

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

CMHA
1441 West 25th Street
Cleveland, Oh. 44113
Plaintiff

vs.

Theartis Miller
10304 Miles Avenue #503
Cleveland, Ohio 44105

Defendant

) Date: November 25, 2003

) CASE NO. 2003CVG09190

) LANDLORD – TENANT

) MAGISTRATE'S REPORT AND

) RECOMMENDATION

This case was heard by Magistrate Ruben E. Pope, III, to whom this case was assigned by Judge Raymond L. Pianka pursuant to Ohio Civil Rule 53, to take evidence on Plaintiff's Complaint for Forcible Entry and Detainer and Defendant's Counterclaim for reasonable accommodation as a handicapped person.

Plaintiff was present and represented by counsel.

Defendant was not present, but was represented by counsel.

FINDINGS OF FACT:

1. The parties had a written agreement for the rental of the premises located at 10305 Miles Avenue, Cleveland, Ohio 44105. The rent was \$154.00 per month.
2. The Plaintiff is a Public Housing Authority.
3. The tenant moved on the premises on or about the 27th of December 2002.
4. The Defendant is being evicted for cause.
5. The Defendant allegedly violated the terms of his lease by assaulting the Property Manager.
6. The Defendant has counter sued for a reasonable accommodation as a Handicapped person.

CONCLUSIONS OF LAW AND FACTS:

The Plaintiff has filed a motion for Summary Judgment, which was denied, as there exists a dispute as to the facts of this case.

The Plaintiff made a verbal motion at trial for a default judgment as the Defendant was not present. This was also denied, as the Civil Rules do not require the presence of the Defendant unless he or she has been subpoenaed. Forman v. Macias, No. 79AP-122 1979 Ohio App. LEXIS 11693 (Ct App Franklin County, June 26, 1979).

The Plaintiff is required by HUD regulations to provide the Defendant with specific allegations of misconduct as this is subsidized housing. Although the Plaintiff alleges that the Defendant is a disruptive influence on the property, the only plea involves an alleged assault on the Property Manager.

The Plaintiff had several witnesses who testified to the fact that the event allegedly occurred but the Plaintiff never called the Manager who was involved in the attack. The witnesses did not actually see the event and could not provide the court with the details of the event. The Defense moved for dismissal as the Plaintiff failed to prove its case. This motion was granted, as the Plaintiff did not meet its burden of proof.

The Defendant voluntarily dismissed its counter-claim.

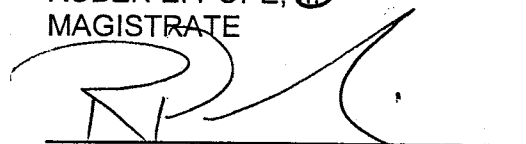
JUDGMENT:

Judgment for Defendant. Defendant may remain in possession of the premises.

RECOMMENDED:


RUBEN E. POPE, III
MAGISTRATE

APPROVED:


JUDGE RAYMOND L. PIANKA
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION