

URBAN HOLLOW APARTMENTS

Plaintiff,

vs.

Case No. M 9403CVG-007533

JEWELL LEWIS and

BRIAN RICHARDSON

Defendants.

FILED
1994 MAY 25 PM 3:22
FRANKLIN COUNTY MUNICIPAL COURT
WILLIAM J. SPENCER, CLERK

REFEREE'S REPORT

This cause came on for hearing before Referee Dennis Kimball on April 8, 1994. Attorney Tom Magelaner represented the plaintiff. Attorney Michael Richter of the Legal Aid Society of Columbus represented defendant Jewell Lewis. No one appeared on behalf of defendant Brian Richardson. Upon the testimony and evidence presented, after weighing the credibility of the witnesses, the referee makes the following Findings of Fact, Conclusions of Law, and Recommendation:

FINDINGS OF FACT

1. Because the relevant eviction notice served by the plaintiff lacked sufficient specificity for all but two grounds for this eviction, and because the eviction in this case is controlled by federal regulations requiring such specificity, on the motion of defendant Lewis this referee limited the grounds for eviction to defendant Lewis' alleged breach of a payment agreement on November 19, 1993 and an alleged incident of defendant Lewis allowing an unauthorized occupant on February 4, 1994.

2. Paragraph 23 of the lease controls the plaintiff's right to terminate the tenancy upon Ms. Lewis' breach of the lease. The only relevant provision of paragraph 23 upon which this action is based is the plaintiff's

claim that Ms. Lewis is in "material noncompliance with the lease." Paragraph 23(b) describes material noncompliance as including "failure to reimburse the Agent within 30 days for repairs made under paragraph 11 of this Agreement" and "permitting unauthorized persons to live in the unit." In addition, paragraph 11 of the lease requires defendant Lewis to pay for damages "caused by carelessness, misuse, or neglect on the part of the Resident, his/her family or visitors"

3. Defendant Jewell Lewis is a tenant under a written lease for a residential unit located at 3377 Urban Hollow Court, Apartment A, in Columbus, Ohio. The plaintiff is the landlord of that property. The plaintiff has had to repair windows and perform other repair work on numerous occasions. However, the evidence presented in this case proved that defendant Brian Richardson, not on the lease, but the father of Ms. Lewis' daughter, caused these damages when he came uninvited to her residence while Ms. Lewis was not home. Mr. Richardson would then break into the unit and cause such damage. During the other times that Mr. Richardson visited the residence with Ms. Lewis' permission, he would not cause any damage. Defendant Lewis agreed on several occasions to repay for the window and door damages caused by Mr. Richardson. On November 19, 1993, Ms. Lewis verbally agreed to pay for window repairs caused by Mr. Richardson totaling \$92.00. She subsequently failed to make all of the agreed payments. During the time that Mr. Richardson came to the residence without Ms. Lewis' permission, he was not a "visitor" within the intended meaning of that term in paragraph 11 of the lease.

4. The plaintiff has often asked defendant Lewis to not allow Mr. Richardson to visit the property any longer. The plaintiff has asked her to file charges on Mr. Richardson. She has recently agreed to do so. However, at trial, she indicated that she would continue to allow him to visit their child. The plaintiff's evidence indicated that Mr. Richardson would "come and go" during an undisclosed period of time. However, Ms. Lewis was more

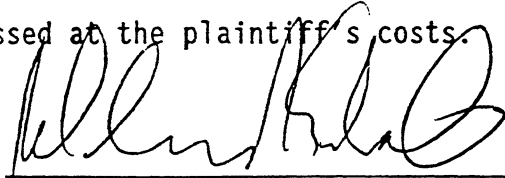
specific in her testimony, claiming that Mr. Richardson never stayed over night, that he had no keys to the unit and he kept no clothing or furniture in the apartment. Based on this evidence, the referee finds that Mr. Richardson does not visit the unit sufficiently frequently or for a sufficient duration so as to constitute being a resident of the property; therefore, defendant Lewis has not been permitting "unauthorized persons to live in the unit" as prohibited by paragraph 23(b) of the lease.

CONCLUSIONS OF LAW

The referee finds that the plaintiff has not proven a right to recover possession of the property against defendant Lewis in this case. The term "visitor" in paragraph 11 of the lease carries the connotation that the tenant is permitting the person to visit the property. While the plight of the plaintiff is of great concern in the situation presented in this case, the evidence establishes that Mr. Richardson, when he is a "visitor" in Ms. Lewis' residence, does not cause any damages or disturbances. Only when he comes to the residence without Ms. Lewis' knowledge or authority (and thus when he is not a "visitor" to the property) does he cause any damages. Thus, damages which defendant Lewis failed to repay do not fall under paragraph 11 and therefore do not constitute material noncompliance with the lease. Furthermore, the evidence in this case failed to establish that Mr. Richardson "lived" in the apartment unit.

RECOMMENDATION

The referee recommends judgment for the defendant on the first cause of action, with the first cause to be dismissed at the plaintiff's costs.



REFeree DENNIS R. KIMBALL

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