

CLEVELAND MUNICIPAL COURT  
DIVISION OF HOUSING  
CUYAHOGA COUNTY, OHIO

CUYAHOGA METROPOLITAN )  
HOUSING AUTHORITY )  
1441 WEST 25TH ST. )  
CLEVELAND, OHIO 44113 )

Plaintiff, )

vs. )

MARY BEDERMAN )  
2616 DIVISION 456 )  
CLEVELAND, OHIO 44113 )

Defendant. )

CASE NO. 96 CVG 02208

MAGISTRATE'S REPORT AND  
RECOMMENDATION

This case was heard and submitted for decision on February 21, 1996 by Magistrate C. David Witt, 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 maintains it is entitled to a writ of restitution on account of a failure on the part of the Defendant to pay rent. Both parties were present with counsel.

FINDINGS OF FACT:

1. Plaintiff and Defendant entered into a month to month tenancy for the rental by the Defendant of property located at 2616 Division 456, Cleveland, Ohio. The property is managed as part of the public housing program.
2. Defendant became delinquent with respect to her rental obligation.
3. Plaintiff and Defendant entered into a succession of modifications to the original rental agreement, the last providing an extension to November 17, 1995 for the payment of the outstanding rental obligation.
4. On November 15, 1995, the Plaintiff mailed to the Defendant a 14 Day Notice of Termination and Invitation to Explain. The Notice is required under the terms

of the Public Housing Program as a precondition to the initiation of a forcible entry and detainer action.

5. On December 5, 1995, Plaintiff served on Defendant a 3 Day Notice to Leave Premises.

6. Defendant remains delinquent with respect to her rental obligation.

CONCLUSIONS OF LAW AND FACT:

7. The purpose of the 14 Day Notice of Termination is to provide a resident of public housing an opportunity to avoid eviction by curing an alleged nonpayment of rent. In the present instance, the 14 Day Notice, served via U.S. mail November 15, 1995, was premature inasmuch as Plaintiff had contractually afforded Defendant until November 17, 1995 to satisfy her rental obligation. Plaintiff argues that the Notice is valid inasmuch as it probably did not reach the Defendant until on or after November 17, 1995. The flaw in this reasoning is that the Notice on its fact provides that the effective date is November 15, 1995; there is no reference to the effective date being tied to the date of receipt.

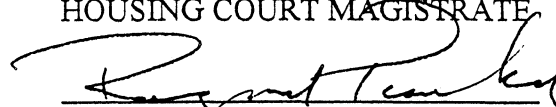
JUDGMENT:

8. Judgment for the Defendant as to Plaintiff's First Cause of Action for Possession.

RECOMMENDED:

  
C. DAVID WITT  
HOUSING COURT MAGISTRATE

APPROVED:

  
JUDGE RAYMOND PIANKA  
HOUSING DIVISION  
CLEVELAND MUNICIPAL COURT

SERVICE

A copy of the Magistrate's Report was sent by ordinary U.S. mail to the Plaintiff's Counsel, Stephanie Reed, 1441 W. 25th St., Cleveland, Ohio 44113 and Defendant's Counsel, Gail White, 5715 Woodland, Cleveland, Ohio 44104 this 28<sup>th</sup> day of February, 1995.

*Nancy Lund*

IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE REFEREE'S REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS OF FILING AND MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.