

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

FRANKLIN COUNTY
MUNICIPAL COURT
J. DANIEL CLERK
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CAPITAL PARK APARTMENTS :
Plaintiff, :
-vs- :
TAMARA L. FUNDERBURKE :
Defendant. :

CASE NO. M'90 CVG 18599

REFEREE'S REPORT

This cause came on for hearing before Referee Dennis Kimball on July 2, 1990. The plaintiff was represented by Attorney Damon Wetterauer. The defendant was represented by Attorney David Scott of the Legal Aid Society of Columbus. Based upon the testimony and 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 of the plaintiff's apartment complex in a residence located at 2251 Albert Avenue in Columbus, Ohio. The parties participate in a federal subsidy program whereby the defendant's rent obligation was \$42 per month for the apartment unit. Defendant failed to pay, May, 1990 rent on time because her "ADC" benefits had terminated at the end of March, 1990. The defendant caused the termination because of her failure to cooperate in the "re-application process." The defendant managed to pay April rent. However, two times during the month of April, the defendant underwent medical treatment involving two attempts to terminate her pregnancy. During the second attempt, the defendant discovered that she had a tumor which required further medical treatments. The hospitalizations

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that occurred prevented her from attending a hearing scheduled on her April 4th re-application for ADC benefits.

2. She again applied for benefits on May 7th. She could not borrow any money from her mother for May rent because she had already borrowed from her to help pay for the prior medical treatments. On May 8th, the plaintiff served the defendant with a proper 3-day notice which contained the certification required by federal regulations advising the defendant of her right to meet with the landlord within 10 days. The defendant contacted the plaintiff on May 31st, promising to pay the past due rent at the close of business that day. An employee of the plaintiff kept the office open later than normal in the hopes that the defendant would make the payment. However, she did not do so because her sister (who had agreed to loan the defendant the money to make the payment) failed to meet with the defendant.

3. The next day the defendant received a check for past ADC benefits. She offered to pay all of the past due rent. On June 5th, the plaintiff notified her that she could pay up only if she also agreed to vacate the property. The defendant declined.

4. After learning of the termination of her ADC benefits on March 15th, the defendant had at least 5 contacts with the plaintiff. During any one of those contacts, the defendant could have told the plaintiff about the termination of benefits. In fact, under the federal subsidy program, the defendant had the obligation to contact the plaintiff about any change in income. The defendant failed to do so. Indeed, one of the contacts resulted, at the plaintiff's urging, in the defendant preparing the forms necessary to conduct the regularly scheduled re-certification of her housing

benefits. On that form, the defendant falsely stated that she was still receiving ADC benefits. Had the defendant stated that she had lost her benefits and then provided the necessary documentation of that fact, the plaintiff would have been required to re-certify her rent obligation to zero. Defendant claims that she did not notify the plaintiff about the loss of benefits because her previous attempt to notify the plaintiff about a previous loss of benefits had not been helpful. The referee did not find the defendant's testimony on that point credible.

CONCLUSIONS OF LAW

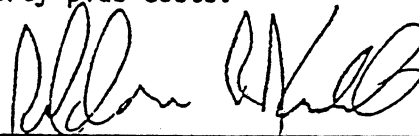
The referee finds that the plaintiff has proven a right to recover possession of the property by a preponderance of the evidence. The defendant argues that the case of Zanetos v. Sparks (1984), 13 Ohio App. 3d 242 (Court of Appeals for Franklin County), operates to prevent the court from allowing a forfeiture of defendant's right to occupy the property. It is true that defendant in this case was able to make up the past due rent, thereby qualifying for equitable consideration under Zanetos. However, Zanetos requires the court to balance the equities in this case.

From the defendant's point of view, it would appear that the tenant lost her ADC benefits and failed to recover them quickly through circumstances beyond her control. Moreover, the defendant stood ready to pay the past due rent the day after the final deadline for payment, thereby remedying any technical breach. However, from the plaintiff's point of view, it is required to apply its rent acceptance policy uniformly through the federal subsidy program. Setting a deadline for final payment of rent on the last day of the month in question was reasonable. The plaintiff's

refusal to accept the tender after May 31st was not arbitrary. Finally, of greatest importance is the fact that the defendant had ample opportunity to protect her tenancy by reporting her loss of benefits to the plaintiff. Had she done so, her rent obligation would have been eliminated while preserving her right to remain in possession. Equity should not protect that which the defendant would not protect. The referee concludes that the equities favor the plaintiff in this action.

REFEREE'S RECOMMENDATION:

The referee recommends judgment for the plaintiff against the defendant for restitution of the property plus costs.



REFEREE DENNIS R. KIMBALL

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DRK:seh
July 17, 1990