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FAIRBORN MUNICIPAL COURT

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FAIRBORN MUNICIPAL COURT
GENERAL COURTS

**IN THE MUNICIPAL COURT OF FAIRBORN, OHIO
CIVIL DIVISION**

GOLD KEY REALTY dba
LANDMARK VILLAGE APTS.

CASE NO. 03CVG00475

Plaintiff

vs.

KELLY HARRIS, ET AL.

MAGISTRATE'S DECISION

Defendant

This matter came before the Magistrate on April 16, 2003, for hearing on restitution on a forcible entry and detainer action. Present in Court were plaintiff through its representative Shirley Simpson with its attorney of record Laurence Lasky and defendant with her attorney of record Roger Lee.

Based upon the evidence presented, the Magistrate finds that defendant is a tenant at the premises known as 253-E Corey Court, Fairborn, Ohio, which is subsidized housing by the Department of Housing and Urban Development (HUD). Plaintiff is the landlord of this premises and Shirley Simpson is the property manager. The tenant's portion of monthly rent pursuant to the Lease is \$53.00.

Sometime in either December or early January tenant informed plaintiff that she had a decrease in her income. However, the landlord did not receive any confirmation of this information from the tenant's employer. As a result, the landlord posted a letter dated February 13, 2003, upon the tenant's door requesting that she come into the office to discuss her employment situation. Tenant denies that she received this letter. however, either way she did go into the manager's office

in February 2003, to discuss her employment situation. During this meeting Ms. Simpson advised the tenant that she would not accept the report of a change in income and wanted to know how the tenant was paying for her food, utilities, etc.. At first, the tenant denied that she was receiving any supplemental monies from any source. However, she did eventually admit that her brother, Gerald Greene, was paying for her food and utilities. Ms. Simpson then requested a notarized statement from Mr. Green to this effect.

Sometime on or about February 13, 2003, the landlord also received a letter from the tenant's employer which stated to the effect that tenant's hours were flexible. Ms. Simpson advised the tenant that she needed a more specific statement stating that the tenant was not working.

On February 25, 2003, Mr. Greene signed a notarized statement to the effect that he provided \$250.00 as a monthly allowance to the tenant. This statement was received by the landlord on February 27, 2003.

On March 6, 2003, the employer sent a letter to the landlord stating that tenant was not working at the time. Also on March 6, 2003, the landlord had a 10-day notice to leave the premises served upon the tenant by putting a copy inside her door. On March 7, 2003, the landlord received the employer's March 6, 2003 letter. On March 17, 2003, the landlord posted a 3-day notice to leave the premises on tenant's door by leaving a copy in tenant's door.

Based upon the information received, the landlord adjusted the tenant's portion of rent to zero effective April 1, 2003. The tenant did not pay any rent in the month of March, 2003.

The Magistrate finds that plaintiff is the landlord of the premises and that proper 10-day and 3-day notices were served upon defendant by placing them inside her door. At issue is whether tenant is late in rent as a result of not paying March's rent, Tenant argues that the landlord

improperly used April 1, 2003, as the effective date for her reduced amount of rent in the amount of zero. Tenant argues that it should have been retroactive to March 1, 2003, if not earlier. As such, she would not be behind in rent.

The Magistrate finds that the tenant was not behind in rent in the month of March, 2003, and even if she was, the landlord had to provide the tenant with written notice of any rent due and owing and allow the tenant to have 30 days to pay the rent before an eviction could be filed. Landlord knew in January, at the latest, that the tenant's income had changed. On February 13, 2003, the landlord received the letter requested from the employer. However, it did not provide the specifics needed. On February 27, 2003, the landlord received the notarized statement from tenant's brother as requested. On March 6, 2003, landlord provided tenant with a 10-day notice advising her that she was behind in rent. On March 7, 2003, landlord received the requested information from tenant's employer. On March 17, 2003, landlord provided tenant with a 3-day notice. On March 28, 2003, the complaint was filed herein. The property manager admitted that if she believed that the tenant was being honest with her in disclosing her income, that she would have made the zero amount of rent retroactive to March 1, 2003. Although the tenant may have originally advised the property manager that she did not have income and then later changed the answer to reflect that she did receive help from her brother, no other evidence was submitted that the tenant was being dishonest with regard to her income amount. Rather, tenant provided to landlord shortly after the request the notarized statement by her brother acknowledging that he provided an allowance for food and utilities. The landlord also intimated that the tenant may have resided with her father at one point. However, the Magistrate finds that the tenant stayed with her father while she was

interviewing for a potential job and that she had to remain with him until she could find transportation back to her home. Even if tenant had stayed with her father for a longer amount of time, this fact would actually support the tenant's theory that she did not have enough money to support herself. Therefore, the Magistrate finds that the rental amount should have been retroactive to March 1, 2003.

Even assuming arguendo the tenant was behind in her rent, pursuant to the Lease Agreement, Paragraph 16(b) provides that during the certification process when the tenant has reported a decrease in her income that tenant has 30 days after receiving written notice of any rent due during the certification process before the landlord can evict for non-payment of rent. No evidence was submitted as to any such 30-day time period provided to tenant


WHEREFORE, plaintiff's request for restitution of the premises is hereby OVERRULED and DENIED.



BETH W. ROOT, MAGISTRATE

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the foregoing were forwarded to Laurence A. Lasky, Attorney for Plaintiff, 130 W. Second Street, Ste. 830, Dayton, Ohio, 45402; Roger Lee, Attorney for Defendant, 275 s. Allison Street, Ste. 100, Xenia, Ohio, 45385, by regular United States Mail this 22nd day of April, 2003.



Diana S. Cordon