

IN THE EUCLID MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

NATIONAL CHURCH RESIDENCES)
dba SUMMERWOOD COMMONS)

Plaintiff)

vs.)

EVA NEAL)

Defendant)

CASE NO.: 04-CV-G-1264

DATE: September 1, 2004

JUDGE DEBORAH A. LEBARRON

MAGISTRATE'S DECISION

This matter came before this Court on the 27th day of August, 2004, upon the Plaintiff's Complaint. Attorney Edward Kraus appeared on behalf of Plaintiff. Attorney Dennis Dobos represented the Defendant. The Court was advised that the parties were unable to resolve the matter and trial was commenced.

FINDINGS OF FACT

1. Plaintiff is the authorized agent for the owner of the property located at 19630 Euclid Avenue, Euclid, Ohio.

2. The Defendant entered into a lease for the premises located at 19630 Euclid Avenue, Euclid, Ohio, Unit #206 on December 17, 2003.

3. The grandsons of Defendant, Christopher Neal and Alfonzo Jordan, reside in Unit 206 with their grandmother.

4. On or about the 3rd day of June, 2004, Mr. Alonzo Crosby, an employee of Plaintiff, served a three-day notice upon Defendant pursuant to ORC 1923.04.

5. The three-day notice served upon Defendant on June 3, 2004 refers to violations of her signed lease and acts of her household members.

6. On or about March 29, 2004, a letter was forwarded to Defendant by Ms. Janine Stanchfield, the senior property manager, advising Defendant of complaints pertaining to guests and household members.

7. That the aforementioned rental property has received an allocation from the Low-Income Rental Housing Tax Credit Program administered by the State of Ohio.

CLERK OF COURT
EUCLID MUNICIPAL COURT

SEP 01 2004

FILED

CONCLUSIONS OF LAW

Plaintiff's Complaint alleges that Defendant has forcibly and unlawfully detained Plaintiff from the possession of the premises located at 19630 Euclid Avenue, Euclid, Ohio, Unit #206.

Before determining the merits of the case, this Court must determine if it has jurisdiction to proceed. The Defendant raised the jurisdictional argument at various times during the trial and this Court held Defendant's oral motion in abeyance until the entire matter was heard.

Pursuant to 1923.04 of the Ohio Revised Code, a landlord is duty bound to give a tenant a three-day notice to vacate. The statutory three-day notice to vacate is statute prerequisite to filing an action in forcible entry and detainer.

A landlord's acceptance of future rent after service of the ORC 1923.04 notice to vacate waives the notice to vacate. Graham v. Pavarini (1983) 9 Ohio App 3d 89, 458 NE 2d 421.

The question of acceptance of rent hinges upon the determination of a future versus past rent. A landlord's acceptance of past rent, after service of the three-day notice, does not vacate the notice to vacate.

In the case sub judice, Defendant pays a portion of her rental obligation, and the balance of the rental obligation is paid pursuant to a tenant based assisted housing program.

The Plaintiff has acknowledged receiving the housing voucher payments for the months of July and August, 2004. These months are after service of the 1923.04 notice to vacate. The Plaintiff has not accepted the Defendant's contribution towards rent for those same months.

The Defendant argues and relies upon a series of municipal court cases which stand for the proposition that a landlord's acceptance of the subsidy payment, after the landlord has served the tenant with a notice to vacate, waives the notice to vacate.

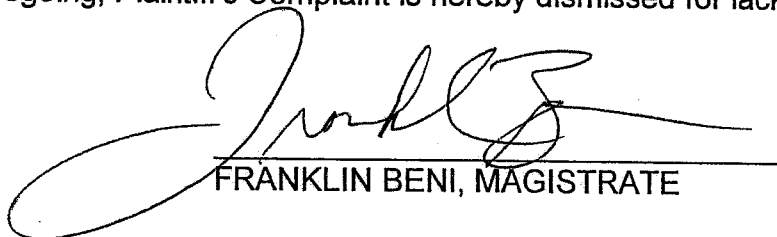
Baker v. Wade, No. 2002-CVG-15892 (Mun. Ct. Cleveland, Oct. 2, 2002); Tolle v. Hill, No. CVG-9600580 (Mun. Ct. New Philadelphia, March 13, 1997); Orlosky v. Adams, No. 95-CVG-981 (Mun. Ct. Painesville, Sept. 21, 1995); Wright v. Rash, No. 93-CVG-10748 (Mun. Ct. Cleveland, June 29, 1993); Lipford v. Ward, No. 92-CVG-0727 (Mun. Court Canton, March 24, 1992); Green v. Sephus, No. 90-CVG-1768-38 (Mun. Ct. East Cleveland, Jan. 8, 1991); Schaefer v. Robertson, No. K86-CVG-1104 (Mun. Ct. Portage Cty. Nov. 10, 1986).

This Court is mindful, however, of the case of National Corp for Housing P'ships v. Chapman, 18 Ohio App 3d 104, 481 NE 2d 654 (1984), which held that a landlord's acceptance of rent subsidy from HUD did not waive the three-day notice, and therefore, the tenant may be evicted.

In the case at bar, there was very little testimony as to the nature of the subsidy payment. This Court believes that Plaintiff received one subsidy payment check for multiple vouchers and thus, accepted said payment.

This Court is persuaded by the by the cases emanating from the various municipal courts and referred to above. The Plaintiff's acceptance of July and August subsidy payments on behalf of the Defendant waived the notice to vacate tendered to Defendant on June 3, 2004. Thus, this Court is without jurisdiction to proceed on the merits of the forcible entry and detainer complaint.

Based upon the foregoing, Plaintiff's Complaint is hereby dismissed for lack of jurisdiction.


FRANKLIN BENI, MAGISTRATE

THE PARTIES HAVE FOURTEEN (14) DAYS FROM THE DATE OF THE FILING OF THIS DECISION TO FILE WRITTEN OBJECTIONS WITH THE OFFICE OF THE CLERK OF COURT. ANY SUCH OBJECTIONS MUST BE SERVED ON ALL PARTIES TO THIS ACTION, AND a COPY MUST BE PROVIDED TO THE EUCLID MUNICIPAL COURT. a PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THAT DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIVIL RULE 53(E)(3).