

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

Michele Jackson

DATE: February 15, 2007

Plaintiff

-vs-

CASE NO.: 2006 CVG 31171

Tarina Hammond; and
Videl Hammond

Defendants

JUDGMENT ENTRY

Plaintiff filed timely objections to the *Magistrate's Decision* of December 8, 2006 which granted judgment to Defendants on Plaintiff's first cause of action. Defendant Tarina Hammond filed her response to the objections January 11, 2007. The Court overrules the objections and sustains the magistrate's decision for the reasons that follow.

This is an eviction action brought by Plaintiff against two defendants, Tarina Hammond and Videl Hammond. Plaintiff's complaint alleges only one ground for the eviction: nonpayment of rent. The magistrate granted judgment to both defendants on Plaintiff's first cause of action.

Plaintiff states her objections in five enumerated paragraphs. The Court finds no merit in any of the arguments and therefore overrules the objections and sustains the magistrate's decision.

Plaintiff first argues that the magistrate was in error when he concluded that Defendant Tarina Hammond was entitled to judgment because Plaintiff had accepted separate rental payments from Defendant Videl Hammond. Plaintiff's argument fails because it is not true that the magistrate's ruling was narrowly based on this issue. The issue before the magistrate, as to Tarina Hammond, was whether Plaintiff proved that this tenant breached her agreement with Plaintiff by failing to pay rent. Having found that her rent was \$0 under a Housing Assistance Payment (HAP) contract with the Cuyahoga Metropolitan Housing Authority (CMHA), the magistrate correctly held that Plaintiff failed to prove a breach due to nonpayment. *Magistrate's Decision* at Conclusions Of Law, ¶2. A tenant who owes \$0 cannot fail to pay rent. Plaintiff has not challenged this finding of fact by providing a transcript or affidavit as Civ.R. 53(E)(3)(c) requires.

Plaintiff's second argument is that the magistrate's decision hinged on an erroneous interpretation of the HAP contract. She argues that the HAP contract puts the burden on Defendant to report to CMHA if a new person begins to live in her household

and that the magistrate held that it was Plaintiff's responsibility to inform CMHA that a new person had begun to live at the property. The Court finds nothing in the *Magistrate's Decision* that suggests that the magistrate based his decision on this issue. His decision instead finds support in the conclusion that Defendant Taraina Hammond's rent under the HAP Contract was \$0.

Plaintiff may be correct that Defendant Taraina Hammond breached the HAP agreement by including Mr. Hammond in her household without amending the HAP agreement. *Objections* at para. 2. But Plaintiff did not state in notices to Mrs. Hammond, or allege in her *Complaint*, that Mrs. Hammond had committed this breach. A landlord must rely on the grounds for eviction stated in the complaint. *M.L.R. Props., Inc. v. Baer* (1986), 1986 WL 6703, at *3 (Ct. App. Lucas Cty. June 13, 1986); *Cnty. Gardens Park & Sales, Inc. v. Roe* (1981), No. M8109-CVG-027176 (Mun. Ct. Franklin Cty. Nov. 6, 1981); *Inner City Hous. v. Sebastian*, No. 81-CV-15029 (Mun. Ct. Hamilton Cty. June 29, 1981). A landlord evicting a tenant with a subsidized housing lease must rely on the grounds for eviction stated in the notice of termination. 24 C.F.R. §§ 247.6(b), 880.607(c)(3); subsidized housing lease, ¶ 23(f).

Plaintiff's third argument is that the Magistrate erred in concluding that Plaintiff failed to establish that she served defendants a three day notice as required by law. *Magistrate's Decision* at Conclusions Of Law ¶1. But Plaintiff's objections fail to challenge this finding of fact by reference to a transcript or affidavit as Civ.R. 53(E)(3)(c) requires.

Plaintiff's fourth argument is that the magistrate should have concluded that Plaintiff proved that she was entitled to evict Defendant Taraina Hammond because Defendant Taraina Hammond had canceled the HAP agreement by sending a "notice of intent to move" to CMHA. Plaintiff's objections again fail to provide any transcript or affidavit showing that Plaintiff presented this evidence to the magistrate. The Court also notes that, even if Defendant Taraina Hammond had provided CMHA with notice of her intent to move, she could only terminate the HAP contract and her lease with Plaintiff by complying with the termination requirements in the HAP contract and lease. The HAP contract, in the form provided by Defendant Taraina Hammond in her response to Plaintiff's objections, does not appear to authorize the tenant to terminate the HAP contract at will. Plaintiff did not provide a copy of the HAP contract with her complaint, at trial or with her objections.

Plaintiff's fifth argument is that the magistrate erred by not making findings of fact addressing Defendant's claim against Defendant Videl Hammond. The Court disagrees. The *Magistrate's Decision*, which is pre-printed with spaces for the magistrate to fill in, uses the terms "Defendants" or "Defendant(s)." The decision thus included findings and conclusions with respect to Plaintiff's first cause claim against Defendant Videl Hammond, the conclusion being that Plaintiff had failed to prove she was entitled to evict him.

Plaintiff's five arguments can also be considered together as a general objection to the result in this case. Understood this way, Plaintiff is claiming that she was entitled to do what she did, which is to enter into a HAP Contract with Defendant Taraina Hammond, her rent being \$0 and CMHA paying the full contract rent of \$507 per month, while at the same time entering into a "separate" agreement with Defendant Videl Hammond to pay \$353 in rent for the same premises. Plaintiff's claim for breach then stems from Defendant Videl Hammond's failure to pay the \$353. This argument fails because Plaintiff cannot prove that Mrs. Hammond owed any "separate" rent. HAP Contracts are by federal regulation, exclusive of any other agreements. Paragraph 5(e) states:

The owner may not charge or accept, from the family or from any other source, any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided and paid by the owner in accordance with the lease.

Defendant's Response at Exhibit B. Paragraph 5(f) states: "The owner must immediately return any excess rent payment to the tenant." *Id.* Plaintiff did not allege or prove that she entered into any amendment to the HAP contract adding Defendant Videl Hammond to the household, increasing the contract rent to \$860, and increasing the tenant share of rent to \$353. Only that allegation and proof would entitle her to judgment against both defendants.

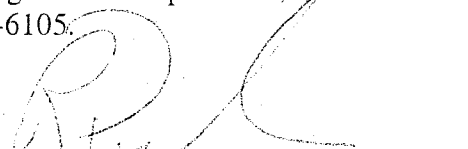
The Court overrules Plaintiff's objections and sustains the magistrate's decision granting judgment to Defendants on Plaintiff's first cause of action.

This case remains set for settlement conference **March 1, 2007 at 1:30 p.m.** on the 13th floor of the Justice Center, parties to check in at the desk outside the courtrooms.

Parties should be expected to make a vigorous effort to achieve settlement. As part of the settlement process, it is the intent of the conference manager to review with the respective parties the facts of the case, the strengths and weaknesses of the respective positions, and the consequences of proceeding to trial.

At least two hours time has been allocated for the settlement conference.

Both parties and counsel are required to attend. Additionally, a party should bring to the conference evidence or documentation that may aid in achieving settlement. Failure of a party or counsel to attend may result in dismissal of a party's claims or immediate hearing of the opposing party's claims. Questions concerning the settlement conference should be directed to C. David Witt, Magistrate's Department, Alternative Dispute Resolution Specialist, telephone: 216-664-6105.



JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this *Judgment Entry* was sent via regular U.S. Mail to the following on

2/16/07 smc

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