

SYLVANIA MUNICIPAL COURT
6700 Monroe Street
Sylvania, Ohio 43560

Lucas Metropolitan Housing Authority : Case: CVG 0900329

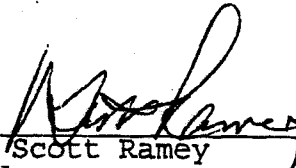
Plaintiff(s) :
-vs- : Judgment Entry

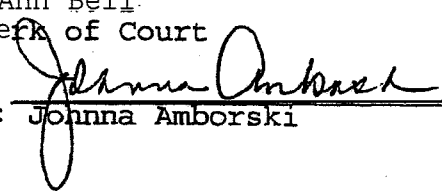
Wood, Amber J.
Prater, Jason : JUDGMENT

Defendant(s) * * * * *

Date of 06/23/2009

JUDGMENT GRANTED IN FAVOR OF DEFENDANTS. SEE OPINION.


M. Scott Ramey
Judge

JoAnn Bell
Clerk of Court

by: Johanna Amborski

Laura A. Garrett
P.O. Box 477
Toledo, Oh 43697

Date Mailed: 06/23/2009

George A. Thomas
520 Madison Ave., #640
Toledo, Oh 43604

JOURNALIZED

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SYLVANIA MUNICIPAL COURT
SYLVANIA, OHIO

IN THE MUNICIPAL COURT OF SYLVANIA, LUCAS COUNTY, OHIO

Lucas Metropolitan Housing
Authority

Plaintiff,

VS.

Amber J. Wood,
Jason M. Rater

Defendant.

CASE NO. CVG-0900329

OPINION

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MUNICIPAL COURT
SYLVANIA, OHIO

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This matter comes before the court on a Complaint in Forcible Entry and Detainer. On February 24, 2009, Plaintiff filed a complaint. Plaintiff alleges that Defendant Wood unlawfully and forcibly detains from Plaintiff possession of its premises at 439 N. Dorcas Road, Toledo, Ohio. Plaintiff argues that Defendant Amber J. Wood (“Wood”) violated the terms of her lease by allowing Defendant Jason M. Prater (“Prater”) to reside as an unauthorized occupant at her residence. On April 21, 2009, this case went to trial in this court. Thus, the issue before the court is whether to find in favor of Plaintiff on its Complaint in Forcible Entry and Detainer.

I. Facts

Plaintiff, a public housing authority, owns and operates the premises at 439 N. Dorcas Road, Toledo, Ohio. In December 2003, Wood entered into a lease with Plaintiff to live at the premises. Shortly after Wood moved in to the premises in December 2003, Prater began spending significant amounts of time at the premises. On August 1, 2007, Plaintiff and Defendant entered into the Lease at issue in this case. The terms of the

Lease authorized Plaintiff Wood to reside at the premises at no monthly rent. The lease stipulated that only Plaintiff and her three children, Jason M. Prater (age 4), Jacob M. Prater (age 2), and Madison M. Prater (age under 1 year), could occupy the premises. Plaintiff's Exhibit I. The Lease states that any addition to these household members requires written approval by Plaintiff in advance.

On September 30, 2008, Plaintiff served notice to Wood pursuant to 24 C.F.R. 966.4(I) stating that it intended to terminate the Lease. Plaintiff set a conference date for an informal hearing on October 3, 2008. Plaintiff's Exhibit 2. The notice stated that the reason for termination was for violation of Lease sections 9(c) (4) ("Tenant must not assign the Lease, sublease the dwelling unit, or provide accommodation to boarders or lodgers"), 9 (c) (5) ("Tenant must use the dwelling unit solely as a private dwelling for Tenant and Tenant's household members identified in Section 1, and not to use or permit its use for any other purpose"), 9(c) (11) ("Tenant must assure that: Tenant, household members and guests do not engage in any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other tenants.. ."), 9(c) (14) ("Tenant must act, and cause household members or guests to act, in a manner that will not disturb other tenants' peaceful enjoyment of their accommodations.. ."), and 9(c) (26) (Tenant must not commit any fraud in connection with any Federal Housing Assistance program, and not receive assistance for occupancy of any other unit assisted under any Federal Assisted Housing program during the term of the Lease").

Specifically, Plaintiff stated in its Notice that Wood had allowed Prater to reside with her as an unauthorized occupant. Further, Wood had misrepresented her family composition to Plaintiff by not stating that Prater resided with her. Finally, Prater, while being an unauthorized occupant or guest of Wood's, disturbed the peaceful enjoyment of

Wood's neighbors by trespassing on their property with his ATV, which he keeps at Wood's residence.

On November 13, 2008, Plaintiff held a formal grievance hearing regarding the termination of Wood's Lease. The hearing was held before a panel consisting of the Plaintiffs Chairperson, two residents, and two of Plaintiff's employees. *Plaintiff's Exhibit 3*. Wood and Prater appeared and testified at the hearing. The hearing panel upheld the conviction on the basis that Prater was an unauthorized occupant. The panel based its decision on the fact that official court and police documents listed Prater's address as that of the premises of Wood. *Plaintiff's Exhibits 3, A1, A3-A6, A8* . On December 8, 2008, Plaintiff served Notice to Leave Premises on Wood based upon the September 30, 2008 termination notice and subsequent hearings.

At trial, Plaintiff offered the testimony of Jessica Correa, Wood's neighbor, and Deputy Martin to support the fact that Prater was an unauthorized resident. Correa stated that she saw Prater at Wood's residence almost every day, and on most mornings she would see Prater leave for work. Deputy Martin testified that he had been dispatched to Wood's residence ten to twelve times and that Prater was always there.

In her defense, Wood testified that Prater did not reside there but was there only to visit his children, who were members of Wood's household. Wood testified that Prater had stayed overnight at her residence maybe only once during the time that she resided there. Wood further testified that Prater worked from 8 a.m. to 5 p.m. and would stop by after work to see his children; and sometimes he would take his children home at night and return them in the morning so that they could go to school.

II. Notice Requirements

Because Plaintiff is a public housing authority, it is required to give a tenant written notice of any proposed termination of the tenant's lease in accordance with R.C. §

1923.04 and 24 C.F.R. § 946(k)-(l). R.C. § 1923.04(A) provides:

[A] party desiring to commence an action under this chapter shall notify the adverse party to leave the premises, for the possession of which the action is about to be brought, three or more days before beginning the action, by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in person, or by leaving it at the defendant's usual place of abode or at the premises from which the defendant is sought to be evicted.

Every notice given under this section by a landlord to recover residential premises shall contain the following language printed or written in a conspicuous manner: "You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."

In this case, Plaintiff has complied with the requirements of R.C. § 1923.04.

Specifically, Plaintiff served Wood with notice by leaving a written copy of notice with the required language conspicuously printed on it at her residence on December 8, 2008.

Thus, the first issue in this case is whether Plaintiff satisfied the heightened notice requirements of 24 C.F.R. 966.4(k) and (l).

24 C.F.R. 966.4(l) provides in relevant part:

Termination of tenancy and eviction.-

- (1) Procedures. The lease shall state the procedures to be followed by the PHA and by the tenant to terminate the tenancy.
- (2) Grounds for termination of tenancy. The PHA may terminate the tenancy only for:
 - (i) Serious or repeated violation of material terms of the lease, such as the following:
 - ...
 - (B) Failure to fulfill household obligations, as described in paragraph (f) of this section;
 - ...
 - (iii) Other good cause. Other good cause includes, but is not limited to, the following:
 - ...
 - (C) Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;
 - ...
- (3) Lease termination notice.
 - (i) The PHA must give written notice of lease termination of:
 - ...
 - (C) 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply.
 - (ii) The notice of lease termination to the tenant shall state specific

grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure.

- (iii) A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination under paragraph (1)(3)(i) of this section.
- (iv) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination (see § 966.5 1 (a)(l)), the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

Termination notices under section 966.4(1) must be framed in a way that is not vague or conclusory, and must set forth a factual statement to justify termination. See *Cuyahoga Metropolitan Housing Auth. v. Younger* (8th Dist. 1994), 93 Ohio App. 3d 819, 825,639 N.E.2d 1253, 1256. Courts have found termination notices insufficient in situations where the housing authority failed to "provide the tenant with knowledge of the circumstances upon which the termination of the lease was predicated sufficient to afford the tenant an opportunity to prepare a meaningful rebuttal." *Housing Auth. of DeKalb County v. Pyrtle* (Ga. 1983), 167 Ga. App. 181, 183,306 S.E.2d 9, 10-11.

A review of the notice provided by Plaintiff in this situation shows that it sufficiently complies with the requirements of C.F.R. 966.4 (1). First, the Lease between Plaintiff and Wood adequately sets forth the termination procedures. See *Plaintiff's Exhibit 1, section 15*. Second, Plaintiff's reason for termination stated in the notice was for serious violation of a material term of the lease and for misrepresentation of Wood's family composition. Third, Plaintiff gave Wood 30-days notice setting forth three specific grounds in the notice. Specifically, Plaintiff stated that Wood was allowing Prater to

reside with her as an unauthorized resident, that in doing so Wood had misrepresented her family composition, and that Prater, while being a guest or an unauthorized occupant, disturbed the peaceful enjoyment of the premises of Wood's neighbors. Fourth, Plaintiff met all the technical requirements of section 966.4 (1). *See Plaintiff's Exhibit 2*. Finally, Plaintiff afforded Wood and Prater an opportunity for a hearing, and the hearing panel upheld the reasons for eviction. Accordingly, this court finds that Plaintiff complied with all requirements to terminate the Lease.

III. Good Cause Requirement

Due process under the Fourteenth Amendment requires a determination of good cause to support termination of public housing tenancy during the term of the lease.

Lowery v. Housing Auth. of Terre Haute (Ind. App. 2005), 826 N.E.2d 685,689. A housing authority must show by a preponderance of evidence that it has a reason under 24 C.F.R. 966(1) to evict the tenant.

A. Unauthorized Resident

In this case, Plaintiff based its eviction of Defendant on Prater being an unauthorized resident. The lease agreement does not define the word "resident." Additionally, neither the Department of Housing and Urban Development nor Ohio statutorily define resident in relation to low-income housing residential leases. The only statutory definition of "resident" in Ohio is in relation to manufactured homes parks. See R.C. 3733.01. There, the legislature defined a resident as "a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others." *Id.* This is a very narrow definition of resident and has not been applied to any set of facts outside of its intended legislative purpose with manufactured homes parks. Thus, this court finds this definition inapplicable to the case at hand.

Black's Law Dictionary defines a "resident" as a "dweller, habitant or occupant; one who resides or dwells in a place for a period of more, or less, duration." See *Prudential Property & Cas. Ins. Co. v. LaMarr* (1993), 92 Ohio App.3d 331, 334, 635 N.E.2d 63. Ohio courts have used this definition in determining whether a person is a resident for the purposes of insurance contracts. See *id.* Thus, Ohio courts have stated that a "resident" is "one who lives in the home of the named [party] for a period of some duration or regularity, although not necessarily permanent." *Farmers Ins. of Columbus v. Taylor* (10th Dist. 1987), 39 Ohio App. 3d 68, 70. Courts have used several factors to establish whether a person lives or resides in a home, including (1) the regularity of visits or amount of time spent by that person at the home; (2) whether the person receives mail at the address of the home or uses the address for other purposes; (3) whether the person keeps personal property at the home; and (4) whether the person has established a residence separate from the home. See *Prudential Property & Cas. Ins. Co. v. Koby* (11th Dist. 1997), 124 Ohio App. 3d 174, 178-81. This is a very broad definition of "resident" because it applies to insurance contracts, and "where the meaning of language used in a contract of insurance is doubtful, uncertain or ambiguous, the language will be construed strictly against the insurer and liberally in favor of the insured." *Blohm v. Cincinnati Ins. Co.* (1988), 39 Ohio St. 3d 63, 66. For policy reasons, this definition may be too broad to apply to forcible entry and detainer actions brought against tenants in low-income or subsidized housing. However, even applying this broad definition, this court finds that Plaintiff failed to establish that Prater was a resident of Defendant's apartment.

Plaintiff relies strongly upon the fact that Prater spent time at Defendant's apartment. This is uncontroverted. Defendant admits that Prater is often there because his children live there. However, Defendant testified that Prater does not stay overnight

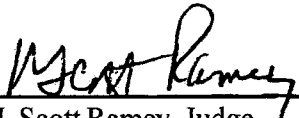
and that none of his belongings are at her residence. Wood testified that Prater stayed overnight maybe once the entire time she has lived there. Plaintiff offered no evidence to the contrary. One overnight stay over the course of six years is hardly enough to establish even a temporary residency. Additionally, Plaintiff's additional evidence does not support a finding that Prater is a resident. Plaintiff submitted evidence that "Mr. Prater's address on official court and police documents is 439 N. Dorcas, which is Amber Wood's address." Two of these documents are criminal complaints filed against Prater and one is a subpoena issued in relation to another case. These documents alone do not conclusively establish that Prater is a resident. Additionally, Defendant rebutted this evidence by providing evidence that Prater has another address as his place of residence, where he receives mail and stays at night. Thus, the only evidence Plaintiff provided that supports a finding that Prater is a resident at 439 N. Dorcas is that he spends a lot of time during the evenings and mornings at Defendant's residence. This is not strong enough evidence to support a forcible entry and detainer action, however, because Plaintiff did not provide any evidence to show that Prater was at Defendant's residence for anything more than the purpose of spending time with his children.

B. Disturbance of Peaceful Enjoyment

Plaintiff also alleges that Prater, as either a guest or a resident, disturbed the peaceful enjoyment of Defendant's neighbors by trespassing on their property with his ATV. Plaintiff, however, has failed to provide evidence sufficient to establish the allegation. Neither the testimony of Jessica Correa or Deputy Martin addressed whether Plaintiff trespassed on the property of Defendant's neighbors with his ATV. Thus, Plaintiff has failed to establish with a preponderance of the evidence that Prater disturbed the peaceful enjoyment of Defendant's neighbors.

III. Conclusion

Since Plaintiff did not list a specific definition of residence in its contract with Plaintiff, due process requires a narrow definition of residence since Defendant was not on notice of a more detailed explanation. For the purposes of this trial, the key elements of the determination of residence are whether the individual spends the majority of his nights at Defendant's residence and whether the majority of his property is located at her dwelling. Plaintiff has failed to show by a preponderance of evidence that Prater is a resident. For the foregoing reasons, this court finds in favor of Defendant on Plaintiff's Complaint for Forcible Entry and Detainer.


M. Scott Ramey, Judge
Sylvania Municipal Court

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