

# THE PARMA MUNICIPAL COURT

CASE NO. 05CVG00759

THE PARMA PUBLIC HOUSING AGENCY  
PLAINTIFF

vs.

## JOURNAL ENTRY

IYSHIA SMILEY

DEFENDANT

This matter came on for a Hearing on the 14th day of March 2005, upon the Plaintiffs filing an action in Forcible Entry and Detainer. The Plaintiff was represented by Assistant Law Director Bruce Courey from the City of Parma and the Defendant by Attorney H. Edward Gregory from the Legal Aid Society of Cleveland.

The testimony at Trial revealed that the premises in question, located at 5629 Chevrolet Boulevard, Unit 6, Parma, Ohio was federally subsidized housing. As such, an Eviction proceeding was subject to not only O.R.C. 1923.01, et seq., but also the Code of Federal Regulations, specifically Title 24 CFR 966.4, regarding such actions.

Upon a review of the evidence at Trial and the respective briefs of opposing counsel, the issue before this Court can be reduced to a determination of whether proper notice of termination was provided to the Defendant prior to bringing the action in Forcible Entry and Detainer.

On January 11, 2005, the Plaintiff served a Notice of Termination of Lease which stated that the Defendant violated the conditions and terms of the lease due to "serious or repeated damage to the dwelling unit, creation of physical hazards in the unit, common ground or parking areas of the unit". This language in essence, is a verbatim restatement of the language of Paragraph XIV (a) (6) of the lease, and a paraphrasing of CFR 966.4 (l) (2), regarding termination.

However, CFR 966.4 (l) (3) (ii) requires that in order to terminate a lease, the notice to the tenant shall state "specific grounds" for the termination. The case law in this judicial district as well as nationwide have held that this notice must be specific enough to insure that a tenant is provided adequate information as to the exact nature of the violations against them, in order that they can properly defend the allegations within the confines of due process under the Fourteenth Amendment, Caulder v. Durham Housing Authority, 433 F. 2d 998 (4th Cir. 1970); Escalera v. New York Housing Authority, 425 F. 2d 853 (2nd Cir. 1970); Cuyahoga Metropolitan Housing Authority v. Younger, 93 Ohio App 3d 819 (Cuyahoga Cty. 1994).

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PARMA MUNICIPAL COURT  
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In Assocaited Estates Corporation v. Bartell, 24 Ohio App 3d 6. (Cuyahoga Cty. 1985), the Eighth District found that notice language which stated "serious, repeated damage to unit, repeated disturbance", was insufficient to provide specific grounds. Similarly, a Georgia Court held that "repeated incidents of intoxication and irresponsible use of the kitchen utensils in your unit which have imposed a threat to the peaceful enjoyment of your neighbors", to be equally legally inadequate. Housing Authority of DeKalb County v. Pyrtle(1983), 67 Ga. App. 181.

Even more compelling, in Younger supra, the Cuyahoga Metropolitan Housing Authority (CMHA) sent a notice of termination to the tenant advising that they possessed information regarding violation of the lease, that no further rent would be accepted, that the lease would be terminated after thirty (30) days and that the Defendant had a right to a hearing. In addition, the notice had an attachment enumerating five (5) separate lease violation notices sent to the tenant over a period of eight (8) months, which also listed the specific sections the lease violated. Despite the detail, the Eighth District concluded that the notice of termination failed to set forth a factual statement of each incident, when they occurred or who was involved. In other words, there were no concrete facts to support the allegation.

In the case subjudice, the information contained in the Plaintiff's notice was no more than a mere recitation of Paragraph XIV (a) (6) of the lease. That is the same vague, broad-stroke language found wanting in Bartell, supra, and Pyrtle, supra, and does not even approach the specificity struck down in Younger, supra. Moreover, the Plaintiff's contention that the Defendant "lived under these conditions and was fully aware of them" is irrelevant. As Judge Harper noted in Younger, supra, the issue revolves around whether or not the public housing authority complied with federal regulations, not whether the tenant was aware of the specific violations. The Court concluded that CMHA had all the information necessary to prepare the required factual statements, and would "not be hard pressed" to furnish them Younger supra, at 826.

For all of the foregoing, the Court finds the Defendant's Motion to Dismiss is well-taken and therefore, the matter is Dismissed at Plaintiff's costs.

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Magistrate Edward J. Fink