

OCT 12 2018

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
RONALD J.H. O'LEARY, JUDGE

LANCE E. COTTLE, CLERK

CMHA
Plaintiff (s)

Date: October 2, 2018

-VS-

2018 CVG 013344

DEBRA A RAMSEY
Defendant (s)

MAGISTRATE'S DECISION

Case called for hearing on September 27, 2018 on plaintiff's first cause of action before Magistrate H. Edward Gregory III, to whom it was referred by Judge Ronald J.H. O'Leary pursuant to Ohio Rule of Civil Procedure 53. Plaintiff's site manager Arika Bethune-Payne appeared, represented by Attorney Cullen J. Cottle. CMHA Police Officers Ali, Badge #31 and Shakir, Badge #8 appeared as witnesses. Defendant appeared pro se. Hearing had, matter taken heard and submitted.

FINDINGS OF FACT:

- {¶1.} Plaintiff is the owner of the residential premises located at 1795 West 25th Street in Cleveland, Ohio ("premises"), which is the federally assisted conventional public housing estate known as Riverview Tower.
- {¶2.} Defendant is the tenant residing in unit #1035 ("unit") of the residential premises pursuant to a written rental agreement ("lease"). Defendant has resided in public housing for eight years.
- {¶3.} Plaintiff served defendant with a thirty-day notice of termination dated June 1, 2018 and a three-day notice for cause on July 5, 2018. Copies of both notices were attached to the complaint.
- {¶4.} The grounds alleged for this eviction are violation of the lease as it concerns defendant's guest engaging in suspected drug related criminal activity on the premises on May 25, 2018.
- {¶5.} Officer Ali attests that on May 25, 2018, he and Officer Shakir responded to the premises for a possible drug overdose that occurred in defendant's unit. Upon arriving at the building, Officer Ali attests he spoke with an EMS Officer with Badge #357, in the lobby of the premises at 12:30. EMS officers were transporting the overdose victim to Lutheran Hospital and handed Officers Ali and Shakir an evidence bag that contained a needle with suspected heroin residue.

- {¶6.} Officer Ali attests he and Officer Shakir went up to the unit to speak with defendant who identified the victim as her daughter, Nicolette Hite (“Nicolette”).
- {¶7.} Officer Ali attests he and Officer Shakir did not check the unit for drug activity but that CMHA Detective Wright and the High Intensity Drug Enforcement Agency entered the unit, conducted the follow up and submitted the evidence obtained from EMS to the lab for testing.
- {¶8.} Plaintiff offered into evidence a four page Physical Evidence Examination Report (“lab report”) prepared by the Cuyahoga County Regional Forensic Science Laboratory. A copy of the lab report was admitted and marked as Plaintiff’s Exhibit A. The lab report showed that no controlled substance or other significant compound was found on the syringe recovered however, cocaine and heroin residue was detected on the spoon recovered.
- {¶9.} Defendant attests that on May 24, 2018 she received a phone call from Nicolette requesting that defendant pick her up from a drug rehab facility where Nicolette had spent the past six months. Defendant attests she understood that Nicolette would wait in her unit until Nicolette’s boyfriend came by to take Nicolette home.
- {¶10.} Defendant attests Nicolette was in the unit for a few hours before Nicolette stepped into the hallway and left. About ten minutes later Nicolette returned to the unit, went into the bathroom, came out and fell down. Defendant called EMS. Defendant attests Nicolette died in her arms about four or five times and that she just wanted to save her.
- {¶11.} Defendant attests that she spoke to Nicolette after Nicolette was released from the hospital and Nicolette informed defendant that she had wanted to come by the unit in order to get high.
- {¶12.} Defendant attests Nicolette has had a drug problem for a long time and that she has been in and out of rehab programs but Defendant thought this time was different as it was the first time Nicolette had actually stayed at a rehab facility. Defendant attests she thought things were going to go well, that Nicolette, who has four children, was really trying to help herself.

CONCLUSIONS OF LAW:

- {¶13.} Plaintiff has established by a preponderance of the evidence that plaintiff served defendant a three-day notice as required by law, vesting this court with jurisdiction to proceed and prior to that, served defendant with a 30-day Notice of Termination and Invitation to Explain as required by law and her lease.
- {¶14.} The testimony of plaintiff’s agents and defendant have establish that defendant’s daughter Nicolette Hite had collapsed in defendant’s unit from a drug overdose, EMS was called and Nicolette had to be hospitalized on May 24, 2018.

- {¶15.} The issue the Court is considering in this case is the extent to which defendant should be expected to scrutinize Nicolette's illegal conduct and if defendant is to be afforded a defense in equity to an eviction based on her lack of awareness of her daughter's conduct.
- {¶16.} Prior cases of this Court have held that a tenant must subject his guests to a reasonable degree of scrutiny but not the same level of scrutiny to which the police would subject them. In the case of *CMHA v. Mundy*, 2007 CVG25841, a tenant whose guest, his nephew, brought and smoked marijuana in the unit and told the tenant it was a hand rolled tobacco, the Court concluded that the uncle did not need to doubt his nephew's claims about the content of the cigarette. In the case of *CMHA v. McNary*, 2010 CVG 866, where a tenant in recovery from drug addiction whose guests was a friend and fellow addict in recovery, the Court concluded that the tenant might well know that her friend was likely to have drug paraphernalia in his backpack, as the police found, since recovering addicts frequently suffer relapse on the way to recovery, but that it is inequitable to demand that such a tenant subject her friend to a search of his belongings.
- {¶17.} When Officers Ali and Shakir arrived in the lobby of the premises while responding to the call for an apparent drug overdose, they met the EMS officers who were transporting the overdose victim and who provided the Officers with the evidence bag containing the suspected drug paraphernalia. The Officers went to the unit and interviewed defendant but only about the identity of the victim. The Officers turned the evidence bag over to CMHA Detective Wright, who along with members of the High Intensity Drug Enforcement Agency actually entered the unit and conducted the follow up investigation. Officers Ali and Shakir had no firsthand knowledge about where items eventually placed in the evidence bag were recovered or what defendant might have known about Nicolette's behavior in her unit.
- {¶18.} Defendant admits that she was aware of her daughter Nicolette's drug problem and that it had been going on for a long time. However, after spending six months at a drug rehab facility, a first for Nicolette, defendant believed that Nicolette had overcome her drug problem and wanted to spend some time with defendant prior to her boyfriend stopping by to pick her up.
- {¶19.} The Court concludes that given the circumstances in this case, defendant is entitled to have equity protect her from forfeiting her lease based on the conduct of her guest.

RECOMMENDATION:

{¶20.} Judgment for defendant. (HJEFD1)


Magistrate, Housing Division

SERVICE

10/10/18. *[Signature]*