

IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO

FRANKLIN COUNTY
MUNICIPAL COURT
CLERK
MAY 21 1994
COLUMBUS, OHIO

Winchester Gardens,
Plaintiff,

v.

Melinda Swickheimer,
Defendant.

Case No. M 9410CVG-031135

REFEREE'S REPORT

This matter came for hearing before Referee Kathleen E. Graham on November 3, 1994. Plaintiff was represented by Attorney Damon E. Wetterauer, Jr. Defendant was represented by Michael P. Richter, The Legal Aid Society of Columbus. Defendant moved the court to dismiss the action on two grounds: 1) that the notice dated June 9, 1994 fails to satisfy the specificity requirements of the federal regulations governing subsidized housing and 2) that plaintiff failed to serve a notice to cure required by R.C. 1923.02(A)(8). No sworn testimony was offered. Based upon the documents presented and the arguments of counsel, the referee makes the following Findings of Fact, Conclusions of Law and Recommendation:

FINDINGS OF FACT

1. Defendant Melinda Swickheimer occupies premises located at 3187 Webster Drive in Columbus, Ohio, Franklin County pursuant to the terms of a written lease agreement dated February 11, 1988. Plaintiff receives a federal subsidy and the lease agreement is subject to federal eviction procedures contained in 24 C.F.R. 247.
2. A letter dated June 9, 1994 was served upon the defendant

by plaintiff, a copy of which is attached to the complaint. Thereafter, a notice to leave the premises dated September 7, 1994 was served upon defendant in compliance with R.C. 1923.04, a copy of which is attached to the complaint.

CONCLUSIONS OF LAW

The first branch of the motion to dismiss challenges the sufficiency of the language of the notice of proposed termination dated June 9, 1994. 24 C.F.R. Sec. 247.4(A) states in pertinent part:

(a) *Requisites of Termination Notice.*

The landlord's determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated on a date specified therein; (2) state the reason for the landlord's action with enough specificity so as to enable the tenant to prepare a defense **** .

These statutory requirements are also incorporated in paragraph 23(C)(3) of the lease agreement.

The letter of June 9, 1994 establishes that the grounds for termination must, in some way, relate to the unit not being kept "safe, clean and decent" and that the nature of the breach would be a violation of a local code or ordinances. In what seems to be an attempt to be more specific, the third full paragraph of the letter identifies bad housekeeping as the grounds for eviction. The question is whether all three references taken together meet the specificity standard of the federal regulations.

This referee initially ruled that the July 9, 1994 notice met the requisite degree of specificity. However, after further

argument on other grounds for dismissal, this referee indicated that she might reconsider the earlier ruling on the specificity of the notice. Both parties were offered an opportunity to make further argument and submit case law in writing prior to November 9, 1994. The referee has reconsidered the earlier ruling and concludes that the notice of June 9, 1994 fails to state the reasons for termination with sufficient specificity for the defendant to prepare a defense.

The purpose of the federal regulations regarding proposed terminations is to provide procedural due process to tenants facing eviction from federally subsidized housing. The right to forfeiture of the leasehold depends upon giving written notice of the breach, in strict compliance with the terms of the lease and the federal regulations. The second full paragraph of the June 9th letter merely re-states portions of the rules and regulations. Defendant points out correctly that those phrases are merely restatements of what the defendant has agreed to do and does not provide notice of what the defendant has failed to do.

Secondly, the notice claims that defendant is a bad housekeeper, but states nothing more specific than that. The term "housekeeping" encompass many duties and tasks and fails to give the defendant enough specific information about her failures to know what evidence or witnesses she may need or to otherwise prepare a defense. It can be assumed from the letter that the maintenance staff has advised management of bad housekeeping. In

fact, they were "really upset" with the conditions. Requiring the landlord to describe in more detail what constitutes the breach - very simply what the maintenance people observed that led them to the conclusion that there was bad housekeeping - is not too much to ask of the plaintiff. This remains true despite the fact that bad housekeeping may, as plaintiff argues, occur over a period of time. It is a subjective term - one person's standard for what a clean kitchen is may be very different from another's. Nonetheless, the conduct which lead to the conclusion that the defendant is a bad housekeeper must be capable of being described and quantified. Obviously some discussions took place between the management and the maintenance. It seems only proper that maintenance share the specifics with the defendant so she can respond to the allegations.

Defendant further moved to dismiss the complaint on the basis that plaintiff failed to serve defendant with a notice to cure required by R.C. 1923.02(A)(8) and described in R.C. 5321.11. This notice is required if the basis for the eviction is a condition which materially affects health and safety. The referee is willing to accept , for purposes of this argument, that there may be grounds for eviction which fall within the description of bad housekeeping - that justify eviction but do not materially affect health and safety. For that reason, defendant motion to dismiss for failure to give the notice to cure is overruled.

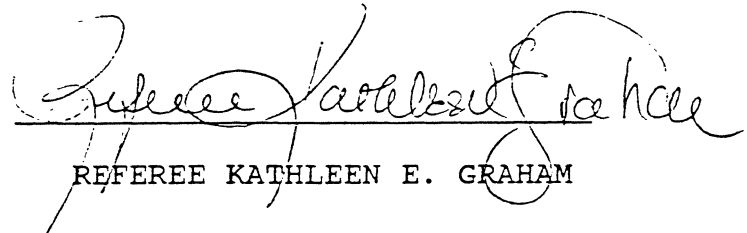
That having been said, plaintiff must still meet the federal standard of material non compliance set forth in 24 C.F.R. Sec.

247.3(C). If it is able to meet that standard to justify grounds for eviction and depending on the specific violations plaintiff proves, plaintiff may have established a breach serious enough to affect health and safety, in which case a R.C. 5321.11 notice to cure would have been required.

RECOMMENDATION

That the complaint to be dismissed without prejudice. Costs to plaintiff.

November 14, 1994


REFeree KATHLEEN E. GRAHAM

KEG/lbs

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