

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

FRANKLIN COUNTY  
MUNICIPAL COURT  
W.M. J. ...  
ERK

1987 DEC - 1 AM 9:44

FILED

Kimberly West Company, :  
Plaintiff, :  
-vs- :  
Robin A. Smith and all occupants, :  
Defendant. :

Case No. M'8710CVG 33507

This matter came for hearing before Referee Kathleen E. Graham on November 23, 1987. Plaintiff was represented by attorney Damon Wetterauer and defendant was represented by attorney Donna Mayer. Defendant moved the Court to dismiss the action on the basis that the notice to leave the premises served upon the defendant failed to comply with federal law. Based upon the evidence presented and the arguments of counsel, the referee makes the following Findings of Fact, Conclusions of Law and Recommendation:

FINDINGS OF FACT

1. Defendant rents the property located at 3750 Kimberly West Drive from the plaintiff pursuant to the terms of a written lease agreement dated February 14, 1987, a copy of which was attached to plaintiff's complaint. The lease agreement between the parties is subject to federal eviction procedures contained in 24 C.F.R. 247 subpart A.
2. A copy of the notice served upon the defendant in compliance with O.R.C. 1923.04 is also attached to plaintiff's complaint.

CONCLUSIONS OF LAW

In order to terminate National Housing Act 236 Subsidized Housing

Project, a landlord must notify the tenant in writing and the notice shall:

"(1) State that the tenancy is terminated on a date specified therein;

(2) state the reasons for the landlord's actions with enough specificity so as to enable the tenant to prepare a defense."

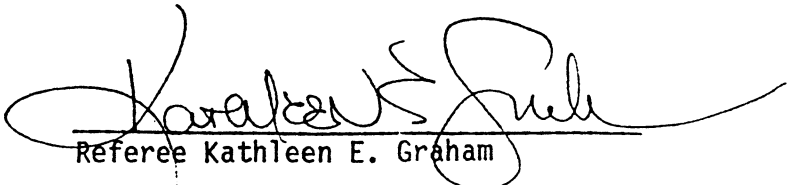
In addition, Section 247.4 (e) states:

"Specificity of notice in rent non-payment cases. In any case in which a tenant is terminated because of the tenant's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity set forth in paragraph (a) and (2) of this section."

The referee concludes the notice served upon the defendant in this case fails to state the reasons for termination with sufficient specificity for the defendant to prepare a defense. Although the language of section 247.4 (e) is not mandatory, it is indicative of the degree of specificity contemplated by the federal regulations. Accordingly, the referee concludes the notice in this case at a minimum should have included the amount of the rent past due and the period for which rent was past due as of the date of the notice.

REFEREE'S RECOMMENDATION

Defendant's motion to dismiss be granted. That the hearing previously scheduled for December 3, 1987, be cancelled on the basis that defendant's motion to dismiss is dispositive of all issues and that plaintiff's complaint be dismissed. Costs to plaintiff.

  
Referee Kathleen E. Graham

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Copies to:

Damon E. Wetterauer, Jr.  
Attorney at Law  
151 Walnut Ridge Lane  
Westerville, Ohio 43081  
Attorney for Plaintiff

Donna Mayer  
Attorney at Law  
Legal Aid Society of Columbus  
40 West Gay Street  
Columbus, Ohio 43215  
Attorney for Defendant

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November 30, 1987