

HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO



EZZARD CHARLES APARTMENTS	:	Case No. 98CV28786
	:	
Plaintiff,	:	(Judge Elizabeth Mattingly)
	:	
vs.	:	DECISION
	:	
BELINDA WASHINGTON	:	
	:	
Defendant.	:	

This matter came on for hearing on Cross-Motions for Summary Judgment and stipulated facts agreed to by the parties.

The parties have stipulated that Edmond Ellis is Defendant Washington's adult brother, who does not live with her. On October 12, 1998, Mr. Ellis visited Ms. Washington's home with her consent. Police officers arrested him there on an outstanding warrant for domestic violence, searched him and discovered cocaine in his pocket and arrested him for possession of cocaine.

Defendant Washington was not implicated in the drug charge against her brother. No search warrant was issued or executed naming either Defendant Washington or her premises as the probably location of illegal drugs.

On October 19, 1998, Plaintiff Ezzard Charles Apartments served Defendant with a notice to leave the premises, citing as grounds that Defendant was in violation of R.C. 1923.02(A)(6)(i) due to the arrest of Mr. Ellis on drug charges. The described notice required Ms. Washington to leave the premises no later than October 22, 1998. Plaintiff has stipulated that the arrest of Mr. Ellis for drug possession is the sole grounds for this action.

Defendant has the right to serve a three day notice to vacate the premises if the conditions of R.C. 1923.02(A)(6)(a) are met which in this instance requires that there be issuance and successful execution of a search warrant specifically targeted at drugs or related activity on the tenant's premises. Without a search warrant, the landlord, pursuant to this statute, can have no "actual knowledge or reasonable cause to believe" that there has been drug activity. Without that knowledge, there is no basis for serving the abbreviated termination notice permitted by R.C. 5321.17(C) and R.C. 1923.04(B). In this case, the landlord has stipulated that no search warrant for drugs was either issued for or executed upon Defendant Washington's premises. All that the police had was an arrest warrant for Ms. Washington's brother, who does not reside at the premises. The arrest warrant was unrelated to drugs, which were discovered in Mr. Ellis' pocket incidental to that arrest.

Because no search warrant was issued or executed, the statutory notice requirements of R.C. 1923.04 have not been met. The landlord's three-day notice to

leave does not meet the notice requirements of R.C. 5321.17(B) and this court, therefore, lacks subject matter jurisdiction to hear this case. The Court, therefore, grants summary judgment for the Defendant and dismisses the complaint filed herein. Defendant Washington is to prepare within fourteen (14) days an entry releasing funds in escrow to Plaintiff. Plaintiff's Motion for Summary Judgment is denied as moot.

So ordered this 22nd day of June, 1999.


Judge Elizabeth B. Mattingly

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