

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

SMALL CLAIMS DIVISION

FILED  
1994 DEC -5 PM 1:49  
FRANKLIN CO. MUNICIPAL COURT  
CIVIL DIVISION  
WM. J. DAWSON, CLERK

COLUMBUS METROPOLITAN HOUSING :  
Plaintiff, :  
vs. :  
TINA WAGNER :  
Defendant. :

Case No. M 9410CV 3661

REFEREE'S REPORT

This matter came before Referee Antonio B. Paat, Jr. on November 29, 1994. The hearing was limited to plaintiff's first cause of action seeking judgment for the premises.

Plaintiff was represented by Attorney John Waddy. Defendant was represented by Attorney Michael P. Richter. All parties and witnesses were sworn. A court reporter was present.

Based upon the evidence submitted and weighing the credibility of the witnesses, the referee makes the following Findings of Fact, Conclusions of Law and Recommendation:

FINDINGS OF FACT

1. Plaintiff provides federal subsidized housing at its apartment complex known as Windsor Terrace.
2. In May, 1994, defendant entered into a lease agreement with plaintiff for subsidized housing at 1177 Windsor Terrace.
3. Prior to the lease agreement, defendant attend plaintiff's orientation session where she was informed of her duties as a tenant including

the payment of \$72.00 monthly rent. Defendant was notified that rent was due between the first and seventh of the month, that mailed payments must be postmarked by the seventh of the month, and that nonpayment of rent by the seventh of the month was cause for termination of the lease agreement. Additionally, defendant's lease agreement and lease addendum specified the amount of rent, the due date, and the consequences of any late payment.

4. Defendant did not make timely payment of her August 1994, rent. On August 12, 1994, defendant tendered payment of her August rent. Plaintiff accepted that late payment upon defendant's agreement to pay timely thereafter. (Plaintiff's Exhibit A)

5. On August 30, 1994, defendant's uncle died. Defendant helped her aunt with local funeral arrangements and spent several days with her aunt.

6. Defendant did not make timely payment of her September, 1994, rent. Rather, defendant tendered her rent payment on September 8th in person at plaintiff's office. The late rent payment was refused by plaintiff's agent. Defendant was given proper notice to leave the premises for failure to pay rent. This action was filed upon defendant's failure to vacate the premises.

7. At hearing, defendant established that she could become current on her rent obligation and could pay the \$80.00 costs of the eviction action.

#### CONCLUSIONS OF LAW

In a civil action, the plaintiff has the burden of proof by a preponderance of the evidence. Burden of proof is the necessity or duty to prove facts in dispute on an issue raised between the parties in a case. A preponderance of evidence is the greater weight of evidence which is more credible and convincing to the mind.

Here, plaintiff alleges that defendant was in violation of the lease agreement which required that rent to be paid timely. Defendant claims that despite that technical breach, she has established grounds for equitable relief.

Defendant cited Urban Hollow Apartment v. Johnson, (May 26, 1994) Franklin County Court of Appeals No. 93APG10-1495, 94 Ops 2285. In Urban Hollow Apartments the court reiterates its position previously stated in Zanetos v. Sparks (1984), 13 Ohio App. 3d. 242.

\* \* \* unless a lessee's conduct is willful or malicious, or if compensation for the breach cannot be made due to the lessor, a court exercising its equity powers will grant the lessee relief from forfeiture. The forfeiture clause for nonpayment of rent is not strictly construed, rather, it is viewed as merely security for the payment of rent. The court will balance the equities of the case and relieve the forfeiture where the equities favor the lessee. Urban Hollow Apartments supra at 2288.

The court also goes on to list some issues that must be considered in determining whether a defendant is entitled to equitable relief. These include:

(1) the lack of evidence that defendant acted maliciously or willfully; (2) the referee's determination that defendant at trial was able to make full payment of all of his obligations for rent and repair charges, which would compensate plaintiff for defendant's breach of the terms of the lease; and (3) defendant's tenancy in federally subsidized housing giving defendant a substantial equitable interest in maintaining the housing provided to him by the subsidy. (citation omitted) Urban Hollow Apartments supra at 2290.

The referee concludes that these issues weigh in favor of this defendant's claim for equitable relief.

Based upon the findings of fact, the referee also concludes that plaintiff's agent acted reasonably in not accepting defendant's late rent payment. The evidence clearly established that defendant had been late with her rental payment just the previous month. Less than 30 days before her

September rent was due, defendant signed an agreement of strict compliance acknowledging that any future late payment would initiate an eviction action. This action was properly filed because defendant did not pay her rent on time and then refused to leave the premises. Additionally, the case cited by defendant stress as an element of equitable relief that the landlord be compensated for defendant's breach. For these reasons and pursuant to Civ. R. 54, the referee concludes that defendant should be assessed costs for this action.

#### RECOMMENDATION

Judgment in favor of defendant for possession of the premises. Cost to be paid by defendant.

Referee Antonio B. Paat, Jr.  
REFEREE ANTONIO B. PAAT, JR.

ABP/mmc/12/3/94

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**CERTIFICATE OF SERVICE**  
THE UNDERSIGNED SERVED A COPY OF THE FOREGOING REFEREE'S REPORT BY ORDINARY MAIL UPON ALL PARTIES HERETO AT THE ADDRESSES SET FORTH IN THE RECORD ON THE 5<sup>th</sup> DAY OF December, 1994  
M. Campbell  
DEPUTY BAILIFF