

CS FEB 15 1989

COLONIAL AMERICAN DEVELOPMENT :
 Plaintiff, :
 -vs- : CASE NO. M'88 CVG 42042
 JEFFREY MOREY :
 and DEBRA MOREY :
 Defendants. :

REFEREE'S REPORT

This cause came on for hearing before Referee Dennis Kimball on January 5, 1989. The plaintiff was represented by Attorney Robert Reed. The defendants were represented by Attorney Joseph Maskovyak. Based on the evidence presented and after weighing the credibility of the witnesses, the referee makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The defendants have been tenants of property owned by the plaintiff since 1982. The defendants initially occupied the unit at 2886 Harrisburg Station Lane. On or before July of 1984, the defendants moved to the unit at 2890 Harrisburg Station Lane.
2. From May of 1982 through November of 1988, there have been approximately 25 repairs performed by the plaintiff at the defendants' residence. Nearly all of the repairs were requested by the defendants. Approximately 4 repairs were requested by the plaintiff when they discovered damages during inspections. Many of the repairs requested by the defendants were relatively minor, such as replacing a light bulb in the range hood. A few of the requests were to correct conditions that did not exist when the repairman arrived. On several occasions, door stops had to be replaced in the unit.

3. Throughout this tenancy, the plaintiff would review the repairs made on the defendants' unit and determine what portion exceeded normal wear and tear. The plaintiff would then bill the defendants for the cost of the damages which exceeded normal wear and tear. The defendants have paid all but the latest of those charges in a reasonable time. The defendants are in the process of paying the latest charge which was received after this action was filed. In addition, the defendants admitted causing damage to a light pole. The plaintiff would not have determined who caused the damage if it were not for the defendants' voluntary admission. The defendants hope to pay for that damage when the plaintiff determines the amount.

4. The plaintiff did not prove who caused many of the damages repaired during the defendants' tenancy. The defendants clearly caused the missing door stops and the repair requests which were determined to be unnecessary. In addition, the plaintiff proved that the defendants caused those damages beyond normal wear and tear for which the plaintiff charged them. However, the plaintiff did not prove the cause of damages to the front door, various windows and screens, the storage shed door, the garbage disposal, weather stripping, the heating element in the oven, and caulking in the bathtub. Based on all the evidence, the referee finds that the defendants have fully reimbursed the plaintiff for the damages caused by their tenancy.

5. The plaintiff has a policy of annually inspecting the apartments to determine if the tenants are keeping them clean. On September 6, 1988, the plaintiff performed an inspection of the defendants' unit. On a copy of the inspection form left with the defendants, the only specific objections noted concerned the living room carpet, the kitchen floor, a water leak in

the kitchen ceiling, a screen missing from the kitchen window, paint falling from a stairway ceiling, a missing stopper in the bathroom sink, a knicked door in the bathroom, and a chain on a closet door in the back bedroom. The form also stated "apartment very dirty" at the bottom, with the word "poor" appearing at the top of the form. The plaintiff's witness who performed the inspection, Leslie Smith, apartment manager for the plaintiff, performed that inspection plus approximately 50 other inspections within a two hour period. Ms. Smith claimed that she did not have time to complete the form while in the defendants' unit. She completed her copy of the form back at the office. On her copy she indicated that the entire living room, kitchen, utility room, half bath and bath were dirty, along with all three bedrooms. Defendant Debra Morey denied that the apartment was in such a condition on that inspection. In addition, the defendants produced the testimony of a friend who saw the apartment the evening before the inspection. She disagreed with the plaintiff's appraisal that the unit was generally dirty. Given that Ms. Smith had inspected the units in such a short period of time and did not prepare the final version of the inspection form until after those inspections, the referee does not place as much weight on her testimony concerning the specific dirty conditions as that placed on the defendants' testimony to the contrary. Thus, the referee finds that the plaintiff failed to prove that the defendants' apartment unit was kept in such a dirty condition as to amount to a material breach of the lease.

CONCLUSIONS OF LAW

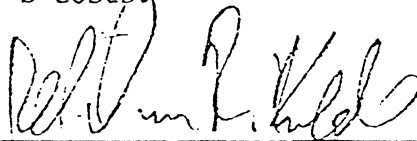
The referee finds that the plaintiff has not proven a right to recover in this action by a preponderance of the evidence. The federal regulations located at 24 CFR §880.607 (B)(3) list material non-compliance

with the lease as "(i) One or more substantial violations of the lease, or (ii) repeated minor violations of the lease that...interfere with the management of the building or have an adverse financial effect on the building." The defendants repeatedly requested repairs to their unit, but only some of the repairs were caused by the defendants' negligence. The number of repairs caused by the defendants, when considered over the length of the tenancy, was not an unreasonable number. In addition, the defendants paid all the charges associated with those repairs. Thus, the plaintiff has not proven an interference with its management or an adverse financial impact caused by the defendants' tenancy.

In addition, the plaintiff failed to prove that the conditions discovered in the apartment unit on September 26, 1988 were so unclean as to amount to a material breach of the lease. The plaintiff's witness clearly testified to such conditions, but the documentation which she left with the defendants failed to corroborate the details which she later listed on her own copy of that form. Defendant Debra Morey denied the existence of those conditions, and that denial was corroborated by the testimony of another witness. Therefore, the evidence presented by the defendants was accorded greater weight on this point.

REFEREE'S RECOMMENDATION:

The referee recommends judgment for the defendants, with the complaint to be dismissed at the plaintiff's costs.



REFEREE DENNIS R. KIMBALL

ALL PARTIES NOTIFIED:

DRK:seh
February 13, 1989