

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

CMHA)

Plaintiff)

vs.)

LINDSEY STEWART)

Defendant)

DATE: MARCH 1, 2006

CASE NO. 06-3698

JUDGMENT ENTRY

This case came to be heard on February 23, 2006 before Magistrate Myra Torain Embry, to whom it was referred by Judge Raymond L. Pianka pursuant to Civ. R. 53, to take evidence on all issues of fact and law regarding plaintiff's first cause of action. Plaintiff was present through counsel. Defendant was present, pro se.

FINDINGS OF FACT

1. Plaintiff is, and all times relevant to this action, the owner of the federally subsidized property located at 1300 Superior Avenue, Cleveland, Ohio.
2. On or about December 2005, plaintiff leased unit #1901 of the subject premises to defendant pursuant to the lease agreement admitted as plaintiff's exhibit A.
3. On or about December 2005 plaintiff's property manager, Marilyn Applewhite, was informed by the Cuyahoga County Sheriff's Office that defendant was convicted of a sexually orientated offence, and was determined to be a sexual predator, Case Number CR-82-170928.
4. In its rental application and background check procedure, plaintiff failed to discover defendant's past criminal record through no fault of defendant.
5. Plaintiff did not produce testimony or evidence that defendant failed to disclose his criminal record in the rental application process.
6. On or about December 19, 2005, plaintiff served defendant with the notice of termination admitted as plaintiff's exhibit B.

7. On or about December 23, 2005 plaintiff served on defendant the statutory 3-day notice admitted as plaintiff's exhibit C.

CONCLUSIONS OF LAW

Plaintiff seeks to terminate defendant's tenancy due to alleged lease violations. Specifically, plaintiff's property manager, Marilyn Applewhite, testified that plaintiff was in error when it entered into a tenancy with defendant as defendant has been adjudicated a sexual predator. Ms. Applewhite further testified that the above mentioned error occurred when through not fault of defendant, plaintiff's rental application and prospective tenant background check failed to discover defendant's criminal record. Plaintiff did not produce testimony or evidence that defendant failed to disclose his criminal record in the rental application process.

Besides stating that plaintiff made a mistake in renting to defendant, Ms. Applewhite does not assert any specific lease provisions violated by defendant, as alleged in plaintiff's Notice of Termination. Nor does the lease itself address termination of tenancy for: 1) acts engaged in by defendant prior to his tenancy with plaintiff, or 2) when plaintiff has erroneously rented to defendant. As such, this Court finds that plaintiff has failed to meet its burden in showing that defendant has violated his lease agreement.

It should be noted that this Court is sensitive to the concerns defendant's past conduct presents to the Housing Authority. The Court, however, is not in a position to evaluate the remedies that may be available to plaintiff. This Court can only address the complaint and evidence currently before it. For the above stated reasons, plaintiff cannot prevail on this claim, and judgment is entered for defendant on the plaintiff's first cause of action.

RECOMMENDED JUDGMENT

Based upon the evidence presented, judgment is for defendant on the first cause of action. The second cause of action remains set for default hearing **March 23, 2006 at 1:30 p.m.** in Courtroom 3A. Defendant must file an answer prior to hearing in order to contest plaintiff's claims for monetary damages.

Recommended:



MAC/MYRA TORAIN EMBRY

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.

JUDGMENT

The Magistrate's Decision is approved and confirmed. Based upon the evidence presented, judgment is for defendant on the first cause of action. The second cause of action remains set for default hearing **March 23, 2006 at 1:30 p.m.** in Courtroom 3A. Defendant must file an answer prior to hearing in order to contest plaintiff's claims for monetary damages.



JUDGE RAYMOND L. PIANKA

A copy of the Magistrate's Decision and judgment entry was served on parties/counsel by regular U.S. mail on 3/2/06. *WRP*