

IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO

FILED
2009 MAY 11 P 2:23.0
FRANKLIN COUNTY
MUNICIPAL COURT
LORI M. TYACK

Community Properties of Ohio
Management Services,

Plaintiff,

v.

Richard Taylor,

Defendant.

Case Number: 2009 CYG 001131

Judge W. Dwayne Maynard

Decision and Entry

This case is before the Court on Plaintiff's Objection to the Magistrate's Decision Filed March 17, 2009 and/or Motion for Reconsideration filed on March 31, 2009. The Plaintiff brought this action in forcible entry and detainer to recover possession of its property located at 104 Oakwood Avenue, Columbus, Ohio 43206, and for restitution and damages. The trial of this matter was heard before Magistrate Mathews on January 30, 2009. The Magistrate found that the Plaintiff failed to state adequate grounds for eviction in the ten-day notice thus failing to meet the requirements of the federal regulations for HUD tenancies and entered judgment in favor of Defendant. That decision was adopted by the Court and judgment was entered in favor of the Defendant on March 18, 2009.

In considering the present objections, this Court has conducted its own independent review of the record and the issues in this case as required by Civil Rule 53(D)(4)(d). This Court agrees that the Plaintiff failed to satisfy the requirements under federal law to support an eviction action and that the Defendant is entitled to the Judgment previously entered.

The Magistrate's decision does not preclude all future HUD landlords and tenants from entering into agreed judgment entries as the Plaintiff suggests. The definition of "rental agreement" under 24 C.F.R. 247.2 includes all agreements *between landlord and tenant*—not judgment entries issued by the court which, whether or not they are agreed upon by the parties, are fundamentally different from private agreements between a landlord and a tenant.

Plaintiff's argument that 24 C.F.R. 247.4(d) only requires HUD approval where the landlord unilaterally modifies the lease is unpersuasive. 24 C.F.R. 247.4(d) requires HUD approval prior to any change the landlord makes to the terms or conditions of the lease. The regulation does not distinguish between so-called "unilateral" modifications by the landlord and modifications agreed to by the tenant. Plaintiff cites only two cases in support of its argument and neither of them undermine the Magistrate's ruling: *Commons v. King*, 2nd Dist. No. 13159, 1992 WL 288781, a case easily distinguished from Plaintiff's because in *Commons* there were adequate grounds for evicting the tenant and the tenant was given specific notice of those grounds; and *Hil-Roc Condominium Unit Owners Assoc., Inc. v. HWC Realty, Inc.*, 8th Dist. No. 87344, 2006-Ohio-4770, which dealt with the timing of notices to terminate a lease, and significantly, did *not* involve a HUD tenancy.

Further, the Magistrate's Decision does not prevent the landlord from attempting to enforce the forbearance agreement or seek a remedy under contract law. The Decision merely states that the forbearance agreement does not provide the necessary grounds for termination of the HUD tenancy under 24 C.F.R. 247.3(a).

Based upon the foregoing, this Court **OVERRULES** Plaintiff's objections to the Magistrate's Decision and adheres to the Judgment previously entered in this case.

The Clerk is hereby directed to enter the fact of this Decision and Entry upon the Journal of the Court and serve copies of this Decision and Entry upon the parties listed below.

SO HELD AND ORDERED.

5-8-09
Date


Judge W. Dwayne Maynard

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Magistrate Denise Mathews

Magistrate's Report and Decision

This cause came on for hearing before Magistrate Mathews on January 30, 2009. At the hearing, counsel for Defendant moved that the eviction action be dismissed. Based on the sworn testimony taken, the magistrate finds as follows:

Findings of Fact

1. The Plaintiff in this case, CPO Management, is the managing agent for the property located at 1041 Oakwood Avenue, Columbus, Ohio.
2. The Defendant, Richard Taylor, is a resident of the above-listed property pursuant to a written lease agreement. This lease agreement is governed by regulations promulgated by the United States Department of Housing and Urban Development ("HUD").
3. On October 9, 2008, the Columbus Police were called to the Defendant's address by the Defendant, himself, alleging he was the victim of a robbery. The Defendant stated to the responding officers that several men had entered his apartment, struck him, and stolen a game console.

4. After taking the Defendant's statements, the police officer indicated in his report that the Defendant had previously been observed leaving a known drug house. The officer went on to state in the report that the Defendant had ingested crack cocaine as to avoid its detection by said officer.

5. Based upon the officer's report, the Plaintiff discussed the allegations with the Defendant and on October 14, 2008, both parties entered into a forbearance agreement. In said agreement, the Defendant agreed to vacate the premises on or before November 14, 2008.

6. On November 14, 2008, the Defendant failed to vacate the premises.

7. On December 10, 2008, the Plaintiff then served a "10 Day Notice to Vacate" on the Defendant which stated the following grounds for termination of the Defendant's lease:

Material Non-Compliance: Specifically violations of the HUD approved lease: Specifically, hold over tenancy: breach of lease agreement by not vacating by agreed date: Criminal activity: on 10/14/08 Mr. Taylor signed a forbearance agreement to move on an agreed date so to avoid an eviction action being filed against him. On 12/4/08 Management checked the unit for occupancy and Mr. Taylor stated that he wanted to proceed with the eviction action.

The Defendant did not vacate the premises.

8. The Plaintiff filed an eviction action against the Defendant on January 9, 2009 and the case proceeded to trial on the scheduled eviction date of January 30, 2009.

Conclusions of Law

The Plaintiff in this case must comply with both state and federal law when terminating the Defendant's lease because the Plaintiff receives a subsidy from HUD for Defendant's rent. *Knoll Group Management Co. v. Wolfe*, 4th Dist. Nos. 93 CA 553, 93 CA 554, 1994 WL 326347, at * 3. "Ohio courts have recognized a tenant's constitutionally protected interest in

continued occupancy of federally subsidized housing." *Show Mgt. Corp. v. Hazelbaker*, 12th Dist. No. CA2005-11-031, 2006-Ohio-3619, at ¶ 14. Absent good cause for eviction (defined by federal regulations), the tenant has the right to remain in federally subsidized housing for life. *Gorsuch Homes, Inc. v. Wooten* (1992), 73 Ohio App.3d 426, 432, 597 N.E.2d 554. Under federal law, a landlord only has good cause to terminate a HUD tenancy for material noncompliance with the rental agreement, material failure to carry out obligations under state landlord-tenant law, criminal activity, or other "good cause." 24 C.F.R. 247.3(a).

Where a landlord decides to terminate a tenancy, the tenant must be given written notice stating, among other things, "the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense." 24 C.F.R. 247.4(a)(2). "The purpose of requiring that the notice [state the] reasons for the termination is 'to insure that the tenant is adequately informed of the nature of the evidence against him so that he can effectively rebut that evidence.'" *Associated Estates Corp. v. Bartell* (1985), 24 Ohio App.3d 6, 9, 492 N.E.2d 841 (quoting *Escalera v. New York City Housing Authority* (C.A.2, 1970), 425 F.2d 853, 862, certiorari denied (1970), 400 U.S. 853, 91 S.Ct. 54, 27 L.Ed.2d 91).

Once this written notice is delivered to the tenant, the landlord is obligated by the federal regulations and by standard HUD leases to meet with the tenant "to discuss the proposed termination prior to filing an eviction action, if [the tenant] requests a meeting within ten days of receiving the notice." *Gorsuch Homes, Inc. v. Wooten* (1992), 73 Ohio App.3d 426, 433, 597 N.E.2d 554. "One of the purposes of federally subsidized housing is to assure that every American can afford a decent home. The purpose of [providing the tenant with] an opportunity to meet with the landlord [prior to eviction] is to attempt to resolve the controversy in a mutually

satisfactory manner, that will, if possible, avoid the tenant's loss of subsidized housing while protecting the rights of the landlord." *Id.* at 434.

Termination notices required under 24 C.F.R. 247.4(a)(2) have been held "insufficient where they contain only one sentence, are written in 'vague and conclusory' language, and fail to set forth a factual statement of the reason for termination." *Bartell*, at 9. In *Bartell*, the reason given for termination of the tenant's lease was "[serious], repeated damage to unit. Repeated disturbance." *Id.* The court held that the notice was inadequate because it was "blanketed in broad language and [did] not refer to specific instances of conduct," thus denying the tenant procedural due process. *Id.* In contrast a two-page explanation of the landlord's reasons for terminating a lease "in which sixteen separate violations of the lease agreement were identified in specific detail [was] sufficient to give the [tenant] reasonable notice of the nature of her nonconforming conduct and enable her to prepare an appropriate defense." *Village South Apartments v. Jensen*, 12th Dist. No. CA96-10-018, 1997 WL 148067, at *2.

The landlord may not modify the terms and conditions of a rental agreement without prior approval from HUD. 24 C.F.R. 247.4(d). "Rental agreement" is defined as "all agreements, written or oral, between the landlord and tenant (and valid rules and regulations adopted by the landlord pursuant to a written agreement) relating to the use and occupancy of a dwelling unit and surrounding premises." 24 C.F.R. 247.2. Where HUD approves a modification of a rental agreement, the change is not effective until the end of the initial term of a successive term of the existing agreement. 24 C.F.R. 247.4(d).

In an action to evict the tenant of HUD housing, "the landlord must rely on grounds which were set forth in the termination notice served on the tenant[.]" 24 C.F.R. 247.6(b). In this

case, the "10 Day Notice to Leave Premises" given to Defendant set out the reasons for termination of the lease as follows:

Material Non-Compliance: Specifically violations of the HUD approved lease: Specifically, hold over tenancy: breach of lease agreement by not vacating by agreed date; Criminal activity: on 10/14/08 Mr. Taylor signed a forbearance agreement to move on an agreed date so to avoid an eviction action being filed against him. On 12/4/08 Management checked the unit for occupancy and Mr. Taylor stated that he wanted to proceed with the eviction action.

The Plaintiff in this case argues that the Defendant is a holdover tenant because he agreed (in the "forbearance agreement") to vacate the premises on or before November 14, 2008 and he did not do so. The Plaintiff asserts that the forbearance agreement superseded the lease and the breach of that agreement is sufficient to evict the Defendant. Alternatively, Plaintiff relies on "criminal activity" as a basis for eviction.

The Defendant moved to dismiss the eviction action arguing that the breach of the forbearance agreement did not create a holdover tenancy and the agreement runs contrary to the policies behind the federal regulations because it renders the meeting envisioned by the ten-day notice rule meaningless. The Defendant also asserts that the ten-day notice was defective in that it did not specify what "criminal activity" Defendant was involved in and thus, the Plaintiff failed to assert any adequate grounds for eviction.

The Defendant is correct that the ten-day notice was defective with respect to the alleged criminal activity. The phrase "criminal activity" is not specific enough to adequately inform the Defendant of the nature of his conduct so he could prepare an appropriate defense. It is a vague and conclusory statement with no explanation or factual detail, much like the notice described in *Bartell*, and without allegations of specific conduct, is insufficient to satisfy the notice requirements under 24 C.F.R. 247.4(a)(2).

Regarding the forbearance agreement, HUD tenancies present a unique situation. Although normally a landlord and tenant could freely negotiate and mutually agree to terminate or modify a lease, virtually every aspect of the landlord-tenant relationship for HUD properties are controlled by federal regulations. These regulations dictate that a lessor of HUD property may only terminate a tenancy for a few very specific reasons. The list of permissible reasons for terminating a HUD tenancy does not expressly include termination based on the breach of a separate agreement to vacate made between a landlord and tenant. Therefore, the Plaintiff could not legally terminate Defendant's tenancy by the forbearance agreement.

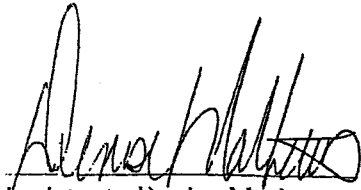
While one permissible reason for the termination of a HUD tenancy is material noncompliance with the rental agreement, that did not happen in this case. The parties separate "forbearance agreement" could not effectively modify or supersede the terms of the lease without prior approval from HUD under 24 C.F.R. 247.4(d), which was not obtained. Thus, the attempted termination of the lease through the forbearance agreement is invalid under the federal regulations. Since the forbearance agreement failed to validly terminate the lease, it created no duty for the Defendant to vacate the premises enforceable by eviction, since he was still entitled to remain in possession of the premises under the lease. Therefore, any grounds for termination of the tenancy set forth in the ten-day notice based on a breach of the forbearance agreement or an alleged holdover tenancy are insufficient to support an eviction action.

The ten-day notice given to Defendant in this case contained no adequate grounds for termination of the tenancy under the federal regulations. Since a landlord may only rely on the grounds stated in the ten-day notice and all the grounds stated in the notice here are insufficient to terminate the Defendant's tenancy, the Plaintiff's claim for eviction must be dismissed.

Decision

Defendant's Motion to Dismiss is granted. Judgment in favor of the Defendant and against the Plaintiff, costs to Plaintiff.

3/16/09
Date


Magistrate Denise Mathews

A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law contained in this decision unless the party timely and specifically objects to that finding or conclusion. Civ. R. 53(D)(3).

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