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COLUMBUS METROPOLITAN HOUSING

AUTHORITY :

PLAINTIFF, :

VS. :

CASE NO. M 9510CVG-028670

DAKIA L. HORSLEY :

DEFENDANT. :

MAGISTRATE'S DECISION

This cause came on for hearing before Magistrate Dennis Kimball on December 7, 1995. The plaintiff was represented by Atty. John Waddy. The defendant was represented by Atty. Joseph Maskovyak. Based upon the evidence and arguments presented, the magistrates issues the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. At the hearing on December 7, 1995, the sole issue for decision was whether the plaintiff's lease termination notice complied with 24 CFR 966.4(1)(3)(ii), which states

The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to Section 944.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure.

2. The eviction in this case was based upon the plaintiff's claim that the defendant was engaged in drug related criminal activity. With the eviction based on such an allegation of illegal drug activity, federal regulations governing the subsidized tenancy in this case permit the plaintiff to choose (and the plaintiff did choose) to not afford the

defendant an opportunity to formally request a grievance hearing. The notice served upon the defendant contained all the necessary statements required by federal regulations with the exception that it failed to state that the defendant had a "right to make such reply as the tenant may wish" or similar words to that effect.

3. Under 24 CFR 966.4(1)(5)(i), the plaintiff is given the discretion to consider several circumstances in its decision to proceed with an eviction when the action is based upon the criminal activity of its tenants. Some of the circumstances include the "seriousness of the offense, the extend of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity." That discretion extends to the possibility that the plaintiff could permit family members not involved in the criminal activity to continue the tenancy and to merely exclude the offending tenants from the property. Presumably, a tenant who is advised of a right to reply to the eviction notice could inform the plaintiff about some of the enumerated circumstances it may consider in deciding whether to proceed with the eviction.

4. On November 7, 1995, the defendant filed a motion to dismiss based upon the claim that the termination notice failed to inform the defendant of a right to reply to the eviction notice. The plaintiff contends that it has no obligation to inform the defendant of a right to reply when the eviction is based upon alleged criminal activity.

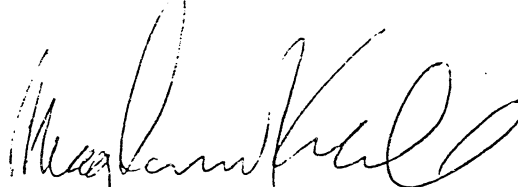
CONCLUSIONS OF LAW

The magistrate finds that the lease termination notice served in this case failed to comply with 24 CFR 966.4(1)(3)(ii) by failing to inform the defendant of a right to reply to the eviction. The requirement for such a

notice is clearly stated in the first sentence of that section, quoted above. The plaintiff's contention that such a notice is not required in situations where no grievance hearing is required is belied by the last sentence of the language quoted above, which provides that "the notice shall also inform the tenant" of a right to request a formal grievance hearing when an opportunity for one is required. The use of the word "also" indicates an intention that all notices, regardless of any requirement to provide grievance hearings, must inform tenants of a right to reply. With this notice not informing the defendant of a right to reply to the eviction, the magistrate concludes that the notice is defective. When this magistrate announced his decision on this issue in court, the plaintiff filed a notice of dismissal on both causes of action.

DECISION

Dismiss both causes of action at the plaintiff's costs.



MAGISTRATE DENNIS R. KIMBALL

DRK/kjr/2-1-96

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