

v

FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO
SMALL CLAIMS DIVISION

FILED
92 MAY 22 AM 9:07
FRANKLIN COUNTY
MUNICIPAL COURT
WM. J. DAWSON, CLERK

UPTOWN VILLAGE APARTMENTS LIMITED, :
Plaintiff, :
v. :
BRADY WHITE, JR., :
Defendant. :

Case No. M 9203CVG-008281

REFEREE'S REPORT

This cause came on for hearing before Referee Dennis Kimball on April 9, 1992. The final briefs were due by April 27, 1992. The plaintiff was represented by Attorney David M. Neubauer... The defendant was represented by Attorney Michael P. Richter. The plaintiff declined to submit any trial brief. The defendant filed his trial brief on April 23, 1992.

Based upon the testimony and evidence presented, after weighing the credibility of the witnesses, the referee makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The defendant is a tenant of property managed by the plaintiff located at 50-D East 5th Avenue in Columbus, Ohio under a federally subsidized lease. The tenancy is subject to the requirements of 24 C.F.R. Section 247.4(a)(3). The lease covering the property and 24 C.F.R. Section 247.4(a)(3) both require "all termination notices" to specify the date that the tenancy would terminate and the grounds for termination with reasonable detail for the tenant to prepare a defense, and to advise the tenant that he had ten days to discuss the proposed termination with the landlord, and to advise the tenant of his right to defend any eviction action in court. In an attempt to satisfy the requirements of federal regulation, the lease, and

state law, the plaintiff served the defendant with a written "NOTICE OF INTENT TO TERMINATE LEASE AGREEMENT" on February 13, 1992. That notice contained the statutory language required by Section 1923.04, R.C. It stated the grounds for the eviction and the date for termination ten days hence. It advised the defendant of his right to discuss the termination with the plaintiff during that ten day period. That notice did not advise the defendant of his right to defend an eviction action in court. On February 24th, the plaintiff served a "NOTICE TO LEAVE THE PREMISES" which also contained the language required by Section 1923.04. It also stated the date of termination and the grounds for termination. It did advise the defendant of his right to defend an eviction action. However, it failed to advise the defendant of his right to discuss the termination with the plaintiff.

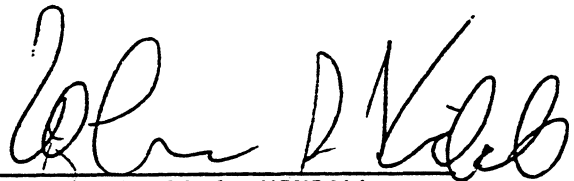
CONCLUSIONS OF LAW

A. The referee finds that the plaintiff has not proven a right to recover in this action by a preponderance of the evidence. Both notices contained sufficient language required by state law. However, neither notice complied with federal regulations and the lease; the February 13th notice failed to advise the defendant of his right to defend an eviction action in court and the February 24th notice failed to advise the defendant of his right to discuss the termination with the plaintiff. A reasonable reading of the lease and of the federal regulations requires that all four elements of the notice must be contained in the same document. The case of Donald Martz, vs. Marta Rhoad (Feb. 15, 1991), Paulding County App. No. 11-89-14, unreported, is not binding authority in this county; this referee

did not find its holding (that the tenant had to pursue grievance proceedings in order to raise a defective notice as a defense at trial) to be persuasive. Thus, the referee concludes the plaintiff has not served a proper notice of termination as required by the lease and federal regulations.

REFEREE'S RECOMMENDATION:

The referee recommends judgment for the defendant on the first cause of action, with the first cause to be dismissed without prejudice at the plaintiff's costs.



REFEREE DENNIS R. KIMBALL

May 20, 1992

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