

IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO

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Canterbury Way Apartments, :
Plaintiff, :
v. : Case No. M 9004 CVG 012282
Mevilyn Rogers, Jr., et al., :
Defendants. :

REFEREE'S REPORT

This matter came on for hearing before Referee Kathleen E. Graham on May 24, 1990. Plaintiff was represented by Attorney Damon Wetterauer, Jr. Defendant was represented by Attorney Kathleen LaTour, Legal Aid Society of Columbus

Defendant moved to dismiss the Complaint on the basis that the termination notices dated March 8, 1990 (copies of which were attached to the Complaint) failed to comply with the requirement of Paragraph 23 of the Lease Agreement (a copy of which was attached to the Complaint). Specifically, the defendant argued that the grounds set forth in the termination notices were not specific enough to advise the tenant of the nature of the breach alleged in order to be able to prepare a defense. Plaintiff countered by submitting plaintiff's Exhibit "1" and arguing that even if the notices are defective on their face, the tenant was aware of the nature of the violations and was not prejudiced in her defense by any alleged inadequacy in the termination notices.

The matter was submitted to this referee for a report based upon the exhibits attached to the Complaint, those offered at the hearing by the

plaintiff (Plaintiff's Exhibit "1"), and the arguments of counsel. Based upon the evidence, the referee recommends that the defendants' Motion To Dismiss be sustained because the notices do not comply with the lease requirements for termination of a tenancy.

CONCLUSIONS OF LAW

Paragraph 239(c) provides in pertinent part:

All termination notices must:

- specify the date this Agreement will be terminated;
- state the grounds for the termination with enough detail for the Tenant to prepare a defense; * * *.

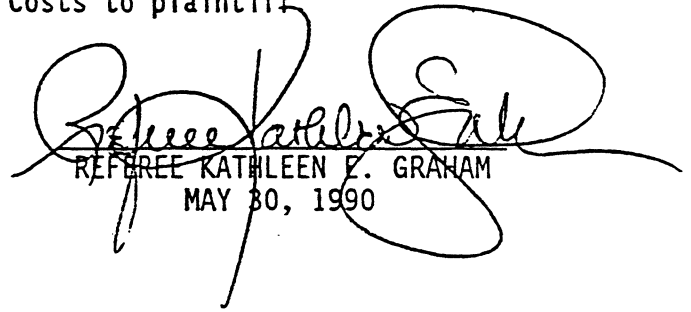
The two notices dated March 8, 1990, merely restate the language in the lease agreement which describes in a very general sense the type of violations which the plaintiff alleges the defendant committed. Such general statements violate the lease and the federal regulation. 24 C.F.R. 247 Subpart A.

The evidence presented by the plaintiff does not indicate that the defendant was aware of the specifics of the violations claimed. Plaintiff's Exhibit "1" contains records of complaints received by the plaintiff regarding the conduct of the defendant and her family. None of the complaint documents indicate that defendant was advised of the complaint. Each complaint form contains a question - "1) Was the tenant notified of complaint filed? (yes) (no)". An answer to the question was not noted on any of the forms. Plaintiff failed to prove by testimony or documents its claim that the defendant was not prejudiced by the lack of specificity in the termination notices.

Accordingly, the defendant has been denied procedural due process. Associated Estates Corp. v. Bartell, 24 Ohio App. 3d 6 (Cuyahoga, 1985).

RECOMMENDATION

That Defendant's Motion To Dismiss be sustained. That plaintiff's complaint be dismissed without prejudice. Costs to plaintiff



REFeree KATHLEEN E. GRAHAM
MAY 30, 1990

CC: Damon E. Wetterauer, Jr., Esquire
151 Walnut Ridge Lane
Westerville, Ohio 43081
ATTORNEY FOR PLAINTIFF

Kathleen LaTour, Esquire
Legal Aid Society of Columbus
40 West Gay Street
Columbus, Ohio 43215
ATTORNEY FOR DEFENDANTS

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