

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

FILED

93 AUG 23 AM 9:04

FRANKLIN COUNTY
MUNICIPAL COURT
WM J. PATTERSON, CLERK

SHOWE MANAGEMENT CORPORATION :
dba RIVERLODGE APARTMENTS :
Plaintiff, :
vs. :
TERESA LEE STOVER, et al :
Defendant. :

Case No. M 9306CVG-17876

REFEREE'S REPORT

This matter was heard by Referee Julius J. Nemeth. Plaintiff was represented by attorney C. Bernard Brush and defendants were represented by attorney Michael P. Richter of the Legal Aid Society of Columbus. Based on the sworn testimony and other evidence presented, and weighing the credibility of the witnesses, the referee makes the following Findings of Fact, Conclusions of Law, and Recommendation:

FINDINGS OF FACT

1. Since 1986, defendant has resided in Apartment B, 505 Broadmeadows Blvd., Columbus, which is located in the Riverlodge Apartments Phase III. Her rent is subsidized. Defendant's share of the rent was \$16.00 per month (of a \$246.00 total) at the inception of the lease on October 16, 1986 (see Exhibit A) and \$26.00 per month beginning June 1, 1993 (see, paragraph 6 of complaint).

2. Defendant has two minor daughters, Serena and Jane, and has been a single parent since December 1987, when she and her former husband separated. In August 1992, plaintiff was injured in a rear end collision on Sawmill Road, as the result of which she suffered a painful injury which affected her mobility and which rendered her incapable of caring for the children independently. In an attempt to help, defendant's boyfriend invited her and her children to share his Westerville home until defendant could manage on her own again. Defendant accepted the offer and, in fact, the children were enrolled in Westerville schools for 1992-1993.

3. Defendant had been seeking psychological counseling since 1989, and in October 1992 she returned to her therapist for help in coping with the stress and pain caused by the car accident and her depression resulting from her inability to come for her children and house without help (see Defendant's Exhibit 1). At this time, defendant also sought help for her daughter Serena who was experiencing behavioral problems and had difficulty handling her emotions. The therapist recommended and supported defendant's decision to remain at her boyfriend's home instead of returning to her apartment at the time because of the pain and emotional problems she was suffering. He also recommended that defendant's family return to the apartment as defendant's health improved, in several months, so that Serena would be able to start a new school year at her school.

4. Defendant was not secretive about the fact that she was temporarily living at her boyfriend's home, or why. Plaintiff knew about it for several months before bringing this action.

5. During the time the defendant was absent her apartment was left a mess (Plaintiff's Exhibit H). Part of this disorder was caused by once having to move things so the apartment could be sprayed for roaches.

6. During defendant's absence management had to enter the apartment on March 25 to relight the furnace and water heater, which had been turned off

for nonpayment and in May the electricity was also temporarily turned off.

7. On May 26, 1993 plaintiff sent defendant a notice to leave premises and notice of termination of lease stating three grounds for the proposed eviction: discontinuation of electric service due to nonpayment; and failure to keep the apartment in a decent and safe sanitary condition; failure of the tenant to live in the apartment as her only place of residence.

8. This action was filed on June 11, 1993. Plaintiff and her children moved back to the subject premises late in June or early in July and were residing there on the date of the hearing in this matter July 15.

CONCLUSIONS OF LAW

A. Since the grounds for a proposed eviction under the applicable federal regulations are limited to those stated in the notice of termination, testimony at the hearing was limited to these grounds. Thus, no testimony was received concerning the allegations of nonpayment of rent, which is raised as the second cause of action in the complaint but was not stated as a ground in the termination notice.

B. The gas and electric disconnects resulted from a deliberate act on the part of defendant, who had been told by CAMACO that if there was a disconnect they would pay the entire amount of the arrearage instead of one half. CAMACO in fact paid the gas arrearage but did not pay the electricity, which defendant paid to have turned back on. While nonpayment of utility bills is a material breach of the lease, under the particular circumstances disclosed in this case, the breach at issue does not warrant evicting defendant.

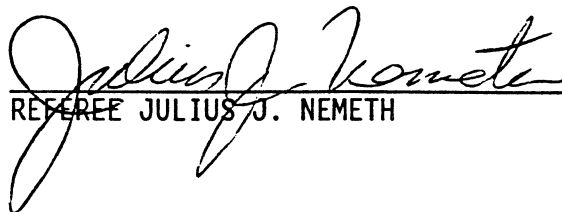
C. In preparation for reoccupying the subject premises, defendant and her boyfriend began to put the apartment in order in early June. Again, while failure to keep the apartment in safe and decent sanitary condition

was a breach of the lease the particular circumstances in this case do not warrant evicting defendant.

D. Defendant's failure to occupy the subject premises as her only residence, as required by the lease (Exhibit C attached to complaint) was, likewise, a serious violation of the lease, specifically paragraph 13. Were it not that defendant's absence from the apartment was due to an effort on her part to deal not only with an injury but near-total immobility and consequent inability to function independently to care for two children and run a household -- in short, to deal with a major if temporary handicap -- this violation, standing alone, would be sufficient to justify eviction. However, the handicap was of sufficient magnitude to bar her eviction under the Rehabilitation Act of 1973, 29 USC Section 701 et sec., which applies. Her disability falls within the federal statute, which defines "individual with a disability" as "any person who (i) has a physical or mental impairment which substantially limits one or more of such persons major life activities, (ii) has a record of such an impairment or (iii) is regarded as having such an impairment. 29 USC Section 706 (8)(B). See Schuett Investment Company v. Anderson (Court of Appeals of Minnesota, April 22, 1986), 386 N. W. 2nd 49. (A copy of Schuett is attached to the file).

RECOMMENDATION

The referee recommends that the first cause of action be dismissed at plaintiff's cost.


REFeree JULIUS J. NEMETH

JJN/mmc
August 18, 1993

Copies to:

C. Bernard Brush, Esq.
5530 Columbia Road S. W.
Pataskala, Ohio 43062
ATTORNEY FOR PLAINTIFF

Michael P. Richter, Esq.
Legal Aid Society of Columbus
c/o West Gay Street
Columbus, Ohio 43215
ATTORNEY FOR DEFENDANT