

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

S&F MANAGEMENT

DATE: APRIL 5, 1999

Plaintiff(s)

-VS-

CASE NO: 98-CVG-25253

ELIZABETH HORVATH

Defendant(s)

JUDGMENT ENTRY

This matter came for determination on defendant's Motion for Summary Judgment regarding plaintiff's first cause of action. As defendant is not asking the court to review anything outside the pleadings, and the decision will be based upon legal rather than factual issues, the court will construe defendant's motion for summary judgment as a motion to dismiss pursuant to Civ. R. 12 (B)(6).

Civil Rule 12(B)(6) permits the court to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted. Determination of a motion for judgment on the pleadings is restricted solely to allegations in the complaint, and all reasonable inferences to be drawn from the pleadings are to be construed in favor of nonmoving party. *Flanagan v. Williams*, 87 Ohio App. 3d 768, 623 N.E. 2d 185 (Washington 1993).

The court has reviewed plaintiff's complaint, the attached lease and notices, and the attached applicable federal regulations governing the eviction of tenants from HUD subsidized property. In addition, the court has reviewed defendant's motion, plaintiff's response brief, and defendant's reply brief, and the case law attached. Based upon these documents, the court finds that plaintiff's notices failed to provide defendant with sufficiently specific information pursuant to 24 CFR 247 to terminate her lease for cause. For the reasons set forth below, defendant's motion for judgment on the pleadings is granted.

Lake Avenue Commons is a HUD subsidized property pursuant to 24 CFR 450, and as such, plaintiff must meet the requirements set forth in

24 CFR 247 to properly terminate a tenancy at this property. As a federally subsidized property, the notice for lease termination must state the specific grounds for the eviction. 24 CFR 247.4(a). Compliance with this requirement ensures that the tenant is apprised of the allegations against her, and has an opportunity to respond to, or defend against, these allegations. Defendant contends that the notices served by plaintiff to terminate the tenancy in this case fail to comply with 24 CFR 247(a).

On November 10, 1998, plaintiff filed an eviction action against tenant, listing as basis for the eviction defendant's "failure to keep the premises in a clean and sanitary condition, affecting the health and safety of the residents, and creating a hazardous condition in the building." Plaintiff's complaint refers to specific paragraphs in the lease agreement which permit termination of the lease for "repeated minor violations of this agreement which disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises . . ." and for tenant's failure "To keep the premises in a clean and sanitary condition . . ."

Plaintiff's complaint is based upon a termination notice dated October 12, 1998. In relevant part, the notice contains the following language:

"you continue to maintain your suite in a deplorable condition even after our written notice dated September 11, 1998 . . ."

and:

"That you continue to maintain the suite in a deplorable condition is evidenced by our inspection on October 12, 1998. Your lack of housekeeping materially affects the health and safety of the residents in the apartment building in which you live . . ."

Plaintiff subsequently served defendant with a three-day notice and filed its complaint. Defendant argues that the language in plaintiff's notice fails to provide defendant with sufficiently specific grounds for her to defend against the eviction.

The Cuyahoga County Court of Appeals addressed the issue of specificity of notice in a similar situation in *A.E.C. v. Bartell*, 24 Ohio App. 3d 6, 492 N.E. 2d 841 (Cuyahoga County 1985). In *Bartell*, the tenant

occupied the rental premises pursuant to a federally subsidized housing program. The federal regulations governing that program required the landlord to state the grounds for eviction in the notice of termination. The Court of Appeals held that the grounds stated as the basis for Bartell's eviction, "serious, repeated damage to the unit" and "repeated disturbance," were not sufficiently specific to comply with the federal regulations and procedural due process.

Similarly, in *CMHA v. Younger*, 93 Ohio App. 3d 819, 639 N.E. 2d 1253 (Cuyahoga 1994), which addresses the specificity requirement in notices of termination under 24 CFR 966.4, the court found that a notice was insufficient which was "framed in vague and conclusory language," or failed "to set forth a factual statement to justify termination." *Id.* at 1257.

Plaintiff attempts to distinguish the instant case, stating that in the cases cited by defendant, the landlord's actions were the result of specific incidents involving conduct of defendants, and/or other individuals, which were easily describable. In this case, plaintiff argues that the "conduct of defendant which gave rise to this action is not in the form of a specific instance or multiple incidents," but is "simply an ongoing refusal to keep her unit in a 'clean and sanitary condition . . .'" Plaintiff states, "To expect plaintiff to provide a more specific notice in this case would create an almost impossible burden . . ." and later, "there is little more that plaintiff could include in its notices to defendant beyond what has been stated." The court is not persuaded.

Municipal courts in Ohio have addressed the issue of specificity of notice in eviction actions involving poor housekeeping. In *Dayton Metropolitan Housing Authority v Connie L. Williams*, 88 CVG 1268 (Dayton Municipal Court) (July 8, 1988), the tenant occupied the rental premises pursuant to a federally subsidized housing program. The federal regulations governing this program require the landlord to state the grounds for eviction in the notice of termination. In *Dayton*, the court found that the following notice language to defendant was "intended as a shotgun approach for any housekeeping cases which might arise in DMHA complexes:

You are in violation of your lease for poor housekeeping.
The following problems must be corrected before you will be
allowed continued housing privileges at a DMHA home.
You must keep your walls clean; you must clean your
bathroom sink, tub and shower and your toilet. In the


kitchen, your stove and refrigerator are too dirty to be healthy. You are expected to dispose of bad food before it rots. You must keep the grease and food splatters off your stove and out of the oven. Poor cleanliness attracts bugs. Your dishes should not be stored with old food on them.

In *Williams*, not all of the housekeeping violations listed above existed at the time the notice was issued. The court held that the description of the grounds stated as the basis for Williams's eviction, which dealt with poor housekeeping, was, "mere boilerplate bad housekeeping language" and that "the notice failed to identify specific types and times of violations, thus depriving the of defendant the ability to prepare a defense in her case." Finding that the grounds stated were not sufficiently specific to comply with the federal regulations and procedural due process, the court dismissed plaintiff's complaint.

In the instant case, as defendant points out, the affidavit of Joan Sinko, attached to plaintiff's response, clearly sets forth the specifics of the "deplorable housekeeping" mentioned in plaintiff's notice. In paragraphs four and six of Sinko's affidavit, plaintiff is able to succinctly identify what problems exist: "the apartment was completely cluttered with property over the entire floor area of every room, including books, newspapers, clothing, boxes, small appliances, bags and the like . . ." and " . . . the stove was cluttered with debris creating an obvious fire hazard." If it was not an "impossible burden" to put this language into plaintiff's manager's affidavit, it should not be an "impossible burden" for plaintiff to include language this specific in its notice to terminate the tenancy.

The plaintiff's notice to the defendant was nonspecific, and under the standards established by 24 CFR 247, as interpreted by courts in this state, plaintiff's notice failed to provide defendant with enough specificity to afford her the opportunity to defend herself. For the reasons set forth above, it is recommended that plaintiff's action be dismissed.

Recommended:


Mag. Martha R. McCorkle

JUDGMENT

The foregoing recommendation is approved and confirmed, and the court adopts this recommendation as its order in this matter.

IT IS SO ORDERED.

Approved:



JUDGE RAYMOND L. PIANKA

IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE MAGISTRATE'S REPORT MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS REPORT, AND MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THE COURT.

A copy of this judgment entry was sent by regular U.S. mail to counsel for plaintiff, Lou D'Amico, 6449 Wilson Mills Rd. Mayfield Village, Ohio 44143-3402, and to counsel for defendant, Maria Smith, Legal Aid Society, 1223 West Sixth Street, Cleveland, Ohio 44113, on April 8, 1999.

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

S & F MGMT., INC.

DATE: MAY 3, 1999

Plaintiff(s)

-VS-

CASE NO: 98-CVG-25253

ELIZABETH HORVATH

Defendant(s)

JUDGMENT ENTRY

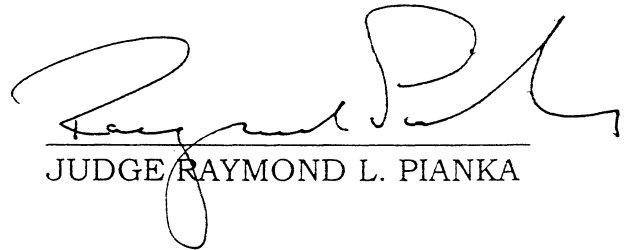
Plaintiff's objections to the magistrate's recommendation, unsupported by law, are overruled.

The magistrate's decision is approved and confirmed. Plaintiff's complaint is dismissed without prejudice, at plaintiff's costs.

JUDGMENT ENTRY RECEIVED
FOR JOURNALIZATION

MAY 6 1999

EARLE B. TURNER, Clerk


JUDGE RAYMOND L. PIANKA

A copy of this judgment entry was sent by regular U.S. mail to plaintiff's attorney, Lou D'Amico, 6449 Wilson Mills Road, Mayfield Village, Ohio 44143-3402, and to defendant's attorney, Maria A. Smith, 1223 West Sixth Street, Cleveland, Ohio 44113, on May 4th, 1999.