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FRANKLIN COUNTY
MUNICIPAL COURT
W. J. DEER, CLERK

CHARLES SUMNER :

Plaintiff, :

-vs- :

GINGER AYERS :

Defendant. :

CASE NO. M'89 CVG 18789

REFEREE'S REPORT

This cause came on for hearing before Referee Dennis Kimball on June 13, 1989. The plaintiff represented himself. The defendant was represented by Attorney Molly Hennessey. Based upon 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 defendant is a tenant of property owned by the plaintiff at 1116 E. 23rd Avenue in Columbus, Ohio. The tenancy receives a federal subsidy from the Department of Housing and Urban Development (HUD) under its Section 8 Moderate Rehabilitation Program. The plaintiff has signed a Housing Assistance Payment contract with the federal government. Due to a mix up by the federal authorities, the plaintiff and defendant have not yet signed a written lease for the property. However, the parties have signed an "Addendum To Lease". Paragraph (f) of the addendum requires the plaintiff to give a notice of any proposed termination of tenancy "stating the grounds and advising the Family that it has an opportunity to respond to the Owner."

2. The plaintiff seeks to evict the defendant for non-payment of rent, destruction of property, and having an unauthorized pet. On April 13,

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1989, the plaintiff served a "Notice to Leave Premises" alleging those grounds. That notice did not inform the defendant of her opportunity to respond to the plaintiff about those grounds. The plaintiff served another "Notice to Leave Premises" on May 15th which also failed to inform the defendant of an opportunity to respond to the plaintiff. No other notices were served in this case.

CONCLUSIONS OF LAW

The referee finds that the plaintiff has not proven a right to restitution of the property by a preponderance of the evidence. Although no formal lease was executed between the parties, the "addendum" signed by the parties effectively modified the terms of the oral tenancy between the parties to the extent of requiring the plaintiff to give the defendant written notice which informed the defendant of an opportunity to reply to the grounds stated on the notice. The plaintiff failed to do so. The plaintiff must strictly comply with all the terms of a federally subsidized lease in order to terminate that lease through an eviction.

REFEREE'S RECOMMENDATION:

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



REFEREE DENNIS R. KIMBALL

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DRK:seh
June 27, 1989