

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO
SMALL CLAIMS DIVISION

Neighborhood Development Corp., :
Plaintiff, :
v. : Case No. M-79-CV-G-30481
Vickie Cook, :
Defendant. :

This cause came on for hearing before Referee Donna Bowman on December 19, 1979. Based on the testimony and evidence presented, and weighing the credibility of the witnesses, the Referee makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. That the defendant occupied the premises known as 333 Seemic Circle, Columbus, Ohio, on a written lease (Plaintiff's Exhibit #1) at the rate of \$186.00 per month, due on the 1st day of each month but no later than the third day. Defendant's portion of the rent is \$64.00.
2. That the defendant has not paid rent since October 1979, the arrearage being a total of \$192.00 (Plaintiff's Exhibit #2).
3. The defendant was served with a 3-day notice (Plaintiff's Exhibit #3) on October 23, 1979 by mail (Plaintiff's Exhibit #4) and by delivery to the premises when the notice was put through the mail chute.
4. Plaintiff is a subsidized project as that term is defined in 24 C.F.R. 450.2.
5. The notice sent does not meet the requirements of paragraph D(6)(3) of the lease or 24 C.F.R. 450.40.
6. Marion Cook, defendant's mother, tendered full payment of the October rent on or about October 10 and prior to receipt of plaintiff's Exhibit #3. The defendant has paid rent late on other occasions (Plaintiff's Exhibit #2) and plaintiff accepted the late rent. Plaintiff presented no evidence to show it had given defendant written notice of strict enforcement of the lease provisions as to timely payment of rent.

CONCLUSIONS OF LAW

The Referee finds that the plaintiff has complied with the provisions of O.R.C. 1923.04 in that the defendant was given a 3-day notice and that the defendant was duly served with a copy of the Complaint which is found to be proper on its face. Plaintiff denied that it is subject to the regulations set forth in 24 C.F.R. 450, however, those regulations define a subsidized project as "... a multifamily housing project...which receives the benefit of subsidy in the forms of...(4) payments under the Additional Assistance Program for Projects with HUD-insured and HUD-held mortgages pursuant to Section 8 of the United States Housing Act of 1937 and the regulations at 41 F.R. 12170, published on March 23, 1976." The second and third paragraphs of the preamble to plaintiff's lease with defendant recites receipt of such payments and the fact plaintiff has entered into such an agreement. Further, paragraph D(2) specifically states plaintiff is sub-

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ject to 24 C.F.R. 450 and plaintiff cannot deny it at this time.

Although plaintiff has complied with state law as to the contents of the notice to leave the premises (Plaintiff's Exhibit #3) it did not comply with 24 C.F.R. 450-4(a)(3) or 24 C.F.R. 450.4(e). The notice does not advise the tenant of her right to present a defense if a judicial proceeding is instituted or state the date of the computation of the past due rent. See Ivywood v. Bennett, Franklin County Court of Appeals, 76 AP-669.

Plaintiff has accepted late rent payments in the past and has waived its right to require prompt and timely payments without prior written notice to defendant. Lauch v. Manning, 150 O.App.2d 112.

REFEREE RECOMMENDS:

Case dismissed at plaintiff's costs.



REFEREE DONNA BOWMAN

Copies to:

George McCann, attorney for plaintiff
Janet Green, attorney for defendant(Legal Aid)