

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
RAYMOND L. PIANKA, JUDGE

EMERALD DEV AND ECONOMIC NETWORK
INC (EDEN) et al
Plaintiff (s)

Date: June 20, 2014

-VS-

2014 CVG 003506

LEWIS FOSTER
Defendant (s)

JUDGMENT ENTRY

This matter is before the Court on Defendant's Motion for Summary Judgment on the first cause of action. For the following reasons, Defendant's Motion is granted.

A court must grant summary judgment if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C). Summary judgment shall not be granted unless it appears from the evidence that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion was made. *Id.* Trial courts should award summary judgment with caution, being careful to resolve doubts and construe evidence in favor of the nonmoving party. *Welco Industries, Inc. v. Applied Cos.* (1993), 67 Ohio St.3d 344. Because Plaintiff is the nonmoving party, this Court is required to view the evidence presented in the light most favorable to it.

Defendant argues that he is entitled to summary judgment because the plaintiff failed to comply with requirements under the Code of Federal Regulation and the Rental Agreement to provide specific reasons why his subsidized tenancy was being terminated. The notice of termination given to defendant stated that the tenancy was being terminated due to "destruction of property." Defendant argues that the notice requirement was not met; therefore, entitling him to judgment as matter of law.

Plaintiff has not filed a brief in opposition to defendant's Motion for Summary judgment.


The Eighth District Court of Appeals examined the specificity requirement in *Owner's Mgmt. Co. v. Stern*, 8th Dist. No. 67445, 1995 WL 23152 (Jan. 19, 1995), *2. In *Stern* the landlord served a notice of termination that stated: "We wish to notify you of our intention to terminate you lease upon the grounds of failure to comply with Item 13E of your lease by making noise and committing acts that disturb others which include loud noise, yelling, profanity, trash in hall, loud television and frightened others [sic]." *Id.* at *1. The notice did not notify the tenant of the dates of alleged incidents or the

individuals involved, which the Court found rendered the tenant unable to prepare a defense. *Id.* at *2. Therefore, it determined, the notice did not meet the requirements under federal law and the defendant was entitled to dismissal.

Typically, a notice of termination must provide information about the “specific instances of tenant misconduct on which the landlord is relying, and should, generally speaking answer the questions, who, what, where, when and how as to each of the specific instances.” *United Prop. Mgmt. v. Mundell*, No. R86-CVG-0850, slip op. at 2 (Ohio Mun., Portage Cty., Oct. 22, 1986). Here, the notice of termination only describes the basis for the eviction as “destruction of property.” It does not identify the property at issue, or the type of damage allegedly caused to it. The notice does not indicate when the alleged damage occurred, or where. Absent this information, the tenant cannot reasonably be able to prepare a defense. The notice does not meet federal regulations.

The defendant has met its burden of proving that no material issue of fact exists and that it is entitled to judgment as a matter of law. Because of this finding, the burden shifts to plaintiff to “set forth specific facts showing that there is a genuine issue for trial.” Civ.R. 56(E). Defendant having met his burden, and plaintiff having failed to respond, the Court finds that summary judgment is appropriate in favor of defendant on the first cause of action.

Case is closed; file to judgment.



Judge Raymond L. Pianka
Housing Division

A copy of this judgment entry was sent by regular U.S. mail to parties/counsel on 6/23/14, by APV.