

BOWLING GREEN MUNICIPAL COURT
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Bowling Green, OH 43402-0326
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BOWLING GREEN
MUNICIPAL COURT

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MARY A. COWELL
CLERK OF COURT

IN THE
BOWLING GREEN MUNICIPAL COURT
WOOD COUNTY, OHIO

Amherst Village Management
1520 Clough Street
Bowling Green, OH 43402

Plaintiff

No. 99-CV-G-00259

vs.

MAGISTRATE'S DECISION

Jennifer Bock
1520 Clough Street #171
Bowling Green, OH 43402

Defendant

Alan D. Hackenberg
Hackenberg, Beutler and Rasmussen
314 W. Crawford Street
P.O. Box 1544
Findlay, OH 45840
Attorney for Plaintiff

Steve Robbins
Advocates for Basic Legal Equality
121 North Arch Street
Fremont, OH 43420
Attorney for Defendant

This is a matter in forcible entry and detainer, heard March 25, 1999, by Magistrate
Thomas J. McDermott.

Plaintiff Amherst Village Management ("Amherst") is owner of an apartment complex located at 1520 Clough Street, Bowling Green, Wood County, Ohio. Defendant Bock is a tenant at the complex, along with her three children, and has lived there for three years. Defendant's rent is subsidized under Section 8. Landlord, in accepting Section 8 monies from the federal government, is obligated to abide by the rules and regulations promulgated by the Department of Housing and Urban Development ("HUD").

Under the certification process, Bock's rent had been set at \$125.00 per month through at least September, 1998. Testimony from the complex manager was that rent was not received for September. Bock tendered a check on or about October 12, 1998 for \$125.00 which bounced. Shortly thereafter, Bock tendered a money order for \$145.00, which was applied by management to the September rent. Bock did not pay any rent for October or November, owing \$250.00 by the end of November.

Bock had been working at a series of jobs, each apparently expected to be better-paying than the last. Based on income fluctuations, her rent obligation for December, 1998, was reduced to \$63.00, which was not paid. During December, Bock got a factory job at Ishikawa Gasket, which included overtime. She was working 60 hours per week, 6 days per week. With this information, as well as information about a \$1,500 payment of a child support arrearage, Amherst recertified Bock's rent at \$527.00 per month, starting in January, 1999. Bock received a "lease amendment" [Defendant's Exhibit A], dated December 28, 1998, notifying her that the rent would be increased effective January 1, 1999.

Management did not receive any rent payment at the beginning of January, so on January 18 caused to be served on Bock a "Notice to Leave Premises" and a "Notice of Termination," each citing non-payment of rent as grounds. Two days later, Bock appeared at the office and landlord agreed to hold off on eviction proceedings until February 1, if Bock came up with the back rent. It was assumed at that time that the amount owed was October (\$125.00) + November (\$125.00) + December (\$63.00) + January (\$527.00), or \$840.00. Bock also requested that her rent be recalculated, due to the fact that overtime was no longer available, and her income had therefore significantly decreased. Management told her that they had no obligation to recertify, since she was "under notice of eviction." Payment was not received by February 1 (Bock had tendered a money order for \$250.00 on or about February 12), so landlord filed this action on February 18, 1999, which requested \$1,117.00 in damages for back rent [the \$840.00 above plus another \$527.00 for February, less the \$250.00 proffered but not yet cashed as of the hearing date].

The parties appeared in Court on March 4, 1999. Prior to the commencement of hearing, Bock proffered a money order for \$867.00, which she believed was the amount of back rent owed (the \$1,117.00 in the complaint less the \$250.00 she had previously tendered), not realizing that landlord had already factored that amount into the prayer of the complaint. Landlord accepted the money order, but still has not cashed it. The parties agreed to continue the hearing to March 25, by which time it was expected that Bock would have the rent caught up, which was now calculated as the \$840.00 above, plus the \$527.00 for February, plus another \$527.00 for March, less the \$1,117.00 of the two money orders, or \$777.00.

Parties appeared on March 25, 1999, each represented by counsel. Defendant's main position was that the January 1999 increase in rent was improper because the tenant was not given thirty days notice of the increase. In the alternative, the one-time support arrearage should not have been used to calculate income.

Subsidized housing under the National Housing Act, 42 U.S.C. §1437 *et seq.*, as found in 24 C.F.R. §§ 247 *et seq.* ("Section 8"), establishes a program whereby HUD sets a fair market rent to be paid for a particular dwelling unit and then subsidizes the rent of income-eligible persons. The amount paid by the tenant is determined by a formula found at 42 U.S.C. §1437a; 24 C.F.R. § 813.107(a)(1), and is based on tenant's income. Whatever portion of the fair market rent not paid by the tenant under the formula is the amount of the subsidy paid by HUD to the owner. At least annual recertification of the tenant's income is required. 24 C.F.R. §813.109(a)(1).

Bock was recertified in September, 1998, upon moving from a two-bedroom apartment to a three-bedroom apartment within the same complex. Rent was re-calculated for December, based on November's income, with tenant Bock's obligation reduced from \$125.00 to \$63.00. A **reduction** in rent does not require a thirty day notice of the change. See *Hilltop Village v. West*, No. L-88-120 (Ct. App. Lucas Cty., Feb. 10, 1989), unreported. But, both HUD regulations (Handbook at 5-12 a) and the rental agreement at paragraph 4, however, **require thirty days notice to tenant of any increase in rent**. It is well-established case law that landlords are to be held in strict compliance to these rules and regulations. Exhibit A in the instant case clearly indicates that defendant/tenant was given *three days* notice. **Therefore, the Magistrate finds that Bock's rent was improperly raised to \$527.00 for January 1999, and should have remained at \$63.00.**

The 12/28/98 notice of increase, however, would have been adequate to inform Bock that her rent obligation would be increased for February, 1999. However, she notified the landlord's representative that her income had decreased due to the unavailability of overtime and requested a recertification. Landlord indicated in testimony that she did not have to recertify while defendant was "under eviction." But, this ignores the fact that "eviction" is a process that may be contested by a tenant, and that the tenancy will continue during the contest and may actually survive the action. Further, landlord indicated that she had ninety days, anyway, in which to conduct any such downward recertification of tenant's rent obligation. This is a misreading of the terms and conditions of the lease. Paragraph 16(b) of the lease provides that

The tenant may report any decrease in income or any change in other factors considered in calculating the tenant's rent. If the decrease in income or change in other factors **will last more than 90 days**, the landlord will verify the information and make appropriate reduction. [Emphasis added.]

It is clear from the above language that if the tenant informs the owner that tenant's income has decreased and that the condition will last more than 90 days, the landlord must then take the necessary steps to recertify within a reasonable time. It would defy the spirit of the law if a subsidized tenant were required to pay rent beyond the tenant's adjusted means simply

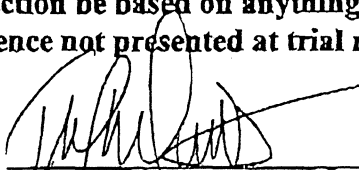
because the landlord waited 90 days. Amherst should have recalculated Bock's rent for February upon receipt in January of her request to do so.

Based on the above findings, the Magistrate finds for defendant/tenant Bock on the eviction action for non-payment of rent. As of the filing of the eviction action on February 18, 1999, Bock owed rent for October and November of 1998 at \$125.00 each per month, December, 1998 and January, 1999 at \$63.00 each per month, for a total of \$376.00. Applicable rent for February, March and April, 1999, at an amount to be determined, is due. Amherst is in possession of two money orders totaling \$1,117.00. Amherst is to deposit those money orders with the court. The Court will disburse \$376.00 to Amherst for rent through January, 1999. The remainder will be held in escrow by the Court pending a recertification of defendant's rent obligation for the period of February - April, 1999. The parties are to appear April 29, 1999 at 1:30 pm for hearing on second cause, by which time it is expected that the recertification process will have been completed.

OBJECTIONS to this decision are controlled by Civil Rule 53(E)(3). 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 address(es) shown in the Magistrate's decision. (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.

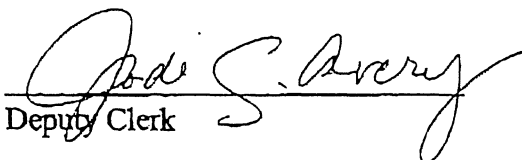
3/30/99



Thomas J. McDermott, Magistrate

deposit: \$ 65⁰⁰
Court Costs are: \$ 65⁰⁰
Plaintiff owes: \$ 0
Defendant owes: \$ 0
Pay to Plaintiff Defendant

On 3/30/99 copies mailed.



Deputy Clerk