

BOWLING GREEN MUNICIPAL COURT
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BOWLING GREEN
MUNICIPAL COURT

97 JUL 15 PM 4:25

MARY J. SWELL
CLERK OF COURT

Amherst Village Management Company
1520 Clough St.
Bowling Green, OH 43402

Plaintiff

No. 97-CV-G-00620

vs.

MAGISTRATE'S DECISION

Leticia Martinez
1520 Clough St., #138
Bowling Green, OH 43402

Defendant

Frederic E. Matthews
Attorney for Plaintiff
100 S. Main St.
Bowling Green, OH 43402

Steve Robins
Attorney for Defendant
1514 West State St.
Fremont, OH 43420

This matter came on for a hearing on the first cause of action, a proceeding in forcible entry and detainer, before Magistrate Thomas J. McDermott on July 10, 1997.

Based upon a greater weight of the believable evidence, the Magistrate makes these essential findings of fact:

Plaintiff, Amherst Village Management Company ("Amherst"), is a residential rental property, which receives federal government subsidization through the Department of Housing and Urban Development ("HUD"). Defendant, Leticia Martinez ("Martinez"), is a subsidized tenant of Amherst who has resided at 1520 Clough St. #138, since June, 1994.

The parties executed a written lease agreement on June 15, 1994, which has been renewed on a monthly basis since the original expiration date of June 1, 1995. Rent is due on the

first day of each month, with the condition in the lease of a five day "grace period" before which late charges would be due. The testimony of parties concurred that Martinez had been late on "some" rent payments, but certainly not consistently.

Defendant is required by federal law to "recertify" each year. This is a review process in which the tenant and the landlord sit down and compute that portion of the rent actually paid by the tenant. In the summer of 1996, Amherst had begun a proposed termination of Martinez' tenancy based on either her failure to timely recertify or allegations of incorrect reporting of income. The termination did not occur, and Martinez' rent for most of 1996 was \$59.00 per month.

An arrearage was accumulated based on Amherst's refusal to accept rent payments during the pendency of the eviction action. As of Jan 1, 1997, that arrearage was \$526.00. Martinez made three payments in January, 1997, totalling \$334.00 toward the arrearage.

Martinez re-certified in January, 1997, resulting in her rent increasing, starting February 1, to \$93.00. February's rent was paid on the 4th (within the grace period).

In early February, 1997, the defendant and plaintiff's resident manager negotiated, and on February 6, 1997, executed, an agreement to pay off the remaining \$192.00 of the arrearage. Martinez was to make monthly payments of \$50.00 on or before the 15th of each month, with the first such payment being due on February 15, 1997. Martinez acknowledged in the agreement that "failure to pay according to this agreement will constitute a breach of my lease and result in the termination of assistance and/or termination of lease and/or eviction."

February 15, 1997, was a Saturday. The office at Amherst was not open on Saturday or Sunday. The landlord provides a dropbox for the deposit of rent checks and messages, etc., but Martinez testified that since she pays by money order, she prefers to hand over payment in person so that she may receive a receipt.

On Monday, February 17, 1997, the next business day, plaintiff's manager drafted both the federally-required 30-day "Notice of Termination" and the O.R.C.-mandated "Notice to Leave the Premises" for "failure to comply with payment agreement dated 2-6-97." These documents were handed to Martinez by the manager when tenant came home from work on Feb. 17, between 4:00 and 4:30 pm. The manager herself was on her way home at that time. Martinez immediately went out to a local convenience store and purchased a \$50.00 money order. Although office hours were over, the manager's assistant was still in the office interviewing prospective new tenants. Martinez' proffer of the payment was refused by the assistant, who claimed that since the proposed

termination papers had been served, she could not accept any payment.

Judy Dominique, the resident manager, testified that Martinez did not take advantage of the 10-day period to discuss the proposed termination of tenancy. Martinez testified that she made several attempts to do so. Ms. Dominique also testified that she considered the payment agreement to be a part of the lease agreement, non-payment of which constituted good cause to terminate the tenancy.

CONCLUSIONS AND RECOMMENDATION

The purpose of both the federal and state laws and regulations is to ensure the uniform and fair management of public housing:

The overall national policy is to provide decent living conditions for those in deprived circumstances who cannot compete on equal terms in the open market because their financial resources are low and constantly at risk. The regulations and procedures set forth detailed and comprehensive rules governing the relationship between landlords and tenants that are considerably different from those otherwise applicable in tenancies.

Cincinnati Metropolitan Housing Authority v. Green (1987), 41 Ohio App. 3d 365, 367.

The Magistrate concludes that the eviction action must fail for a variety of reasons.

First, if, as plaintiff contends, the "payment agreement" became part of the lease, then defendant's failure to pay on February 15, but attempt to pay on February 17 (the next business day), was not a substantial breach of defendant's obligation. The business office was not open on February 15 or 16. Even if the payment on the 17th was proffered outside of "regular" office hours, the office was in fact open and staffed by a representative of Amherst.

Also, if the payment agreement were a part of the lease agreement, defendant could reasonably have assumed that the five day grace period for rent payments would also apply to the monthly \$50.00 rent arrearage payments. Martinez clearly proffered payment within five days of the due date.

Additionally, if the "payment agreement" were an amendment or addition to the terms and conditions of the lease, the provisions of the original lease required, at ¶24, that any

change in the terms and conditions of the lease must provide the tenant with 60 days' notice before the proposed effective date of the change. Testimony indicated that negotiations as to back rent were conducted early in February, 1997; that the agreement was signed on February 6; and that the first payment was due Feb. 15.

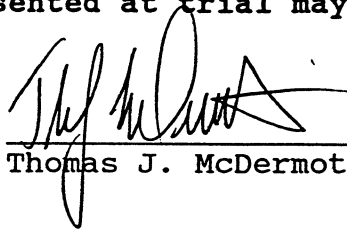
The Magistrate also finds that the "Notice to Leave the Premises" is defective. Martinez was on a month-to-month continuance of the original lease, which ran from the first of each month to the first of the next month. She had timely paid, within the allowed grace period, rent for February. This meant that she was good until March 1, 1997. Therefore, any notice to vacate issued prior to March 1 should have indicated April 1 as the date of having to vacate.

Therefore, the Magistrate finds for the defendant, and recommends that the first cause of action be dismissed. Any costs of this matter are passed to consideration of the second cause.

OBJECTIONS to this decision. A party may, within 14 days of the filing of this decision, file and serve written objections. If objections are timely filed and served by any party, any other party may file and serve written objections within 10 days of the date on which the first objections were filed. Objections shall be specific and state with particularity the grounds therefor. A copy of the objections must be mailed to all other parties. The court will not consider any objection that lacks the following proof of service: "Proof of service. On (date) I mailed copies of this report to (names) at the addresses shown in the Magistrate's report. (Objector's signature)."

NOTE: Objections to this decision may **ONLY** be based upon A) the Magistrate's incorrect application of the law to the facts; or B) the Magistrate's finding was clearly contradictory to the evidence presented at trial. Should an objection be based on anything but these two conditions, it shall be invalid. Furthermore, evidence not presented at trial may not be submitted thereafter in the objections.

7, 15, 97



Thomas J. McDermott, Magistrate

~~Plaintiff's deposit: \$ _____
Court Costs are: \$ _____
Plaintiff owes: \$ _____
Defendant owes: \$ _____
Pay to Plaintiff Defendant~~

on 2/16/97, copies mailed.

Larry Thomas
Deputy Clerk