except for good cause. In this situation, the tenant must be afforded timely notice specifying the reason for the eviction, an opportunity to confront and cross-examine adverse witnesses, present his own evidence, retain an attorney, and have an impartial decision based solely on evidence adduced at the hearing. Anderson v. Denny, 365 F. Supp. 1254.

3. In Chavez v. Housing Authority of El Paso (1992), 973 F. 2d 1245, the Federal Appeals Court heard a similar case. The Court held that the lower Court properly determined that the City Housing Authority had not violated a tenant's Constitutional

rights by evicting her where she had been evicted, for permitting her guests, in violation of her lease, to disturb or endanger others in her community. Furthermore, there was a finding that the lower Court properly found that the tenant's son had been a guest in the tenant's household at the time he engaged in violent criminal activity.

4. In the Referee's "Report" filed April 5, 1995, he states as follows:

Although none of the instances complained of involved the personal conduct of Eadlina Marshall, it is apparent that she has harbored and at least tacitly countenanced the activities of her son Ernest in giving him aid, shelter and support by permitting him virtually unrestricted access to her apartment.

5. This Court disagrees with the above "Conclusion" of the Referee. First of all, the evidence at the trial established that the three instances that occurred in September of 1994 were not committed in the Defendant's apartment or in her presence. There was no evidence that the Defendant witnessed Ernest Marshall or any of his friends engaging in acts that would harass or disturb other tenants. Furthermore, there was no evidence that the Defendant possessed any advance information regarding the alleged criminal plans of Ernest Marshall.

6. This Court agrees with the proposition raised by counsel for the Defendant that a "causal nexus" must exist between the tenant and the third party actions before the tenancy may be terminated. This sufficient "causal nexus" must be proven by the Plaintiff by a preponderance of the evidence. In the Chavez case cited above, there was sufficient evidence to prove

that the tenant's son had been an invited guest in her household. However, it is this Court's opinion that the evidence presented by the Plaintiff failed to establish that there was "sufficient frequency of access by Ernest Marshall to the property of Eadlina Marshall to suggest that he was actually a resident of that household" pursuant to the Referee's "Report." In other words, it is this Court's opinion that Plaintiff has failed to prove by a preponderance of the evidence the specific lease violation alleged in the Complaint.

7. It is this Court's opinion that the decision of the Referee filed April 5, 1995 was against the manifest weight of the evidence.

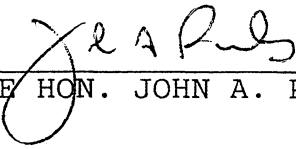
CONCLUSIONS

1. The Court having made an independent analysis of the issues and the applicable law, hereby VACATES the judgment of the Referee of the Canton Municipal Court dated April 5, 1995.

2. Plaintiff's Complaint for eviction filed February 9, 1995 is DISMISSED.

3. Plaintiff is ordered to pay the costs of this action. Exceptions to both parties.

IT IS SO ORDERED.



THE HON. JOHN A. POULOS

Dated: May 15, 1995

cc: John B. Wirtz, Counsel for Plaintiff
Jonathan E. Morris, Counsel for Defendants