

JUL 05 2007

EARLE B. TURNER, CLERK

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO

CMHA)
)
Plaintiff)
)
vs.)
)
ANGELEE TAYLOR)
)
Defendant)

DATE: JUNE 28, 2007

CASE NO. 07-3787

MAGISTRATE'S DECISION
and JUDGMENT ENTRY

This case came for hearing on June 4, 2007 before Magistrate Myra Torain Embry, to whom it was referred by Judge Raymond L. Pianka pursuant to Civ. Rule 53, to take evidence on all issues of law and fact regarding plaintiff's first cause of action. Plaintiff was present through counsel. Defendant was present with counsel. Also present was plaintiff's property manager, Alonzo Turner.

FINDINGS OF FACT

1. Plaintiff is, and at all times relevant to this action, the owner of the project based assisted housing premises located at 1259 West 25th Street, Cleveland, Ohio.
2. Plaintiff and defendant entered into a written lease agreement for unit #263 of the subject premises.
3. Defendant has resided at the subject premises for approximately four years.
4. Defendant's monthly rental amount is, and at all times relevant to this action, \$25.00.
5. On May 3, 2007, between the hours of 1:30am and 2:00am, defendant allowed her friend, Fredrick Williams to spend the night in her unit. Defendant slept on the living room coach while Mr. Williams slept in defendant's bedroom.
6. At approximately 6:30am on May 3, 2007, Cuyahoga Metropolitan Housing Authority (CMHA) police officers arrived at defendant's unit to arrest defendant on a 2004 Open Container warrant.
7. Plaintiff's witness, CMHA Police Sergeant Styles, testified that at the time defendant was arrested, defendant was cooperative with police officers, and upon

questioning by officers, informed them that Mr. Williams was asleep in her bedroom.

8. Based on defendant's statement that another individual was located in the bedroom, police officers went to the bedroom to confirm defendant's statement, and to secure the unit.

9. Upon finding Mr. Williams in the bedroom, police officers instructed Mr. Williams to get dressed. Mr. Williams admitted to the officers that he had a syringe in his pants pocket, which fell out of the pocket when Mr. Williams picked up his pants.

10. In addition to the syringe, police officers found the following items located in Mr. Williams' pants pocket: plastic vial, metal bottle cap and two Percocet Pills.

11. Besides the items found in Mr. Williams' pants pocket, no other drugs or drug paraphernalia was found in defendant's unit.

12. Defendant was arrested for the outstanding Open Container warrant, and Mr. Williams arrested for violation of the state drug law.

13. Besides the syringe, Percocet Pills and the metal bottle, the items found in Mr. Williams pocket tested negative for controlled substance.

14. The metal bottle cap was analyzed by the Cleveland Police Department, Forensic Laboratory, and tested positive for Heroin, Class I residue.

15. The syringe was not tested for controlled substance.

16. On or about November 2, 2006, plaintiff served defendant with the 30 day notice of termination and invitation to explain attached to plaintiff's complaint.

17. On or about January 5, 2007, plaintiff served defendant with the notice to leave premises attached to plaintiff's complaint.

18. Prior to May 3, 2007, Mr. Williams had spent the night at defendant's apartment on at least two separate occasions.

19. Defendant was not aware that defendant had drugs and/or drug paraphernalia in his pocket or in her unit.

CONCLUSIONS OF LAW

This matter is before the Court on plaintiff's first cause of action. Plaintiff asserts that it is entitled to restitution of the premises for breach of lease as defendant's guest engaged in "drug related criminal activity" while in defendant's unit. Defendant does not deny that her guest was found with two percocet pills or item(s) that tested positive for a controlled substance in his pants pocket. Rather defendant asserts that she was unaware that her guest had drugs and/or drug paraphernalia on his person or in her unit. Defendant further asserts that she and Mr. Williams recently reacquainted after a number of years without contact, and she was unaware of Mr. Williams' criminal or drug related history.

Despite the existence of a lease violation, this Court may "weigh all equitable considerations in determining whether a forfeiture is to be declared." Southern Hotel Co. V. Miscott (1975), 44 Ohio App.2d. 217. This is so even where the lease violation pertains to the criminal conduct of an innocent tenant's guest. 66 Fed. Reg. 28776, 28791 (May 24, 2001); CMHA v. Harris, No. 06-CVG-22921 (Mun.Ct. Cuyahoga Cty., November 8, 2006).

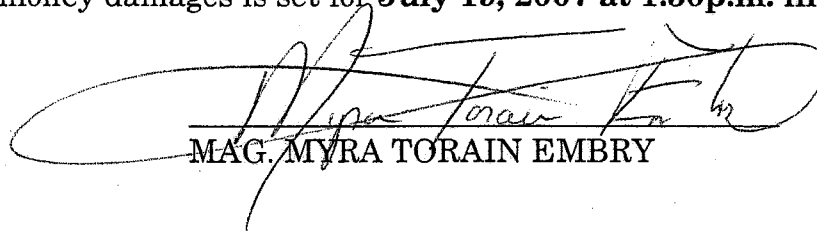
In Harris, this Court applied principles of equity to determine whether to evict a tenant for the drug related criminal activity of a guest. Finding that the tenant (or a member of the tenant's household) was not involved in the criminal activity, cooperated with police in the arrest of the guest, did not know or have reason to know of her guest involvement with drug related criminal activity, and there being no other drug or drug related activity found in the unit, this Court determined that defendant established that equity prohibited an eviction.

As in Harris, defendant fully cooperated with police in the arrest of her guest. Further, there was no testimony or evidence to indicate that besides the items found in Mr. Williams pants pocket, there were any other drugs or drug activity found in defendant's apartment, or that defendant or a member of defendant's household was involved in the drug related activity. Finally there was no testimony or evidence introduced to contradict defendant's statements that she did not know or have reason to know of Mr. Williams criminal or drug related history, and did not know that he had drugs and/or drug paraphernalia on his person or in her unit.

Therefore, the Magistrate finds that in light of the circumstances of this particular case, and in consideration of all equitable factors, defendant has established to the satisfaction of the Court that equity prohibits her eviction from the premises.

RECOMMENDED JUDGMENT

Judgment is for defendant on the first cause of action. Default hearing on plaintiff's claim for money damages is set for **July 19, 2007 at 1:30p.m. in Courtroom 3A.**



MAG. 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

Upon review, the Magistrate's Decision is approved and confirmed. Judgment is for defendant on the first cause of action. Default hearing on plaintiff's claim for money damages is set for **July 19, 2007 at 1:30p.m. in Courtroom 3A.**



JUDGE RAYMOND L. PLANKA

A copy of this entry was served on parties/counsel by regular U.S. mail on 7/13/07. *ANK*