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FOSTORIA
MUNICIPAL COURT

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IN THE MUNICIPAL COURT OF FOSTORIA, OHIO

Twin Lawn Properties, Ltd., et al.

Case No. CVG970506

Plaintiffs,

vs.

JUDGMENT ENTRY

Frank Adams, et al.

Defendants.

This matter came on to be heard on March 6, 1998, on the motion of Defendants to dismiss based upon lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted following the filing of Plaintiffs' two part complaint herein demanding restitution of the premises located at 1224 Sandusky Street, Apartment 10B, Fostoria, Ohio, and demanding a money judgment for rent. The Court having considered the testimony of the witnesses, the exhibits admitted into evidence and the arguments of counsel makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. Plaintiffs' predecessor, Stonegate Apts., Lmtd. Partnership, entered into a housing voucher contract with Seneca Metropolitan Housing Authority (hereinafter SMHA) on December 11, 1992. (See Defendants' Exhibit A).

2. The contract between Plaintiffs' predecessor and SMHA specifically provides that there shall be no changes made in the lease between Plaintiffs (Owner) and Defendants (Family) unless the

changes have been approved in writing by SMHA. (See Paragraph 1(B) of Defendants' Exhibit A).

3. The term on the contract between Plaintiffs' predecessor and SMHA (Paragraph 2) does not have an ending date but specifically states that it will be terminated if there is insufficient funding available through SMHA. This contract also provides that it shall automatically terminate if SMHA does not make assistance payments to Defendants for a period of one (1) year. (See Paragraph 3(B) of Defendants' Exhibit A).

4. The contract between Plaintiffs' predecessor and SMHA further provides that Plaintiffs (Owner) shall not terminate the tenancy of Defendants (Family) except for: (1) serious repeated violation of the terms and conditions of the lease, (2) violation of Federal, State or Local law, or (3) other good cause. (See Paragraph 8(A) of Defendants' Exhibit A).

5. The original owner of the property, namely, Stonegate Apts., Lmted. Partnership, transferred ownership to Plaintiff, Twin Lawn Properties Limited, on or about January 28, 1997. Plaintiff did not give notice to SMHA regarding the change of ownership. Since the date of transfer of ownership Plaintiffs have accepted assistance payments from SMHA for other tenants.

6. In November of 1995, SMHA notified Plaintiffs' predecessor that HUD had changed the provision dealing with the termination of the housing voucher contract in that the contract would automatically terminate when no assistance payments are made for a period of six (6) months rather than one (1) year. This change applies to all contracts between SMHA and landlord/owners

which are entered into after 1995. Plaintiffs had knowledge of this change.

7. Defendants did not receive assistance payments from SMHA for a period of ten (10) months.

8. The original lease between Plaintiffs' predecessor and Defendants dated December 11, 1992, (Defendants' Exhibit C) provides at Paragraph 1 that the lease can be terminated by the landlord only in accordance with Paragraph 12. Paragraph 12 provides that the landlord can terminate the lease for (1) serious or repeated violations of the terms and conditions of the lease, (2) violations of Federal, State or Local law, or (3) other good cause. Other good cause is specifically defined in Paragraph 12(b) to include failure by the tenant/family to accept the offer of a new lease in accordance with Paragraph 15. Paragraph 15 of the lease provides that a new lease must be approved by SMHA pursuant to HUD regulations.

9. The new lease/leases offered by Plaintiffs to Defendants were not approved by SMHA.

10. Plaintiffs' complaint/action for eviction is based upon a termination of the original lease and is not based upon failure to pay rent or violations of the terms of the lease or statutory duties of the Defendants/tenants.

11. Defendants have made rental escrow payments to the Clerk of the Fostoria Municipal Court from November, 1997 through March, 1998.

CONCLUSIONS OF LAW

1. Plaintiffs are subject to the terms of the housing

voucher contract originally entered into between Seneca Metropolitan Housing Authority and Stonegate Apts. Lmtd. Partnership, on December 11, 1992, because Plaintiffs did not notify SMHA of the change in ownership and further because Plaintiffs' accepted assistance payments from SMHA after the change in ownership.

2. The one (1) year rule regarding termination of the housing voucher contract when assistance payments are not paid applies in this case rather than the six (6) month rule because the original contract was entered into prior to 1995.

3. The housing voucher contract between Seneca Metropolitan Housing Authority and Plaintiffs did not terminate because Defendants were without assistance payments for a period of time less than twelve (12) months. It therefore follows that the lease between Plaintiffs' predecessor and Defendants did not terminate. The Court further finds that since the new lease/leases offered by Plaintiffs to Defendants had not been approved by SMHA that the original lease between Plaintiffs' predecessor and Defendants is still in effect.

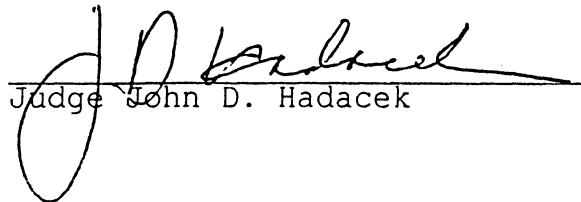
4. Plaintiffs' complaint filed herein fails to state a claim upon which relief can be granted because Plaintiffs' complaint for eviction is based upon the termination of the original lease when in fact the original lease had not terminated.

5. Plaintiffs are entitled to Defendants' rent which has been escrowed with the Clerk of the Fostoria Municipal Court.

Based upon the findings of fact and conclusions of law it is hereby ORDERED that Defendants' motion to dismiss is GRANTED as to

the First Claim of Plaintiffs' complaint relating to restitution of the premises. It is further ORDERED that Defendants' rent which has been escrowed with the Clerk of the Fostoria Municipal Court shall be released to Plaintiffs to be applied to the rent which is due through March, 1998. It is further ORDERED that Plaintiffs' Second Claim for rent in an unknown amount is continued.


DATED: March 16, 1998



Judge John D. Hadacek

PROOF OF SERVICE

A copy of the foregoing was served upon Barbara L. Marley, Attorney for Plaintiffs, P.O. Drawer 866, Fostoria, Ohio 44830, and Upendra K. Patel, Attorney for Defendants, 237 South Main Street, Findlay, Ohio 45840, by regular U.S. Mail this 16th day of March, 1998.



Clerk/Deputy Clerk