

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

New Longwood Associates

DATE: April 26, 2006

Plaintiff

-vs-

CASE NO.: 2006 CVG 7635

**Aaron Smith; and
Renise Smith**

Defendants

JUDGMENT ENTRY

The Court, having reviewed the *Magistrate's Decision* of April 26, 2006 under Ohio Rule Of Civil Procedure 53(E)(4), adopts that decision.

The Court grants judgment to both Defendants on Plaintiff's first cause of action.

JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this *Judgment Entry* was sent via regular U.S. Mail to the following on

___/___/___.

Attorney for Plaintiff

Michael P. O'Malley
Grant & O'Malley
C.A.C. Building, Suite 300
1148 Euclid Avenue
Cleveland, OH 44115

Defendants

Aaron Smith
Renise Smith
2462 Triedstone
Cleveland, OH 44115

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Defendants

MAGISTRATE'S DECISION

This case was set for trial on Plaintiff's first cause of action April 5, 2006. Plaintiff appeared through counsel. Defendant Aaron Smith appeared without counsel. Defendant Renise Smith did not appear. Magistrate David D. Roberts conducted the trial, Judge Raymond L. Pianka having referred the case to Magistrate Roberts under Civil Rule 53.

Findings of Fact

1. Plaintiff is the owner of the property at 2462 Triedstone, Cleveland, Ohio, which is part of Arbor Park Village a federally subsidized project-based Section 8 property.
2. Defendant Aaron Smith is a tenant at this residential property under a written agreement with Plaintiff. Defendant Renise was a former tenant but no longer has a rental agreement with Plaintiff and no longer lives at the property.
3. Plaintiff served Defendant Aaron Smith with a notice of termination for non-payment of rent, a copy admitted into evidence as *Plaintiff's Exhibit A* attached to Plaintiff's complaint.
4. Plaintiff served Defendant Aaron Smith with a notice to vacate (or "3-day notice") under R.C. 1923.04, a copy admitted into evidence as *Plaintiff's Exhibit B* attached to Plaintiff's complaint.
5. The grounds alleged for this eviction are non-payment of rent for February 2006.
6. Defendant Aaron Smith did not make any rent payment for February 2006.
7. Plaintiff determined that Defendant Aaron Smith would owe \$370 per month in rent beginning February 2006 after meeting with him in September and

November 2005 and obtaining information about his prior income and his anticipated income.

8. Defendant Aaron Smith signed a document in September 2005 that stated that his income for the 12 months prior to September 2005 was \$1525 and that his anticipated gross income for the next 12 months was \$20,000. A copy of the document was admitted into evidence as *Plaintiff's Exhibit E*.
9. Defendant Aaron Smith signed a document that stated the same thing in November 2005. A copy of the document was admitted into evidence as *Plaintiff's Exhibit C*.
10. Based on Defendant's statement that his anticipated gross income for the coming year would be \$20,000, Plaintiff determined that he would owe \$370 per month in rent beginning in February 2006.
11. Defendant Aaron Smith put the amount of \$1525 on the two documents he signed because this represented the amount he had earned in the previous 12 months working as a self-employed subcontractor.
12. Defendant Aaron Smith put the amount of \$20,000 on the two documents he signed because he understood from his conversation with Plaintiff's representative that he was required to put this amount based on a calculation from the amount of \$1525.
13. Defendant Aaron Smith did not intend to state that he actually anticipated making \$20,000 during the next twelve months.
14. After receiving notice that his rent would increase to \$370 per month beginning in February 2006, Defendant Aaron Smith contacted Plaintiff's representative requesting that Plaintiff make a new determination of the rent he would owe.
15. Plaintiff did make a new determination of Defendant Aaron Smith's rent and determined that he would owe \$0 per month beginning with rent for April 2006.

Conclusions Of Law

The Court concludes that Defendant Renise Smith is entitled to judgment on Plaintiff's first cause of action, Plaintiff having conceded at trial that she is no longer a tenant at the property.

The Court concludes that Defendant Aaron Smith is entitled to judgment on Plaintiff's first cause of action because Plaintiff did not prove by a preponderance of the evidence that it had good cause to terminate Defendant's tenancy.

A landlord of federally subsidized property has good cause to terminate a tenant for nonpayment of rent only if the landlord has properly determined the amount of rent that the tenant owes. *Weldon Square Apts. v. Lyons* (1985), 1985 WL 9901 (10th Dist); *Amherst Village Mgmt. v. Vestal* (2000), 2000 WL 1595719 (6th Dist.). In this case, Plaintiff did not properly determine the amount of Defendant's rent. Plaintiff properly began the process of determining the amount that Defendant would have to pay in rent, asking him to indicate the amount of income he expected to have in the coming year. But Plaintiff did not properly complete the process. To complete the process, Plaintiff should have verified the basis for Defendant's estimate of his net income. Instead, Plaintiff used Defendant's unsupported estimate of his anticipated gross income by itself to determine his net income.

Plaintiff used its own "Self-Employment Certification" form to determine Defendant's income. *Plaintiff's Exhibit C and E*. The form itself provides a proper framework for determining a tenant's income from self-employment. It asks the tenant to state prior income, to estimate gross income and expenses and then to calculate net income. It also asks the tenant to state how the tenant arrived at the estimated income. But Plaintiff did not follow this framework. Plaintiff had Defendant fill out only the lines for prior income and for anticipated gross income. The lines for expenses and net income were left blank, as was the line for stating how the tenant arrived at the estimated income.

The lack of full information is particularly problematic because the Court found Defendant credible when he testified that Plaintiff's representative told him that he had to put \$20,000 as his anticipated income even though he did not anticipate making that much income. The Court conjectures that Plaintiff's representative may have understood \$20,000 to be an appropriate income estimate based on the other information on *Plaintiff's Exhibit E*: that Plaintiff had been self-employed since August 30, 2005 and that he had earned \$1525 in the short time since then. But such a calculation is too rigid. A self-employed subcontractor cannot expect to find the same amount of work every month. Indeed, by November 2005, when Defendant filled out *Plaintiff's Exhibit C* again, the same rigid calculation would yield a much lower estimate than \$20,000.

Plaintiff was also wrong to conclude that Defendant would earn \$20,000 in the coming year when he failed to list on either document any expenses to be deducted from the estimate of \$20,000 in "gross income." Plaintiff also proceeded to ratify the \$20,000 estimate when Defendant had provided no response to the question "How did you arrive at your anticipated income for the upcoming year?"

Plaintiff admitted at trial that it subsequently determined that Defendant would owe \$0 per month in rent but argued that he should nevertheless be obligated to pay two months rent (February and March 2006) at \$370 per month because he had certified that he expected to make \$20,000 annually and did not retract this statement until later. The Court disagrees, concluding that Defendant did not provide enough information to constitute a certification that he anticipated making \$20,000 in net income for the coming year. The Court concludes instead that Defendant wrote that amount on Plaintiff's forms

in good faith reliance on the explanation of Plaintiff's representative concerning how he had to reach his income estimate.

Recommendation

Based upon the foregoing, the Magistrate recommends judgment for Defendant on Plaintiff's first cause of action.

Magistrate David D. Roberts

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(E)(3). 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

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Attorney for Plaintiff

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