

IN THE FRANKLIN COUNTY MUNICIPAL COURT  
COLUMBUS, OHIO

FILE  
OCT 12 PM 3:22  
FRANKLIN COUNTY MUNICIPAL CT.  
CLERK

Shiloh Grove Ltd. Partnership, :

Plaintiff, :

v. :

Benjamin Ransom, :

Defendant. :

Case No. M 9408CVG-025818

REFEREE'S REPORT

This matter came for hearing before Referee Kathleen E. Graham on September 30, 1994. Plaintiff was represented by Attorney Milton A. Puckett. Defendant was represented by Attorney Donna C. Mayer of The Legal Aid Society of Columbus. A court reporter was present. All witnesses were sworn. Joint Exhibits 1 through 3 and Plaintiff's Exhibit 1 were admitted into evidence. The parties stipulated to certain facts prior to the commencement of the hearing. The stipulations are contained in the findings of fact outlined below.

Based upon the evidence presented, the referee makes the following Findings of Fact, Conclusions of Law and Recommendation:

FINDINGS OF FACT

1. Plaintiff occupied the premises located at 1035 Atcheson Street, Unit #1104, Columbus, OH 43203 pursuant to the terms of a written lease agreement dated May 28, 1993. The premises are subject to regulation as federally subsidized housing. (Stipulation - Joint Exhibit 1)

2. In February, 1994, plaintiff notified the defendant of the need to fumigate his unit. Defendant protested the fumigation

because of war experiences with sprays. Based upon defendant's lack of cooperation, plaintiff determined that defendant was in non-compliance with the lease agreement and no rent was accepted from him for the months of March through August, 1994.

3. The parties finally resolved the issue of fumigating the premises. On August 5, 1994 Gloria Burns, plaintiff's employee, spoke with the defendant and advised him that the rent that had not been paid was due. Defendant told Ms. Burns that he was unable to pay the rent at that time. He told her he was going to Washington to check on his Veterans Affairs records and that he had to use the rent money to purchase his plane tickets. He further told Ms. Burns that he would have all of the rent on September 1, 1994.

4. On August 5, 1994, Ms. Burns served defendant with a ten day notice to leave the premises (Stipulation - Joint Exhibit 2) based upon his failure to pay the rent. Defendant did not contact plaintiff within the ten day period.

5. Approximately three weeks later, defendant contacted Ms. Burns and offered the full amount of the rent. Defendant was advised that plaintiff would not accept the past due rent. Shortly thereafter, defendant contacted the Legal Aid Society.

6. In late August or early September, someone from Legal Aid Society contacted plaintiff's counsel and offered the amount of the past due rent which was due as of that date (Stipulation).

7. As of the filing of the eviction action, defendant's rent for the months of March through August, 1994 had not been paid.

The amount of the unpaid rent as of that time and for that period was \$882.00 excluding the court costs. (Stipulation)

8. Defendant has several medical problems. His problems include depression, alcoholism, cirrhosis of the liver and psychosis. According to his doctor he exhibits some erratic and abusive behavior which can be attributed to mental problems. (Stipulation - Joint Exhibit 3). Defendant receives Veterans Affairs benefits based in part on service connected disabilities to the right knee and right thumb and wrist. Defendant's claim to have a post traumatic stress disorder recognized and related to his service has been denied. (Plaintiff's exhibit 1).

9. The housing where defendant resides is reserved for the disabled and elderly. Defendant has satisfied the criteria to establish him as disabled or "handicapped" for purposes of admission to the housing complex.

10. As of the date of the hearing, defendant had placed \$1008.00 as escrowed rental payments in trust with The Legal Aid Society of Columbus.

#### CONCLUSIONS OF LAW

The party who brings an action has the burden of proving the allegations in the complaint by a preponderance of the evidence. There is no dispute that the defendant was behind in his rental payments. There is also no dispute that defendant offered the full amount of the rent approximately three weeks after the demand for payment was made in early August. Thereafter, defendant's attorney

offered the full amount of rent. Neither offer was accepted by plaintiff.

Defendant argued that he is entitled to have the plaintiff accept his rent as a "reasonable accommodation" for his disability or handicapped status under the Fair Housing Act and the Federal Rehabilitation Act and pursuant to R.C. 4112.02(H). The evidence offered about defendant's status as a handicapped person came from three sources: 1) Ms. Burns who confirmed that he is handicapped for purposes of their admissions policies , 2) the denial letter from the Department of Veterans Affairs ( Plaintiff's exhibit 1) which recognizes his service related injuries, which are of a physical rather than a mental nature and 3) defendant's doctor's letter documenting both physical and mental disorders, including depression, psychosis alcoholism, cirrhosis of the liver and erratic and abrasive behavior. ( Joint Exhibit 3).

The referee concludes, based upon that evidence and the defendant's testimony and demeanor in the courtroom, that the circumstances that led to defendant's refusal to allow the fumigating and then to fail to pay the past due rent when requested to do so are reasonably related to his mental impairment. His impairment and limitations and his obvious focus on obtaining recognition for a post traumatic stress worked together to impair his ability to assess the importance of paying the rent. Therefore, under both the Fair Housing Act and the Federal Rehabilitation Act, plaintiff should make a reasonable accommodation for defendant's

limitations. The referee agrees with defendant that accepting the full amount of the rent three weeks after it was due from this tenant under these circumstances would have been a "reasonable accommodation".

Even if the court concludes that the federal protection for the handicapped should not apply, the referee, having weighed the equities of this matter, concludes that no forfeiture should occur. In a recent case, the Tenth District Court of Appeals directed this court's attention to several factors which weigh in favor of the defendant's continued right to possession in similar circumstances: 1) whether the tenant acted maliciously or willfully; 2) whether, at the time of trial, the tenant was able to make full payment of all of his obligations for rent and 3) whether the tenant is in federally subsidized housing, which gives the tenant a substantial equitable interest in the housing provided by the subsidy. *Urban Hollow Apartments v. Johnson* ( May 26, 1994), Franklin App. No. 93APG10-1495. *Gorsuch Homes, Inc. v. Wooten* (1992), 73 Ohio App.3d 426.

In this case, the evidence does not support a conclusion that the defendant acted either maliciously or willfully. While it is true that he intentionally withheld the payment of the rent, the referee is persuaded that he did so to continue a "battle" that he has been fighting for many years - recognition for more service related disabilities like post traumatic stress disorder or exposure to Agent Orange and was not willful within the context

intended. The evidence further demonstrates that defendant is prepared, through the funds held in The Legal Aid Society's trust account, to pay all the past due rent through the end of October. Finally, there should be no question that defendant has, by virtue of his acceptance into federally subsidized housing for the handicapped, a substantial equitable interest in remaining on the premises. The defendant demonstrated that the plaintiff will be adequately compensated by the payment of all the past due rent through October 12994 and , in fact, would have been so if the rent had been accepted in late August when offered by the defendant. Defendant should be entitled to equitable relief , be permitted to pay the full amount of the rent through October 1994 and upon doing so, remain in possession.

RECOMMENDATION

Judgment in favor of defendant and against plaintiff on the first cause of action. Plaintiff's first cause of action to be dismissed. Costs to plaintiff.

  
REFEREE KATHLEEN E. GRAHAM

KEG/lbs

October 12, 1994

Copies to:

Milton A. Puckett  
155 West Main Street, Suite 200  
Columbus, OH 43215  
**ATTORNEY FOR PLAINTIFF**

Donna C. Mayer  
The Legal Aid Society of Columbus  
40 East Gay Street  
Columbus, Ohio 43215  
**ATTORNEYS FOR DEFENDANT**