

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
JUDGE RAYMOND L. PIANKA

JUDGMENT ENTRY RECEIVED
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DEC 05 2011

EARLE B. TURNER, CLERK

DETROIT TERRACE LTD.,
Plaintiff(s)

DATE: November 21, 2011

-VS-

CASE NO. 11-CVG-19350

DEANGELO BENDER,
Defendant(s)

JUDGMENT ENTRY

Upon review, the Magistrate's Decision is approved and confirmed.
Judgment for Defendant on the first cause of action.



JUDGE RAYMOND L. PIANKA
HOUSING DIVISION

SERVICE

A copy of this Judgment Entry was sent by regular U.S. mail to the parties on
12-1-11 apj

CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

REPORT OF MAGISTRATE'S FILED
DEC 0 5 2011

EARLE B. TURNER, Clerk

DETROIT TERRACE LTD.,
Plaintiff(s)

DATE: November 21, 2011

-VS-

CASE NO. 11-CVG-19350

DEANGELO BENDER,
Defendant(s)

MAGISTRATE'S DECISION

Case called for hearing on Plaintiff's first cause of action before Magistrate Heather A. Veljković, to whom it was referred by Judge Raymond L. Pianka pursuant to Civil Rule 53. Plaintiff was present, and represented by counsel. Defendant was neither present, nor represented by counsel.

FINDINGS OF FACT:

- {¶1.} Service has been perfected upon Defendant by Regular Mail.
- {¶2.} Plaintiff is a limited partnership that currently is in good standing with the Ohio Secretary of State. Plaintiff's Exhibit 1.
- {¶3.} Plaintiff owns the property located 1372 W. 80th Street, Cleveland, Ohio ("premises"). Plaintiff's Exhibit 2.
- {¶4.} Defendant is a tenant at the premises in Apartment #302, pursuant to a written rental agreement. ("Lease"). Plaintiff's Exhibit 3.
- {¶5.} Defendant's tenancy is subsidized, through the Project-Based Section 8 Program.
- {¶6.} The ground alleged for the eviction is breach of lease. Plaintiff's Complaint at ¶ 4-5.
- {¶7.} Plaintiff served upon Defendant a notice of termination, admitted at hearing as Plaintiff's Exhibit 6 ("10-Day Notice"). The 10-Day Notice states that Defendant's Lease "will be terminated for the following reason(s): **Drug Activity and excessive traffic**". [Emphasis as in original]. The 10-Day Notice is dated September 23, 2011.
- {¶8.} Attached to the 10-day Notice is a copy of the Cleveland Municipal Court General Division docket for case number 2010 CRA 28537, captioned State of Ohio / City of Cleveland v. Bender, Deangelo, which states that Defendant was charged with "Trafficking in Drugs." There is no information about an incident date.

{¶9.} Additionally attached to the 10-day notice is a copy of the Case Summary from CR-11-553352-A, a case in the Cuyahoga County Court of Common Pleas, indicating charges of Trafficking Offenses, Drug Possession, and Possessing Criminal Tools. There is no information about an incident date.

{¶10.} Plaintiff served Defendant with a Notice under R.C. § 1923.04 on October 18, 2011 (“3-Day Notice”). A copy of the notice was admitted as Plaintiff’s Exhibit 4.

{¶11.} The 3-Day Notice states the following reason for eviction: Drug Activity and Excessive Traffic.

{¶12.} Plaintiff also submitted at hearing a Cleveland Police Report dated November 9, 2011. Plaintiff’s Exhibit 5. However, there was not an officer present at the hearing to authenticate the document, or testify as to the events described therein.

{¶13.} Finally, Plaintiff submitted a certified copy of a Judgment Entry dated September 28, 2011 from the Cuyahoga County Court of Common Pleas, CR-11-553352-A, wherein the Court accepted De Angelo Q. Bender’s plea of guilty as to R.C. 2925.11, a fifth degree felony; the remaining charges were nolle.

{¶14.} Plaintiff’s Property Manager testified credibly at hearing that she saw Defendant arrested at the premises.

CONCLUSIONS OF LAW:

I. The 3-Day Notice

{¶15.} Plaintiff as established by a preponderance of the evidence that it served Defendant a three-day notice as required by law, vesting this Court with jurisdiction to proceed.

II. The 10-Day Notice

{¶16.} Prior to terminating federally subsidized housing, a landlord must serve upon the tenant a proper notice to terminate the tenancy; strict compliance is required. See, e.g., *Cuyahoga Metro. Hous. Auth. v. Younger* (1994) ,93 Ohio App. 3d 819, 639 N.E.2d 1253

{¶17.} With respect to notices to terminate a federally-subsidized tenancy, 24 CFR 247.4(a)(2) requires the landlord to state the reasons for the eviction action with enough specificity so as to enable the tenant to prepare a defense. Generally, this means that the notice must refer to specific instances of conduct. See, e.g., *Associated Estates Corp. v. Bartell* (1985), 24 Ohio App. 3d 6, 10, 492 N.E.2d 841, 846. Additionally, the notice must specify the date on which the alleged incident occurred and the names of the individuals involved in the alleged incidents. *Owner’s Mgmt. Co. v. Stern* (1995), Cuyahoga App. No. 67445; *Younger*, supra.

{¶18.} The 10-Day Notice—and the attachments thereto—neither contained a reference to specific instances of conduct, nor did it specify the date on which the alleged incident occurred or the names of the individuals involved. Accordingly, the magistrate concludes that the 10-Day Notice of termination does not meet the specificity requirements.

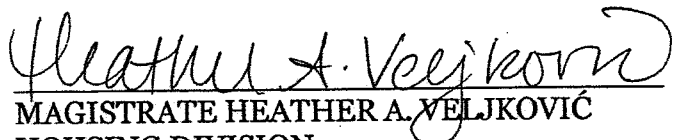
III. Police Report and Journal Entry

{¶19.} The magistrate is not able to consider the narrative contained in the Police Report admitted as Plaintiff's Exhibit 5, because there was not a witness present to authenticate it. See Ev. R. 901.

{¶20.} Plaintiff's Exhibit 7, the Journal Entry from the Court of Common Pleas—while a self-authenticating document pursuant to Evidence Rule 902(4)—does not prove that Defendant engaged in “drug related criminal activity * * * on or near the premises”. Lease at ¶ 23(c)(3).

RECOMMENDATION:

{¶21.} Judgment for Defendant on the first cause of action.


MAGISTRATE HEATHER A. VELJKOVIĆ
HOUSING DIVISION

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this Magistrate's Decision was sent by regular U.S. mail to the parties on 12/1/11.