

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

JUDGMENT ENTRY RECEIVED
FOR JOURNALIZATION

JUL 02 2009

EARLE B. TURNER, CLERK

Hope Burpo

DATE: July 2, 2009

Plaintiff

-vs-

CASE NO.: 2009 CVG 7976

Lalinda Burpo

Defendant

JUDGMENT ENTRY

The Court, having reviewed the *Magistrate's Decision* of July 1, 2009 under Ohio Rule Of Civil Procedure 53(E)(4), adopts that decision.

The Court grants judgment for Defendant on Plaintiff's first cause of action.

Judgment for Defendant. (HJEFD1).

The Court dissolves the temporary restraining order issued May 27, 2009 effective immediately.



JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this *Judgment Entry* was sent via regular U.S. Mail to the parties on

7/2/09. [Signature]

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

REPORT OF MAGISTRATE'S FILED

JUL 02 2009

EARLE B. TURNER, Clerk

Hope Burpo

DATE: July 1, 2009

Plaintiff

-vs-

CASE NO.: 2009 CVG 7976

Lalinda Burpo

Defendant

MAGISTRATE'S DECISION

The Court set this case for trial July 1, 2009 on Plaintiff's first cause of action. Plaintiff appeared without an attorney. Defendant appeared with an attorney. The parties appeared before Magistrate David D. Roberts, Judge Raymond L. Pianka having referred the case to Magistrate Roberts under Civil Rule 53.

The Court grants judgment for Defendant on Plaintiff's first cause of action and dissolves the temporary restraining order issued May 27, 2009 against Defendant. This case raises the question of whether a parent of an adult child can terminate the child's right to live with the parent in the parent's rental unit if the child has signed a lease with the landlord making the child a co-tenant. The law of Ohio is that a parent in this situation does not have the right to terminate a child's right to live in the rental unit. Accordingly, Plaintiff lacked the right to terminate her daughter's right to live in her rental unit and may not evict her. Nor can the Court continue temporary or interim relief where Plaintiff cannot prove her claim to permanent relief.

Findings of Fact

1. Plaintiff and Defendant both reside at 2514 E. 37th St., #2514, Cleveland, Ohio, a housing unit in Arbor Park, a housing development which includes a project based federal subsidy of its tenancies.
2. Plaintiff and Defendant derive their rights as tenants under a written lease with the owner of the property, Longwood Phase One Associates, L.P., a copy of the lease admitted into evidence as *Defendant's Exhibit B*.
3. Both Plaintiff and Defendant signed the lease and the lease lists them both as "tenant."
4. Plaintiff is considered the "Head Of Household" for the purposes of federal regulations that apply to the tenancy.

5. Notice to vacate. Plaintiff served Defendant with a notice to vacate (or "3-day notice") under O.R.C. §1923.04. Plaintiff served the notice on April 9, 2009, a copy of the notice admitted into evidence as *Plaintiff's Exhibit 2*.

6. The notice states that Defendant lacks color of title to the property.

Conclusions Of Law

The Court concludes that Plaintiff is not entitled to judgment on her first cause of action. Under Ohio law a co-tenant may not terminate the lease rights of another co-tenant. *Collins v. Jackson* (1986), 34 Ohio App. 3d 101. Federal regulations do not provide a "head of household" this right. Nothing in the lease that Plaintiff and Defendant both signed confers on Plaintiff the right to terminate Defendant's tenancy. Plaintiff's status as Defendant's mother does not give her any superior legal rights either though it may carry the force of moral authority. The Court heard some testimony from Plaintiff concerning her decision to terminate her daughter's right to live in the property but limited this testimony and limited rebuttal testimony and cross-examination concerning Defendant's conduct because the legal issue in this case is not whether Plaintiff was justified in deciding that Defendant must move out but whether Plaintiff had the legal right to terminate Defendant's tenancy and force Defendant to move.

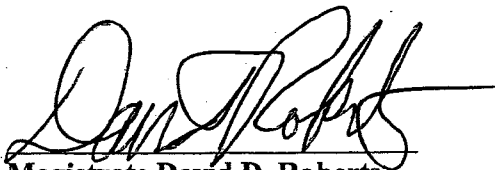
The parties' lease terminates July 31, 2009 and neither can force the other to renew it on the same terms. Plaintiff's remedy therefore may be to request that her landlord enter into a new lease solely with her.

Recommendation

The Court grants judgment for Defendant on Plaintiff's first cause of action.

Judgment for Defendant. (HJEFD1).

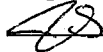
The Court dissolves the temporary restraining order issued May 27, 2009 effective immediately.


Magistrate David D. Roberts

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE

MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS 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.

SERVICE

A copy of this *Magistrate's Decision* was sent via regular U.S. Mail to the parties on 7/2/09.  _____.