

FILED
TOLEDO MUNICIPAL COURT

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CLERK JAMES M. HOLZNER
IN THE TOLEDO MUNICIPAL COURT, LUCAS COUNTY, OHIO
Housing Division

Schroeder Company
dba Southgate Woods Apartments,

Plaintiff,

v.

Nannette Oviedo,
Defendant.

REFEREE'S REPORT

CVG-93-01124

REFEREE
Susan Hartman Muska

Case called for hearing February 8, 1993. Plaintiff present with property manager, Tracy Hopkins, and attorney Richard R. Malone. Defendant present with attorney Thomas Goodwin. Sworn testimony taken and exhibits stipulated by parties admitted into evidence. Matter taken under advisement.

From the sworn testimony and the stipulated exhibits, the Referee makes the following findings.

1. Plaintiff is the owner/operator of a subsidized apartment complex known as Southgate Woods Apartments.
2. Defendant occupies an apartment at Southgate Woods under a written lease executed August 31, 1992.
3. Plaintiff receives substantial subsidies from the Department of Housing and Urban Development (HUD) and is subject to applicable federal regulations, including those found at 24 CFR 880 et seq.
4. Defendant's share of monthly rent is at the rate of \$70.00, payable on the first of each month.
5. On October 12, 1992, police officers of the City of Toledo executed a search warrant at the defendant's apartment.
6. The search warrant was issued for the "home of John Cortez at 464 Southgate Circle 3B" (defendant's subsidized unit).
7. John L. Cortez and Paul A. Ballez were arrested at defendant's apartment.

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8. Three baggies containing suspected cocaine and one baggie containing suspected heroin were found in defendant's cousin's slipper, inside defendant's bedroom closet.
9. John Cortez is the father of defendant's year-old child. Defendant has known Cortez for about four years.
10. Cortez pled guilty to a felony charge of aggravated trafficking on November 12, 1992, and was found guilty of same.
11. Plaintiff learned of Cortez' arrest and seizure of drugs at defendant's apartment from a newspaper story, headlined "Police seize 2, suspected drugs." The story listed Cortez and Ballez by name. It identified the apartment only as being "at Southgate Circle," and gave Cortez' address as "of the Southgate address." It neither listed the apartment by street address nor was defendant named in the newspaper story.
12. On October 19, 1992, plaintiff served a 30-Day Notice "To Vacate" upon defendant. The Notice was not offered into evidence, and testimony was not adduced as to the content of the notice.
13. On December 9, 1992, plaintiff served a second Notice to Leave the Premises and Termination of Lease on defendant by posting it at the premises and by mailing it first class mail. The Notice gave defendant until December 14, 1992, to leave the premises.
14. The Notice recited the following grounds for eviction: "Non-Compliance of Hud [sic] Lease, Section '13'(a) sublet or assign the unit, or any part of the unit. (b) use the unit for unlawful purposes. engage in or permit unlawful activities in the unit, in the - common areas or on the project grounds." The Notice contained the statutory language required by ORC §1923.04, as well as the federally-required notification of the right to a meeting with plaintiff (i.e., 10-day meeting) and of the right to present a defense in court.
15. Attached to the Notice by way of amplification of the grounds for eviction was a copy of the newspaper article.
16. Two "10-day meetings" were held between plaintiff and defendant. Plaintiff was represented by Tracy Hopkins, its property manager for Southgate Woods. Defendant was present at both meetings with her attorney. No person with authority to negotiate defendant's continued occupancy of the premises was present for Southgate at the meetings, in spite of defendant's request.

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17. Plaintiff filed the instant complaint for eviction on January 22, 1993, upon the grounds set out in the December 9, 1992, Notice.
18. The basis for plaintiff's claim that defendant sublet or assigned her unit in violation of her lease is the newspaper story listing Cortez' address as "the Southgate apartment," and his arrest inside the apartment and the seizure of drugs from the apartment.
19. Plaintiff's sole evidence that defendant used the unit for unlawful purposes or permitted unlawful activities in the unit is the successful execution of the search warrant and arrest and guilty plea of Cortez for drug trafficking at the premises. This testimony was introduced by stipulated exhibits #3 and #4, a copy of the City of Toledo Police crime report, and certified copies of the indictment and plea of guilty.
20. Defendant was not named in the search warrant, was not arrested or charged with any crime, and she is not the known subject of any police investigation for illegal activity at the premises.
21. Defendant testified that she was unaware Cortez and/or Ballez possessed illegal drugs or that illegal drugs were hidden in the slipper in her bedroom closet. From her demeanor, facial expressions and body language, and from her manner of responding to questions of both counsel, the Referee finds defendant did not knowingly permit Cortez and Ballez to possess illegal drugs within her apartment or to place illegal drugs inside the slipper in her bedroom closet.
22. Plaintiff offered no testimony to support its claims that defendant used her apartment for unlawful purposes, engaged in or permitted unlawful activities in the unit, in the common areas, or on the project grounds.

Conclusions of Law

Plaintiff has failed to sustain its burden of proof that defendant had sublet or assigned her apartment, i.e., that John Cortez was living in Nannette Oviedo's apartment.

Plaintiff has failed to sustain its burden of proof that defendant used the unit for unlawful purposes, engaged in or permitted unlawful activities in the unit, in the common areas, or on the project grounds, i.e., that Nannette Oviedo knowingly permitted Cortez and/or Ballez to bring illegal drugs into her apartment or to hide them in her bedroom closet.

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Referee's Recommendation

The Referee recommends that judgment be entered for defendant for continued possession at the plaintiff's costs.

Date: February 10, 1993

Susan Hartman Muska
Referee Susan Hartman Muska

The Court hereby adopts the Referee's Findings of Fact and Conclusions of Law, and the Referee's recommendation is hereby made the order in this case.

Date: 2-11-93

R. Weiher
JUDGE Roger R. Weiher