

IN THE FRANKLIN COUNTY MUNICIPAL COURT  
COLUMBUS, OHIO

Allen Pendergrass, et al :  
 :  
Plaintiff, :  
 :  
vs. :  
 :  
Billie Kelly :  
 :  
Defendant. :

Case No. M9110CVG-036723

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REFEREE'S REPORT

This matter came for hearing before Referee Kathleen E. Graham on December 31, 1992. Plaintiffs represented themselves. Defendant was represented by Attorney ~~Michael Richter~~ <sup>David Scott</sup>, The Legal Aid Society of Columbus. Third Party defendant Columbus Metropolitan Housing Authority (hereinafter referred to as "CMHA") was represented by Attorney John Waddy, Jr. A court reporter was present.

At the outset, the parties raised the issue of whether CMHA was a necessary party to the first cause of action. After hearing the arguments of counsel, this referee concluded that CMHA was not a necessary party to the first cause of action.

Thereafter, witnesses were sworn and exhibits offered and admitted into evidence. Based upon the evidence presented, the referee makes the following Findings of Fact, Conclusions of Law and Recommendation:

FINDINGS OF FACT

1. Defendant leased the premises owned by the plaintiffs and located at 72 Miami Avenue #B in Columbus,

Ohio pursuant to the terms of a written lease agreement dated October 22, 1988. (Plaintiffs exhibit A). Shortly thereafter, plaintiffs and defendant signed a second lease agreement which entitled the parties to receive the benefit of a Section 8 federal housing subsidy. (Defendant's exhibit 1). Pursuant to that agreement, a portion of defendant's rent was paid by CMHA with the remainder, if any, paid by defendant.

2. For most of her tenancy, defendant was employed. In September 1991, defendant was employed by Columbus Southern Power. In mid September, defendant was advised by her employer that she was going to have to change employment locations. Because she did not have a car or other means of transportation to get her to her new employment location in Grove City, Ohio, defendant realized that she would be losing her job.

3. Sometime prior to September 11, 1991, defendant called Terry Cooper at CMHA and advised her that she would be losing her job. Ms. Cooper's job at CMHA is to conduct the annual eligibility reviews required by CMHA. After another discussion later in the month, defendant and Ms. Cooper agreed to discuss the defendant's change in employment status on October 3, 1991, the date CMHA had previously scheduled for an annual review. (Defendant's exhibit 2).

4. By letter dated September 20, 1991, CMHA notified defendant of their intent to terminate the Section 8 subsidy based on defendant's alleged failure to permit an inspection of her unit. (Defendant's exhibit 3).

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5. On October 1, 1991, Ms. Cooper called defendant to advise her to bring her termination notice from her employer to the meeting on October 3, 1991.

6. Defendant appeared at the scheduled time on October 3, 1991 with her employment termination notice. (Defendant's exhibits 4 & 5). At that time, defendant was told by Ms. Cooper that she would not conduct the income review and adjust defendant's rent for October because, according to Ms. Cooper's interpretation, CMHA had already terminated the defendant from the Section 8 Program. That same day, a letter was prepared by CMHA and eventually mailed to the defendant which notified her that the Section 8 subsidy would terminate effective December 1, 1991. (Defendant's exhibit 6).

7. Effective October 1, 1991, defendant's sole source of income was ADC benefits in the amount of \$274.00 per month. Defendant received one half months' subsidy for October in the amount of \$141.00.

8. Plaintiffs received \$137.00 from CMEA towards defendant's rent for the month of October 1991. Defendant failed to pay the balance due to October of \$336.00 plus a late fee of \$25.00.

9. Plaintiffs complied with all the termination notices required for federally subsidized housing.

10. A "Notice To Vacate Premises" was served properly upon the defendant on October 10, 1991. (Joint exhibit 1).

CONCLUSIONS OF LAW

The only issue in this action is the alleged non payment by the defendant of her portion of the October 1991 rent. Defendant admits that she did not pay any amount to the landlord for the October 1991 rent. However, defendant asserted as a defense that CMHA failed to do what they were obligated to do by federal statute and by contract - i.e. to adjust the subsidy to plaintiffs according to changes in defendant's income. The evidence proved that Ms. Cooper, a fairly new employee of CMHA back in September 1991, misunderstood the significance of the proposed termination notice dated September 20, 1991. She failed to permit defendant to present evidence of a change in her circumstance and have the rent adjusted accordingly..

Defendant acted promptly to notify CMHA of the need for an interim adjustment. CMHA chose to wait until the date of her scheduled annual review and then refused to make any adjustment. Defendant's argument has merit. Defendant was still a participant in the Section 8 programs for the months of October and November 1991 and was entitled to the benefits of that program. In fact, CMHA continued to pay the landlords their subsidy during those two months, but denied defendant her right to an interim re-examination. The housing authority's obligation to make the adjustment is mandatory. 24 CFR 882.212(b). Defendant was unable to pay her share of the rent which was twice the amount of her income in October 1991.

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Based upon these conclusions, the question remains whether the defendant is in fact in breach of her agreement with the landlord. The agreement dated November 1, 1988 (Defendant's exhibit 1) sets an amount for rent. However, the parties agreed that the amount of the rent was

subject to change by reason of change to Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD established schedules and criteria or by reason of adjustments by the CMHA of any applicable allowance for utilities and other services.

Therefore, the contract between plaintiffs and defendant clearly contemplates fluctuations in the rent. Plaintiffs agreed that the rent would be subject to change. The evidence showed that had the interim adjustment been done, it would have been retroactive to October 1, 1991. (Public Housing Agency Administrative Practice Handbook for the Section 8 Existing Housing Program November 1979 page 10-9). Plaintiffs did not receive all or any portion of defendant's share of the rent simply because CMHA failed to conduct the interview and make the adjustment.

This referee is sympathetic to plight of the plaintiffs. They are entitled to be paid rent for the use of the property. However, the evidence indicates that the failure to pay rent was not defendant's fault, at least not for the month of October 1991. Accordingly, this referee recommends that the first cause of action be dismissed.

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RECOMMENDATION

Judgment in favor of defendant Billie D. Kelly.

First cause of action only to be dismissed.

  
REFeree KATHLEEN E. GRAHAM

KEG:cg

Copies to:

Allen Pendergrass  
1509 E. Main Street  
Columbus, Ohio 43205

Judy Pendergrass  
1509 E. Main Street  
Columbus, Ohio 43205

PLAINTIFFS

Michael Richter  
The Legal Aid Society of Columbus  
40 West Gay Street  
Columbus, Ohio 43215

DEFENDANT

John Waddy, Jr.  
Attorney-at-Law  
Columbus Metropolitan Housing Authority  
P. O. Box 29007  
Columbus, Ohio 43229

THIRD PARTY DEFENDANT