

IN THE MUNICIPAL COURT OF TOLEDO, LUCAS COUNTY, OHIO
Housing Division

Vistula Management Company,

Case #CVG-93-19379

Plaintiff,

REFEREE'S REPORT

vs.

Dana Riley,

REFEREE

Susan Hartman Muska

Defendant.

Case called for hearing upon Plaintiff's complaint for a writ of restitution of the premises located at 824 Bancroft #C, Toledo, Ohio. Plaintiff present through counsel and witness, Pat Hall. Defendant present with counsel. Sworn testimony taken and exhibits admitted into evidence. Matter taken under advisement.

After hearing all of the testimony, viewing all of the evidence presented, and weighing the credibility of each, the Referee makes the following Findings of Facts and Recommendation.

FINDINGS OF FACT:

1. Plaintiff, Vistula Management Company, manages premises known as Vistula II, including apartments located at 824 Bancroft, Toledo, Ohio.
2. Dana Riley is a tenant at Unit #C located at 824 Bancroft.
3. Defendant has occupied the unit with her two children since November, 1991.
4. Defendant's tenancy is subsidized through a contract between Plaintiff and the Department of Housing and Urban Development.
5. Plaintiff's policy requires that all rental payments be mailed to Plaintiff at 711 Locust Street, Toledo, Ohio. Plaintiff will not accept payments directly from tenants or on tenants' behalf.
6. On December 9, 1993, Plaintiff, through Pat Hall, served a notice upon Dana Riley personally to vacate the premises on the grounds of non-payment of December's rent.
7. Defendant purchased a money order on Saturday, December 4, 1993 at Provo's Market. Riley states that on that date, Saturday, December 4, 1993, she placed the money order into an envelope and placed it into the mailbox at the corner of Bancroft and Franklin Streets.

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8. The envelope containing the money order addressed to Vistula Heritage was postmarked December 9, 1993.
9. Plaintiff received the money order on Monday, December 13, 1993 at its Locust Street office and returned it to Riley because legal action had already been started against the tenant.
10. Riley received the returned money order from Plaintiff on December 14, 1993 and mailed it back to Plaintiff.
11. Plaintiff received the money order from Riley on December 15, 1993 and once again returned it to Riley.
12. Riley and her attorney met with Pat Hall at Plaintiff's counsel's office in January. At the meeting Riley explained that she dropped December's rent into the mailbox on December 4, 1993. Riley offered at the "10-Day Meeting" to pay rent for the months of December and January. Payment was refused.
13. Plaintiff relies on documents previously signed by Riley by which she agreed to pay her rent by the 5th working day of the month or be subject to an eviction action. Riley first signed such a document in February, 1992. At that time her timely mailed rent check had been returned to her by the Post Office because it was mis-addressed.
14. Riley signed a Consent Judgment Entry in August, 1993 resolving an eviction which had been filed under Case #CVG-93-11527. Riley had given her July, 1993 rent to her boyfriend to mail and later found that he had forgotten to mail it and had left it in the glove compartment of his car.

CONCLUSION OF LAW:

Non-payment of rent to a subsidized landlord, particularly repeated delinquency, establishes prima facie evidence of sufficient cause to terminate the lease. However, the tenant may affirmatively establish the defense that the non-payment was due to circumstances beyond the tenant's control, and that the tenant made a diligent effort to pay.

Plaintiff has established prima facie sufficient cause to terminate the lease. However, based upon the credibility of Riley's testimony, the Referee finds that Riley did timely mail her rental payment.

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Where Plaintiff requires payments to be mailed to it, there exists an explicit agreement on Plaintiff's part to have the Post Office act as its agent. This includes putting up with frailties of the postal service.

Where the landlord has authorized that rent money be mailed to it, then the Post Office is made the agent of the landlord and delivery of money to the Post Office is payment. See Norskoq v. Atha, 61 O Abs 604, 102 N.E. 2d 907, (Dayton Muni, 1951).

RECOMMENDATION:

Judgment for Defendant. Writ of restitution be denied.

Date: JAN 19, 1994

Susan Hartman Muska
Referee Susan Hartman Muska

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

Date: 1-19-94

R. Weider
Judge

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