

IN THE DAYTON MUNICIPAL COURT
CIVIL DIVISION

MIAMI VALLEY HOUSING : 06 CVG 9358
Plaintiff, : (MAGISTRATE MOORMAN)
Vs. :
RICHARD WILLIAMS, : MAGISTRATE'S DECISION
Defendant. :

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MARK E. DRUM
CLERK

FILED
DAYTON MUNICIPAL COURT
CIVIL DIVISION

This matter came before the Magistrate for Hearing on November 2, 2006 and November 7, 2006, with the parties present and represented by counsel. The Magistrate allowed the parties until November 15, 2006 to file Post-Trial Memoranda. Defendant's counsel submitted a Memorandum in Support of Oral Motion to Dismiss. The Magistrate has taken the matter under advisement and now issues her Decision.

On August 31, 2006, Plaintiff, Miami Valley Housing filed a Complaint in Forcible Entry and Detainer against Defendant Richard Williams for failure to pay rent. On October 12, 2006, the Complaint was amended to state that Defendant also had an excess number of pets, which created a nuisance and danger in his apartment building at Briarwood.

At trial, Michael Williams, Plaintiff's Manager, testified that he saw two cats leave Defendant's apartment building and one cat enter through Defendant's apartment window. He stated that the tenants complained of being bitten by fleas within a month. He saw feeding bowls outside of Defendant's apartment window and this drew stray cats and other animals to the apartment building. He warned Defendant not to feed the cats outside. About three months ago, he saw two cats in Defendant's place. Recently, he only saw one cat in Defendant's apartment. There was a meeting about letting pest control in to spray and notice of the minutes of that meeting and the rules for the grounds were distributed to the tenants. Defendant continued to feed cats outside.

Mr. Shafer, a tenant two doors down from Defendant, testified that there are fleas in his apartment and cats around the building. He had no problems with fleas until Defendant came into the apartment. He stated that he saw Defendant let stray cats into the apartment building a few months ago. There have been as many as 25-30 cats outside the building. He saw Defendant put cat food outside of the window and bring in a stray cat. He talked to Defendant about not feeding the cats, but Defendant said that he would feed them anywhere he wants. He complained about having blisters from the flea bites.

Mr. Bentley, another tenant of Briarwood, testified that stray cats run in the front and back doors whenever they are opened, they go right to Defendant's door, and Defendant feeds the cats through his window and outside. He stated that fleas jumped on him whenever he walked down the hall and he had to have his dog treated for fleas. Around 12 tenants complained about the fleas and the cats were also scratching the screens. He told Defendant not to feed the cats and Defendant refused to stop.

Mr. Jones, the maintenance man, testified that the screens in the lower level are torn up from the cats. He saw Defendant feeding the cats. The halls are infested with fleas and, out of 28 buildings, only Defendant's building has a flea problem. Three tenants complained to him about the fleas. Defendant helped him take some cats to the Humane Society. He stated that he still gets calls about fleas and stray cats are still running into the building.

Mr. John Parker testified that he was hired to do pest control at Briarwood. He saw fleas in the laundry room and in the hall. He sprayed for fleas five times at Defendant's apartment and treated ten other apartments. No one, except for Defendant, has cats. He was first called two months ago and could not gain access to Defendant's place. Defendant denied him access and said that he was not having any problems. Mr. Parker goes out every month to ask the tenants if there are problems. He sees cats inside and outside the building. He saw two to three cats in Defendant's place through the window. He saw ten cats around the window and in back and saw bowls outside. He stated that he watched Defendant take two cats through his window. He told Defendant that he should not be taking the cats inside.

Defendant Richard Williams testified that he had a shelter care lease and did get a cat. He denied that cats were going in through his window. He said that there were 25 to 30 stray cats at the building that have been abandoned by other tenants. He admitted feeding the cats, but pointed out that feeding them is not against the law or his lease. He claimed that the other tenants feed the cats. He admitted that Plaintiff and the other tenants asked him not to feed the cats. He acknowledged receiving notices to terminate his lease. He said that he has had two to three cats before. He stated that he did not pay rent because he received the notices to vacate.

Plaintiff submitted the following as Exhibits 1 through 21: MVHO Lease Agreement; photographs of cats and feeding bowls outside of the apartment building; the July 17, 2006 letter giving 30-day Notice to Vacate by August 17, 2006 because of noncompliance with the pet policy; the 3-day Notice to Vacate by August 27, 2006 for noncompliance with pet policy; the Monthly Home Visit Reports from February through July, 2006 with comments that Defendant was told to get rid of extra cats or could be evicted; the 3-Day Notice to Vacate by August 28, 2006 for failure to pay rent; and the MVHO House Rules, Regulations, and Pet Agreement.

Bren Carey testified that he has worked for Plaintiff for four years. He stated that several times Defendant had more than one cat in his apartment and his building is the only one with a cat problem. He stated that he saw food and water dishes and several stray cats near the dishes outside Defendant's window. Fleas became a problem and he spoke with Defendant. Defendant said that the cats in his unit were injured, being babysat or sick. He told Defendant in July, 2006 to stop feeding cats. When he was at the building two weeks ago, he saw food bowls outside of Defendant's window. He stated that the Notice to Vacate was posted on Defendant's door. He admitted that when he was in Defendant's apartment two weeks ago, Defendant only had one cat.

Tammy Ackerman, the tenant services director, testified that she used to do the monthly visits before being the director and there has been a problem with Defendant and cats for six years. She stated that feeding cats brings in strays and fleas and the only problem with cats and fleas was in Defendant's building; stray cats cause a rabies concern; there was a smell of cat urine in the hallway by Defendant's apartment; the screens had to be replaced because they were

scratched; one-half of the building's tenants complained last year; all the tenants in the building have special needs; in August they tried to offer Defendant a new location to live and told him that they were terminating the Lease. She admitted that there was nothing in the Lease about feeding stray animals. She stated that the reason for terminating the Lease was that there was more than one cat. She also admitted that there are fourteen provisions in the Pet Policy and the Notice did not indicate which provision was violated. She said that she verbally told Defendant about having more than one cat. She further testified that Defendant pays part of the rent and the rest is subsidized through Shelter Plus Care. Once she served the Notice to Terminate, the subsidy was rejected and Shelter Plus Care did not pay their portion of the rent. She stated that she would not have accepted September rent from Defendant.

Defendant Richard Williams testified that he paid the rent on time, but ever since July, if he sent it in, they would send it back. Defendant has all of the rent that he owes Plaintiff. Defendant stated that he only had one cat in his apartment. Defendant submitted Exhibits A, B, & C: the customer ledger showing he paid his portion of the rent until August, 2006; a photograph of his cat; and a statement from Bren Carry that on September 20, 2006, he witnessed a bowl of cat food and water outside Defendant's window and saw stray cats eating and drinking.

Defense counsel then moved to dismiss due to issues with the 30-day Notice lacking specificity, the right to talk to the landlord, and the right to cure. Defense counsel cited 24 CFR Section 582 on Shelter Plus Care requirements, *Northland Village v. Hamp* (June 21, 1991), 2nd Dist. No. 12407, and *Cuyahoga Metro Housing v. Younger* (1994), 93 Ohio App.3d 819.

In Defendant's Post-Trial Memorandum, he states that the Complaint against him should be dismissed because Plaintiff failed to establish that it had properly terminated his tenancy. The Notice of Termination did not provide him with enough detail to prepare a defense, advise him of the right to discuss termination with the landlord, or provide him with an opportunity to cure the alleged breach. Defendant claims that this notice is required under his Lease in Section XXVI(C). He points out that there is no provision in the Lease or the Pet Policy prohibiting the feeding of stray cats. An allegation was made that he caused a flea problem, but there was nothing in the

Notice of Termination nor the Complaint regarding this. The Notice of Termination failed to advise him of his right to discuss the matter with the Plaintiff, as required by Lease Section XXVI(C). Defendant also claims that Plaintiff failed to provide him with an opportunity to cure any alleged breach, as required by the Shelter Plus Care provisions in Section 582.

Defendant further asserts that his tenancy should not have been terminated due to failure to pay rent. There was evidence submitted at trial that Defendant consistently paid his rent and only stopped paying after receiving the Notice to Vacate. Further, Defendant testified at trial that he had the back rent and would be able to pay Plaintiff.

The Court finds Defendant's Memorandum well taken. The Court agrees that the Pet Agreement only provides restrictions on pets and does not address visiting or stray animals. The Court also agrees that Defendant did not fail to pay rent. The Court finds that Plaintiff failed to establish that it had grounds for terminating Defendant's Lease.

The Court finds for Defendant Richard Williams and against Plaintiff Miami Valley Housing and hereby Dismisses Plaintiff's Complaint. Defendant is Ordered to pay Plaintiff Miami Valley Housing all rent that is due by November 24, 2006.



MAGISTRATE COLETTE MOORMAN

THE COURT HEREBY ADOPTS THE MAGISTRATE'S DECISION AND
DETERMINATION OF DAMAGES:



JUDGE

A party shall not assign as error on appeal the Court's adoption of any factual finding or legal conclusion in the Magistrate's Decision, whether or not specifically designated as a Finding of Fact or Conclusion of Law, unless the party timely and specifically objects in writing to that factual finding or legal conclusion within fourteen (14) days of the filing of the Decision, as required by Civil Rule 53(D)(3)(b).

Copies to:

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