

CLERMONT COUNTY MUNICIPAL COURT
BATAVIA, OHIO

FILED
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COLLEGE HILLS APTS., : Case No. 2010 CVG 04025
Plaintiff : JUDGE BROCK
vs. :
LISA MCLAUGHLIN, : DECISION AND ENTRY GRANTING
Defendant : DEFENDANT'S MOTION FOR
: PARTIAL SUMMARY JUDGMENT,
: AND DENYING PLAINTIFF'S
: MOTION FOR SUMMARY
: JUDGMENT

Plaintiff and Defendant's Motions for Summary Judgment were heard February 16, 2011. Plaintiff was represented by David Donnett, Esq.. Defendant was represented by Noel Morgan, Esq.. Upon consideration of the written motions and supporting memoranda, the oral arguments of counsel, and the applicable law, the Court renders this written decision.

The Court finds that the following facts are not in dispute. Defendant, Lisa McLaughlin, has been a tenant of Plaintiff, College Hills Apts., pursuant to the lease executed August 21, 2009 by both parties. A copy of said lease is attached to both Plaintiff and Defendant's affidavits submitted in support of their respective motions. On June 29, 2010, Plaintiff served Defendant with a notice to leave the premises by July 10, 2010. Said notice, hereafter referred to as the ten day notice, is attached to the complaint, and is also attached to the affidavits submitted by both parties in support of their respective motions. The notice states two factual bases upon which the lease is being terminated. First, the notice states that Defendant's minor daughter, Latrel Brinson, assaulted another resident on the grounds of the apartment complex on May 5, 2010. Second, the notice states Defendant has permitted Lenny Brinson to enter the property and her apartment despite Mr. Brinson having been court ordered to stay off the property.

The notice further states that Mr. Brinson was found in Defendant's apartment on May 10, 2010 and charged with criminal trespass.

The Court finds that there is no genuine issue of material fact surrounding the assault committed by Latrel Brinson. Both parties acknowledge that Latrel Brinson, Defendant's minor daughter who resides with Defendant, assaulted another resident on the grounds of Plaintiff's apartment complex on May 5, 2010. Latrel Brinson was adjudicated delinquent in Juvenile Court of the assault.

The Court does find that there are genuine issues of material fact which exist concerning the allegations of Lenny Brinson being on the premises of College Hills Apts. and in Defendant's apartment with her knowledge. Plaintiff offers the affidavit of Tara McCafferty, Plaintiff's agent at the apartment complex, which states that a Larry Brinson, (emphasis added) who was previously banned from the property, was found in Defendant's apartment on May 10, 2010. Plaintiff offers the unsworn, signed statement of Stephanie Murdock, which is attached to Ms. Murdock's affidavit offered in support of Plaintiff's motion, which states Ms. Murdock sees "Lenny" everyday, outside, on College Hill grounds. Because this statement is not in affidavit form or otherwise offered in accordance with Civil Rule 56(C), the statement will not be considered in deciding the summary judgment motions before the Court. Plaintiff further offers the affidavit of Troy Zeigelmeier, a maintenance technician for College Hill Apts., which states that Mr. Zeigelmeier has seen Larry Brinson (emphasis added) on the grounds of the apartment complex, coming from unit 216 of the 500 building (Defendant's apartment), and driving Defendant's car.

Defendant submitted an affidavit acknowledging that she knows Leonard "Lenny" Brinson, who is the father of two of her children, including Latrel Brinson. Defendant avers that Lenny did not come to the apartment complex at her invitation, or visit her apartment with her consent at any time in 2010. Defendant further states she has seen Lenny on the property of College Hill Apartments, and that he has been staying with another tenant in the complex.

Initially, there is a discrepancy in Plaintiff's evidence as to the identity of the banned person who allegedly was in Defendant's apartment. Plaintiff's ten day notice identifies the person as Lenny Brinson. The affidavits of Tara McCafferty and Troy Zeigelmeier describe the conduct of Larry Brinson. There is no evidence that Larry and Lenny Brinson are the same person. Thus, there is scant evidence before the Court establishing the second ground for termination of the lease as set forth in the ten day notice. Even assuming that the Larry Brinson named in the affidavits is in fact the Lenny Brinson named in the ten day notice, there is still a genuine issue of material fact which precludes summary judgment on Plaintiff's second basis for terminating the lease. Defendant denies inviting or permitting Lenny Brinson to enter the property or her apartment. Defendant's invitation of, or knowledge of and acquiescence to, Lenny Brinson's presence in her apartment or on College Hill Apartments property must be proven in order for Plaintiff to prevail herein. Lenny Brinson's presence alone is not enough. Given Defendant's denial of inviting or permitting Lenny Brinson onto the property or into her apartment, a question of fact exists which must be decided by a trier of fact at trial. Thus, summary judgment is not appropriate on Plaintiff's second basis for terminating the lease.

Both Plaintiff and Defendant argue they are entitled to summary judgment on Plaintiff's first basis for terminating the lease. Plaintiff argues there is no factual dispute that Defendant's daughter, Latrel, assaulted another resident on the grounds of the apartment complex, and that said conduct alone constitutes a violation of multiple terms of the lease, warranting restitution of the premises to the landlord. Defendant does not dispute the facts of Latrel's conduct, but argues the court lacks jurisdiction because Defendant was not served with a thirty day notice pursuant to R.C. § 5321.11. Plaintiff argues that a thirty day notice is not required.

If Defendant prevails on her argument that a thirty day notice was required under R.C. § 5321.11 but not given, the Court lacks jurisdiction to proceed and Defendant is entitled to summary judgment on Plaintiff's first claim for termination of the lease and

restitution of the premises. The ten day notice served by Plaintiff on Defendant reads, in pertinent part, as follows:

On 5/5/2010 @ 7:45pm your daughter Latrel Brinson assaulted another resident outside 500 bldg (sic) roadside.... The resident is now concerned with the health and safety of herself, home, and personal items.... On 6/15/10 Latrel Brinson was charged with assault and sentenced to juvenile jail. Violation of lease paragraph(s) # 13(e) General Restrictions, #23(6) a and b, # 23(7), #23(10). Termination of subsidy

Lease paragraph 13(e) states that the Tenant agrees not to permit acts that will disturb the rights or comfort of neighbors. Lease paragraph 23(c)(6)(a) and (b), which the Court assumes Plaintiff's notice is referencing as there is not a paragraph 23(6), permits the Landlord to terminate the lease for criminal activity by any member of the tenant's household that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents. Lease paragraph 23(c)(7), which the Court again assumes Plaintiff intended to reference in the ten day notice, permits the landlord to terminate the lease if tenant is fleeing to avoid prosecution or confinement. There is no factual allegation in the ten day notice, or in the affidavits Plaintiff submitted in support of his motion, which indicates this section of the lease was violated. Finally, lease paragraph 23(c)(10), which the Court again assumes Plaintiff intended to reference in the ten day notice, permits the landlord to terminate the lease if the landlord determines that any member of the tenant's household has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted. The Court concludes that "the criminal activity" refers to criminal activity which threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or neighbors, as described in lease paragraph 23(c)(6).

Plaintiff's ten day notice expressly states that the assaulted resident is "concerned with the health and safety of herself, home, and personal items". Each of the applicable lease provisions cited by Plaintiff in the notice reference conduct which interferes with the ability of the other residents to peacefully enjoy the premises. The conduct of Defendant's daughter as described in the notice constitutes a violation by Defendant

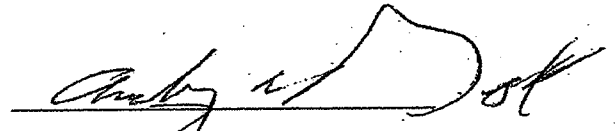
of R.C. § 5321.05(A)(8) which requires a tenant to “require other persons on the premises with [her] consent to conduct themselves in a manner that will not disturb [her] neighbors’ peaceful enjoyment of the premises.” Latrel’s assault of another resident undeniably disturbed her victim’s peaceful enjoyment of the premises of College Hill Apartments. Because Defendant violated R.C. § 5321.05, and the conduct constituting the violation, i.e. the assault committed by Latrel, is the only factual basis for Plaintiff’s first claim to terminate the lease, the notice provision of R.C. § 5321.11 applies.

Revised Code Section 5321.11 permits a landlord to terminate a lease if the tenant fails to fulfill any tenant obligation set forth in R.C. § 5321.05 which materially affects health and safety. As discussed supra, Defendant’s violation of 5321.05(A)(8) materially, and adversely, affected the health and safety of the assaulted tenant. However, R.C. § 5321.11 requires that a thirty day notice be served upon the tenant before the rental agreement may be terminated. No such notice was served by Plaintiff on Defendant herein.

Plaintiff argues that the basis of terminating the lease was not the violation of R.C. § 5321.05(A)(8), but the violation of the specific lease provisions referenced in the ten day notice, discussed above. However, “where the actions of the tenant violate both the written agreement and a provision of R.C. 5321.05(A) which materially affects health and safety, the landlord must comply with the notice requirement set forth in R.C. 5321.11.” Lorain Metropolitan Housing Authority v. Fonseca (1996), 110 Ohio App. 3d 292, 295, 673 N.E. 2d 1019, 1020. “The landlord cannot circumvent this requirement by placing the statutory obligation in writing and then ignoring the statutory notice requirement.” Id. at 294-295, 673 N.E. 2d at 1020. Given Plaintiff’s failure to provide a thirty day notice prior to terminating the lease and filing this action, this Court, as a matter of law, lacks jurisdiction to hear Plaintiff’s claim concerning the conduct of Defendant’s daughter, Latrel. Therefore, Defendant is entitled to summary judgment on that issue.

For the reasons stated herein, the Court finds pursuant to Civil Rule 56 that there are no genuine issues of material fact, and Defendant is entitled to judgment as a matter of law on Plaintiff's claim it is entitled to restitution of the premises based on Defendant's daughter's conduct. Thus, Defendant is granted partial summary judgment, and that portion of Plaintiff's complaint is hereby dismissed. As to Plaintiff's second claim that it is entitled to restitution of the premises based on the presence of Lenny Brinson on the premises and in Defendant's apartment, the Court finds that there are genuine issues of material fact which preclude summary judgment. Accordingly, Plaintiff's motion for summary judgment is overruled in its entirety.

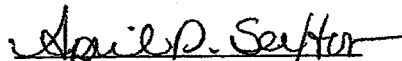
SO ORDERED.



Judge Anthony W. Brock

Certificate of Service

I, April D. Sexton, hereby certify that a copy of the foregoing was served upon David Donnett, Esq., and Noel Morgan, Esq. by regular U.S. Mail to their offices on this 10th day of March, 2011.



April D. Sexton