

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

Deerwood Management Co.,

Plaintiff

-v-

Ruby Flint,

Defendant.

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FRANKLIN COUNTY
MUNICIPAL COURT
TED HYSELL, CLERK

Case No. M'85CVG 24397

This cause came on for hearing before Referee Dennis Kimball on October 2, 1985 on defendant's motion to dismiss. The plaintiff was represented by Attorney Damon Wetterauer. The defendant was represented by Attorney Michael Kirkman. Based upon the evidence presented, after weighing the credibility of the witnesses, the Referee makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The defendant is a tenant in property known as 5681 Erika Court in Galloway, Ohio managed by the plaintiff at all times relevant. The parties herein participate in a federal housing subsidy program administered by HUD, and are bound by HUD regulations incorporated into the lease. Pursuant to the lease and those regulations, the plaintiff served a "notice to leave premises" alleging a breach of the defendant's duty under the lease to keep the unit clean, to not destroy any part of the unit, to remove garbage, and to not have pets in the unit. Also pursuant to federal regulations, the notice gave the defendant 10 days to "discuss the proposed termination with the owner's agent." The defendant requested such a hearing on August 13, 1985. The plaintiff had not responded to that request by August 23 when it filed the forcible entry and detainer action herein. Finally the plaintiff did notify the defendant that a hearing would be held at 4:00 p.m. September 12, 1985, one day before the first court date in this case.


2. The meeting of September 12 was very brief. The agent for the plaintiff attending the meeting, Tom Gilbride, met the defendant and James Bosveld who accompanied the defendant. Mr. Bosveld is a legal assistant with the Legal Aid Society of Columbus. Initially Mr. Bosveld noted that the eviction hearing was scheduled for the next morning, and he questioned whether Mr. Gilbride was serious in listening to the defendant's position in this matter. Mr. Gilbride indicated that the plaintiff had large amounts of evidence, and that the plaintiff would proceed. Mr. Bosveld asked if there was anything that could be said which would cause him to stop the eviction. Mr. Gilbride indicated that nothing said would change his mind. This is corroborated by Mr. Gilbride's testimony in court that he does not wish to waste the court's time, and that once he starts an eviction he has every intention of going through with it. Since disclosing her defenses at that meeting would be futile and would possibly jeopardize her position in the eviction case the next morning, the defendant and Mr. Bosveld left without further discussion. The September 13 hearing date was ultimately reassigned to October 2, the date of the hearing before this Referee.

CONCLUSIONS OF LAW

The Referee finds that the plaintiff has not complied with federal regulations in pursuing this eviction by a preponderance of the evidence. The plaintiff failed to give the defendant a meaningful opportunity to be heard at the meeting of September 12 mandated by federal regulations. On this point it is important to note that conducting such a meeting is not a mere formality. If both parties approach such a meeting with open minds, the possibility exists that an accomodation can be reached which would avoid the necessity for filing the eviction. For that reason, the Referee concludes that the meeting must be conducted by an agent for the landlord who is at least willing to listen and consider the stated position of the tenant. In this case, Mr. Gilbride's mind was made up before the hearing commenced. The defendant's reluctance to risk the disclosure of her defense for no apparent gain was reasonable. Thus the Referee concludes that the meeting of September 12 did not adequately discharge the plaintiff's responsibility under federal regulations to conduct an informal hearing to discuss the grounds for the eviction in this case.

REFEREE'S RECOMMENDATION


The Referee recommends that the complaint herein be dismissed at the plaintiff's costs.



REFEREE DENNIS KIMBALL

Copies to:

Damon Wetterauer, Attorney for Plaintiff
Michael Kirkman, Attorney for Defendant


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