

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO  
RONALD J.H. O'LEARY, JUDGE

MAY 06 2019

EARLE D. JOHNSON, CLERK

MILLENNIA HOUSING MANAGEMENT LTD  
Plaintiff (s)

Date: April 30, 2019

-VS-

2018 CVG 015007

ELLA L WILLIAMS et al  
Defendant (s)

MAGISTRATE'S DECISION

Case called for trial on Plaintiff's complaint for eviction on March 28, 2019 before Magistrate Heather A. Veljković, to whom it was referred by Judge Ronald J.H. O'Leary pursuant to Ohio Rule of Civil Procedure 53. The matter was not concluded on the scheduled date of hearing, and so the trial was continued to April 2, 2019. At both hearings, a representative of Plaintiff was present and represented by counsel; and Defendant Ella Williams was present, and represented by counsel.

Plaintiff and Defendant Michael Alan Lynn ("Lynn") entered into an Agreed Judgment Entry docketed on January 15, 2019 that dismissed the case as to Lynn only.

Upon Defendant's written motion on the initial date of trial, and oral motion on the continued date of trial—and without objection from Plaintiff either date of hearing—an official court reporter was appointed, Ms. Smith on March 28, 2019, and Mr. Rua on April 2, 2019.

Defendant also sought leave to file a counterclaim; the undersigned Magistrate granted Defendant's oral motion, and gave Defendant a filing deadline of April 16, 2019.

At the close of Plaintiff's case, Defendant made an oral motion to dismiss Plaintiff's complaint on the grounds that 1) the notice of termination did not contain a date certain terminating the tenancy; and 2) the notice of termination did not contain language regarding a tenant's right to reasonable accommodation. The oral motion was opposed by Plaintiff and denied by the undersigned magistrate at that time. However, counsel were afforded an opportunity to file post-trial briefs regarding these two defenses until April 16, 2019 in order to provide the Court with any additional legal authority; counsel for both parties filed briefs.

FINDINGS OF FACT:

{¶1.} Plaintiff is the landlord of the property located at 8925 Hough Avenue, #406 ("premises").

- {¶2.} Defendant resides at the premises pursuant to a written rental agreement (“Lease”), a copy of which was admitted as Plaintiff’s Exhibit 1<sup>1</sup>.
- {¶3.} Defendant’s tenancy is federally subsidized project-based Section Eight.
- {¶4.} On August 10, 2018, Plaintiff served Defendant with a notice terminating the tenancy (“Notice of Termination”). A copy of this notice was admitted as Plaintiff’s Exhibit 13.
- {¶5.} The language of the Notice of Termination, drafted by Plaintiff, suggests that it is a form which anticipates a date certain would be inserted into the parenthetical clause “(30 days from service of this notice),” tailoring it to the particular facts of the case.
- {¶6.} On September 17, 2018, Plaintiff served Defendant with a notice under R.C. 1923.04. (“Three Day Notice”); a copy of this notice was admitted as Plaintiff’s Exhibit 14.

#### CONCLUSIONS OF LAW:

- {¶7.} Plaintiff served Defendant with a notice under R.C. 1923.04, vesting this Court with jurisdiction to proceed.

#### ***Must a Notice of Termination State the Exact Date Expressed as a Month, Day, and Year a Tenancy is Terminated?***

- {¶8.} Defendant argues that the Notice of Termination is deficient, inasmuch as it does not equivocally set forth a date certain that the tenancy would terminate, but rather states “This tenancy shall be terminated as of (30 days from service of this notice).” Plaintiff’s Exhibit 13, Page 1, paragraph 4; parentheses in original. The Notice of Termination bears a date of “8/10/18” in the top left hand corner of the document.
- {¶9.} The Notice of Termination additionally provides, at Page 1, paragraph 6, “Should you not vacate the premises on **the date** set forth above, an action will be commenced against you for eviction, wherein you shall be given the opportunity to present a defense.” [Emphasis added].
- {¶10.} The Lease states, “23. Termination of Tenancy: \* \* \* e. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give Tenant written notice and the grounds for the proposed termination. If the Landlord is terminating this agreement for “other good cause”, the termination notice must be mailed to

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<sup>1</sup> The Lease that was admitted into evidence states that the term is from June 1, 2014 to May 31, 2015; neither party submitted any factual documentation or testimony establishing the current agreement under which Defendant currently resides, but testimony was elicited at trial that Defendant has “recertified” annually. The Magistrate therefore finds that the Defendant’s tenancy was renewed under the existing terms of the Lease admitted.

the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit and in accordance with the State law requirements. \* \* \* **All termination notices must: specify the date this Agreement will be terminated \* \* \*.** [Emphasis added].

{¶11.} “The landlord’s determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated **on a date specified therein \* \*** \*.” 24 C.F.R. 247.4(a). [Emphasis added].

{¶12.} The issue, then, is whether “date” means that Plaintiff was required to express the date in terms of a month, day, and year as argued by Defendant, or whether stating the amount of days--in this instance, thirty--in conjunction with a date on the notice, is sufficient. Counsel for both parties have presented arguments on this issue in post-trial briefs.

{¶13.} Generally, a landlord must comply strictly with the federal notice of termination requirements. See, e.g., *Park Lane Apts. v. Rogers*, No. C-830006, 1983 WL 5322 (Ohio App., Hamilton Cty., Nov. 23, 1983) (“[N]otice of termination of tenancy provided by appellant to appellees was not in strict compliance with 24 C.F.R. § 450.4. Although the notice advised appellees that an eviction proceeding could be instituted if they failed to vacate the premises and recommended they seek legal assistance, it did not inform them of their right to present a defense at such a proceeding as required by 24 C.F.R. § 450.4.”).

{¶14.} Defendant cites to *Hedco, Ltd. v. Blanchette*, 763 A.2d 639 (2000), in which the Supreme Court of Rhode Island held that the notice a subsidized landlord served to terminate a lease was insufficient because it failed to specify the exact date of termination. The trial court judge in *Hedco, Ltd.* said, “It doesn’t say the tenant has to count the dates. It says the tenant has to be notified of the date. \*\*\* [T]he regulations are pretty specific as far as what notice the defendant must be given; and date means date.” *Id.* at 641.

{¶15.} The landlord in *Hedco, Ltd.* argued, as Plaintiff does here, that a phrase describing a time period, when read in conjunction with the mailing date, can determine the date with as much specificity as if the day, month, and year were explicitly written out. The *Hedco* court discounted the landlord’s argument, and additionally distinguished the facts before it from the case cited by the landlord (and Plaintiff’s counsel herein), *Jefferson Garden Associates v. Greene*, 202 Conn. 129 (1987). The *Jefferson Garden Associates* case can be distinguished from *Hedco Ltd.*, and the instant case, as the landlord in that case provided a notice of termination with a termination date expressed as a month, day, and year.

{¶16.} The facts of *Hedco, Ltd.* are almost identical to the facts before the court on the instant matter, though, as Plaintiff asserts, the notice in *Hedco Ltd.* was a combined noticed under both federal and state law.

{¶17.} The decision in *Hedco Ltd.* also has been followed by at least one municipal court in Ohio. *Independent Mgmt. Svcs. Of Ohio, Inc. v. Davis* (July 18, 2014), Elyria Muni. Court 2014 CVG 01244, Magistrate's Decision. The undersigned magistrate concludes that the reasoning, rationale, and outcome of *Hedco, Ltd.* are persuasive and should be applied and adopted in this Court.

{¶18.} Because Plaintiff did not specify the date—expressed as a month, date, and year—the tenancy would be terminated, Plaintiff has failed to comply with the Code of Federal Regulations that govern these types of subsidized tenancies, and also has failed to abide by the terms of the Lease.

{¶19.} Because Plaintiff has failed to properly terminate the tenancy, the Court will not reach the issue of whether Defendant breached the Lease, or whether Plaintiff was required to provide Defendant with information regarding reasonable accommodation in the Notice of Termination.

RECOMMENDATION:

{¶20.} Plaintiff's Complaint should be dismissed without prejudice.

  
Magistrate, Housing Division

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this Magistrate's Decision was sent by regular U.S. mail to the parties on

5/31/19.

