

THE PARMA MUNICIPAL COURT

PARMA PUBLIC HOUSING)
)
 Plaintiff)
)
 vs.)
)
 DAWN HOAG)
)
 Defendant)

Case No. 07 CVG 00695

MAGISTRATE'S DECISION

This matter came on for Hearing in Forcible Entry and Detainer on the 16th day of April, 2007. The Plaintiff was represented by Assistant Law Director Bruce Courey and the Defendant by Attorney Carol A. Kite.

Prior to the date of the hearing the Defendant filed a Motion to Dismiss pursuant to Civil Rule 12 (B) (1) and 12 (B) (6) with the basis being that any duty or obligation of the tenant under ORC 5321.05, had been remedied in a timely manner. The Plaintiff filed a Brief in Opposition to the Motion to Dismiss, and the Defendant then filed a Reply. The Court took ruling on that Motion under advisement in order to obtain a better factual basis to make its determination. At the commencement of the Trial, the Defendant orally renewed the request for a ruling upon the Motion to Dismiss and once again, this Court, for the same reason, delayed its ruling.

STATEMENT OF FACTS

The Defendant has been a resident with the Parma Public Housing Agency since October, 2005. On September 26, 2006, the parties entered into a one year lease at Chevybrook Estates, 5623 Chevrolet Boulevard, Unit #3, Parma, Ohio 44130, for a different apartment from the previous year. There was to be no rental obligations and the Defendant also was to receive a utility allowance. The Defendant was to have no pets. However, in response to a prior recommendation from a pediatrician for the Defendant's son, the Plaintiff was given permission to have one cat for therapeutic purposes.

Shortly thereafter it came to the Plaintiff's attention that more than one cat was at the apartment. Administrator Kristin Houk did an inspection and found three cats at the unit. The Defendant was notified by a letter dated October 13, 2006, that the additional animals needed to be removed by October 16, as her pet privilege would be revoked.

However, the evidence was that as of November 9, 2006, the extra cats remained. On that date the Plaintiff issued a Proposed Termination of Tenancy effective within thirty days, but gave the Defendant the option of a hearing on the matter.

The Defendant filed a timely request for a hearing which was set for November 29, 2006. In the written request, the Defendant alleged that she only had one cat. At the hearing, Ms. Houk testified that the Defendant "equivocated" between having between two and four cats, but admitted she had more than one. The Defendant was found to be in violation of the pet exemption and given until January 6, 2007, to leave the premises. When she did not, the Plaintiff provided her with a three-day notice on February 12, 2007, and filed this action on February 21, 2007.

The Defendant testified that she originally had only one cat, which she obtained from the Northeast Ohio Society for the Prevention of Cruelty to Animals (SPCA). However, she said the cat was aggressive and attacked both her and her son so she returned it. The SPCA then gave her three cats in order for her to test which one would adjust and fit her needs the best. The Defendant further stated that the SPCA was overcrowded and she was unable to return the other animals until December 4, 2007. Since that date, the Defendant was adamant that she never had more than one cat.

Mr. Don Oehlestrom, who is a maintenance worker for the Plaintiff, testified that he took photographs at the Defendant's unit in "October or November", 2006, which showed three cats in the windows of Unit 3. (Plaintiff's Exhibit B – taken in November 16, 2006). He further stated that he took additional pictures on March 22, 2007, after the commencement of this action which recorded his observation of at least two cats in Unit 3. While the Defendant attempted to suggest that those photographs were merely composites of the earlier ones, the witness said he was certain he took pictures on both of those occasions and that they accurately reflected what he observed.

FINDINGS OF FACT

1. The parties entered into a valid and binding lease agreement on September 26, 2006, whereby the Defendant began a one year tenancy at 5623 Chevrolet Boulevard, Unit #3.
2. As part of that lease, the Defendant agreed pursuant to Part I, Section IX, sub-paragraph (u), that no unauthorized pets were permitted upon the premises.
3. The Plaintiff gave permission to the Defendant for the Defendant to own and housing one cat for therapeutic purposes for her son, and the Defendant acknowledged that accommodation in writing.

4. Shortly thereafter, Administrator Houk did a unit inspection and observed three cats on the premises. This was later verified by photographic evidence.
5. Defendant was notified in writing on October 13, 2006, that she had three days to rectify the situation.
6. When the additional animals were not removed by November 9, 2006, the Defendant was notified in a Proposed Termination Tenancy that she had thirty days to vacate, but offered a hearing upon the matter.
7. The Defendant timely gave a written request for a hearing and therein indicated she had one cat.
8. In the present Trial, the Defendant testified she returned the additional cats to the SPCA on December 4, 2006, and since that date has only maintained one cat.
9. Following the November 29, 2006, hearing, it was determined that the Defendant was in violation of her lease provisions and she was given until January 6, 2007, to vacate.
10. When the Defendant remained at the unit, a three day notice to vacate was given on February 12 and this action was duly filed on February 21, 2007.
11. On March 22, 2007 the Plaintiff's employee Donald Oehlestrom took photographs of the Defendant's unit which showed at least two cats in the window.

CONCLUSION OF LAW

At the outset, the Court would rule upon the Defendant's Motion to Dismiss which it held under advisement prior to the Trial. The thrust of the motion, filed on March 15, 2007, was that the alleged violation was remedied prior to the termination date and thus there no longer exists grounds upon which the eviction can be based. However, the Court finds that there was sufficient credible evidence to support the Plaintiff's claim that the violation was not remedied and may exist at this date. Therefore, the Motion to Dismiss is overruled.

Turning to the Forcible Entry Detainer action itself, this Court finds that the Plaintiff fully complied with both Federal and State Law regarding the required procedures to be followed. The Defendant was given notification of the violation alleged and a period of time to correct it. When that did not occur, a Proposed Termination of Tenancy was issued together with both information about and the form necessary to request a hearing. The hearing was timely held and both parties were permitted to give evidence.

After the decision to terminate was made, the Defendant was notified in writing and given an adequate time frame in which to vacate. When the Defendant failed to vacate, the Plaintiff gave the three-day notice required by ORC 1923.04, and waited the appropriate time before filing the Complaint. Thus, the action is properly filed before this Court.

The termination of a low-income housing tenancy by a landlord may only be accomplished pursuant to guidelines formulated by the United States Department of Housing and Urban Development (HUD). In general this requires criminal activity, violations of a tenant's obligations under controlling law, or serious or repeated violations of the lease provisions. The question before this Court revolves around an allegation that the Defendant abused her privileges to possess one cat for therapeutic reasons, which clearly falls under the latter category.

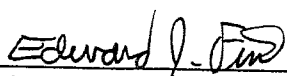
Counsel for the Defendant argues that while the Defendant admittedly had additional animals for a period of time, the problem was cured by no later than December 4, 2006, and thus is at best a de minimus violation. Although it should be noted that date is well after the time the Plaintiff gave the Defendant to comply, under the Defendant's version of the facts, the Court would be inclined to agree.

However, the Defendant's version of the facts is not supported by the evidence. First, shortly after she was permitted to harbor one cat, she took possession of at least three, which was the initial violation of her lease. She then failed to remove unauthorized animals within the period given her to do so. When termination proceedings were commenced, she falsely stated she possessed only one cat. At the oral hearing she admitted the continuing violation although she equivocated as to the precise number of animals. It is also enlightening to note she apparently never told the Plaintiff's that she was having difficulty returning them to the SPCA.

In any event, the Defendant adamantly stated that after December 4, 2006, she never had more than one cat. Such testimony ignores the eye-witness and photographic evidence to the contrary at least as late as March 22, 2007.

Having more than one cat through this period establishes a repeated and continuing violation of the lease, as well as an apparent disregard for the agreed upon rule of the tenancy.

As such, the Court finds sufficient grounds to grant the Forcible Entry and Detainer. The Writ of Restitution shall issue on May 21, 2007. Vacate date shall be May 26, 2007.

 5-2-07
Magistrate Edward J. Fink