

FILED

STATE OF OHIO, LORAIN COUNTY, ss., - THE ELYRIA MUNICIPAL COURT

LORAIN METROPOLITAN HOUSING AUTHORITY
Plaintiff

CLERK OF
ELYRIA MUNICIPAL COURT

BY: 

VS

CASE NO. 2021CVG01447

TENNELLE M. JOHNSON,
Defendant

MAGISTRATE'S DECISION

Pursuant to Rule 53 this matter was referred to the Magistrate for hearing and decision. Plaintiff appeared through counsel. Although Defendant failed to appear, case was tried as though she had as required by R.C. §1923.07. Plaintiff still has to prove each and every element of its claim.

Defendant is a tenant of Plaintiff, a public housing authority, in Apt. 1303 at 310 East Avenue, Elyria, Ohio. Her complete lack of income relieves her from paying any rent due to a program that waives even the minimum rent charged to other tenants in dire financial straits. Despite her inability to pay anything and the known consequences that Defendant would become homeless, Plaintiff asks this Court to oust Defendant based on her failure to pay various charges assessed against her. The lease may make failure to pay such charges a "material" violation, but the circumstances of this case make such position, even in her absence at hearing, unpersuasive.

Plaintiff first asks to evict Defendant for unpaid maintenance charges. See Lease, page 2, par. 3(c). Plaintiff is not persuasive that Defendant should be evicted for unpaid charges related either to a broken toilet seat or a change of locks at her apartment. Plaintiff lacked any proof of any wrongdoing by Defendant as to the \$12.96 toilet seat. An Ohio tenant is not strictly liable for damage to the premises but a landlord must prove fault under R.C. 5321.04(A)(6). The change of locks followed Defendant expressing her concerns for her safety and security. She may indeed be financially liable to Plaintiff for such charges, for which a money judgment might be granted to Plaintiff, but charges from a single incident related to a request for a change of locks due to security issues is hardly a material basis for this H.U.D. landlord, supposed to provide shelter to the otherwise homeless, especially to put her safety and security at greater risk by granting it an eviction.

Plaintiff also asks for restitution based on Defendant's failure to pay the H.U.D. approved annual fee of \$57.27 for a season's use of an air conditioner in her premises. Apparently every unit in this high rise has an air conditioner which Plaintiff leaves on for their use unless and until the tenants notify Plaintiff to put a lock on it to avoid the charge. Rather than turn off the air conditioners when tenants do not pay this fee, Plaintiff allows tenants to use them and then files evictions for their failing to pay. It is not clear why Plaintiff instead does not lock the air conditioners and unlock them when tenants request air conditioning. By providing tenants *free access* to air conditioning already within the tenant's leased apartment and shifting the burden to tenants to decline to avoid financial liability, Plaintiff is denied this charge. If Plaintiff were not a landlord but a private actor, such as a

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supplier subject to the Consumer Sales Practices Act, R.C. §§1345.01, *et seq.*, such an act or practice would be unfair, deceptive or unconscionable and subject Plaintiff to civil liability to customers.

On the other hand, Defendant occupies an apartment on the *thirteenth floor* apartment in a *high rise* apartment building. Even if Defendant could open multiple windows wide for ready ventilation, with the dramatic worsening of global warming leading to oppressive heat and sickness and death in many of our cities, it is very difficult to view and classify air conditioning any longer as a luxury, but should be regarded a "reasonable necessity... in such a sweltering environment," just as long held to be in some western and southern states. In re Fisher, 11 B.R. 666, 668 (Bkrcty. Okl. 1981). This is not meant to suggest that all residential rental housing require air conditioning. However, under circumstances like these, where the lack of air conditioning could seriously affect the safety and health of a tenant, that is, undermine the very habitability of a residence, the failure by a governmental entity like this public housing authority, particularly without any evidence of the tenant having the financial means to pay a fee for access to air conditioning, cannot be deemed a material violation of a lease and a basis to evict, regardless of the form language of the lease.

Finally, Plaintiff asks to evict Defendant for missing an installment on a repayment agreement for the above items. When a tenant is assessed any type of fees and does not pay on demand, the tenant usually must sign a repayment plan to avoid eviction regardless of her financial circumstances and the ability of the tenant to make even one of the required payments under such a plan. The tenant then becomes subject to eviction for default in payment under the plan. In that nonpayment of the underlying charges in this case are not a basis to evict the Defendant, the Defendant's failure to pay on a repayment agreement for such charges likewise is not a basis to evict.

RECOMMENDATION

Judgment should be granted to Defendant.



Magistrate

A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

COPIES TO PARTIES

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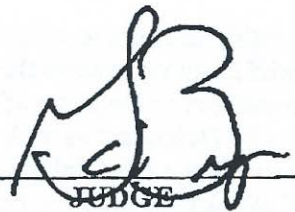
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JUDGMENT ENTRY

The magistrate's decision has been received, reviewed, and adopted. The clerk shall journalize the magistrate's decision along with this judgment entry.

It is not a material violation of a lease for a tenant of a public housing authority to neglect to pay charges related to repairs necessary to protect her safety and security, here a change in the locks, or a fee for air conditioning, the absence of which may seriously affect habitability of the premises, without evidence that the tenant had the ability to pay such charges and refused to pay them. Air conditioning in such a situation in this age of global warming may also be viewed as a basic human right.

Judgment is granted to Defendant.



JUDGE

NOTWITHSTANDING THE COURT'S IMMEDIATE ADOPTION OF THE MAGISTRATE'S DECISION, THE PARTIES HAVE FOURTEEN DAYS FROM THE DATE OF FILING OF THE MAGISTRATE'S DECISION TO FILE WITH THE CLERK OF COURT AND SEND TO THE OPPOSING PARTY ANY OBJECTIONS TO THE DECISION OF THE MAGISTRATE.

CLERK TO SERVE ALL PARTIES WITH NOTICE OF JUDGMENT AND DATE OF ENTRY UPON THE JOURNAL