



FILED
IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, OHIO

2008 APR 23 AM 10:51

CIVIL DIVISION

GREGORY A. BRUSH
CLERK OF COURTS
MONTGOMERY CO. OHIO
23
PLAINTIFF,

-VS-

CASE NO. 2006 CV 08394

DERRICK STRAHORN,

DEFENDANT.

JUDGE BARBARA P. GORMAN
BY JUDGE JOHN D. MARTIN
(Assigned)

ENTRY

This matter is before the court on a motion for summary judgment filed by the plaintiff in this case, Myra Pinkney.

On September 4, 2007 plaintiff filed her amended complaint against defendant alleging breach of contract, fraud and deceit, and the wrongful withholding of a security deposit, seeking the return of her deposit and all overpaid amounts of rent.

To the complaint the defendant has filed an answer generally denying the allegations of the complaint and further stating that plaintiff has failed to state a claim upon which relief can be granted; he also has set up the defenses of estoppel and waiver.

This case evolves out of a lease of a residence located in Dayton, Ohio at 4891 Poterfield Drive. The lease agreement was signed by plaintiff as tenant and by defendant as landlord. Under the agreement the defendant was to enter into a Housing Voucher Contract with the Dayton Metropolitan Housing Authority (DMHA). A copy of the agreement is attached to the original complaint.

Under the rent provisions of the agreement any rents due to the landlord are to be determined in accordance with the contract between the landlord and the DMHA. At the commencement of the lease the rent to be paid to landlord by the tenant was fixed at \$0.00 per month. Ten months later, in June of 2006 that amount was reviewed by the housing authority and raised to \$12.00 per month.

Under Section 3 the tenant's portion of the rent "shall be determined by DMHA in accordance with HUD regulations and requirements." Also, the amount of tenant's rent is "subject to change as determined by DMHA during the term of this lease." The contract further provides that the "Tenant Rent as determined by the DMHA is the maximum amount the Landlord can require the Tenant to pay as rent for the dwelling

unit, including all services, maintenance and utilities to be provided for by the Landlord in accordance with this lease.”

By the terms of the provisions on “Program Abuse” of the Section 8 Existing Housing Voucher Program Lease Agreement it is flatly stated : “Extra or side payments in excess of Tenant’s share of the rent are prohibited.” During the course of the first year of the lease agreement defendant demanded and collected from plaintiff the sum of \$218.00 in addition to the \$432.00 paid by the agency.

On several interim reports to the DMHA defendant characterized the amount of \$650.00 as rent he received for the property. Receipts were given to plaintiff in the amount of \$218.00 indicating these amounts that she paid to defendant as rent. Only later did these amounts paid by plaintiff become “pet fees” rather than rent.

For purposes of this motion the court accepts as established defendant’s statement that the parties to this litigation did negotiate about rent, the landlord insisting that he needed the amount of \$650.00 to cover his expenses, i.e., before he could rent the property to plaintiff. Plaintiff wanted very much to rent the premises and also to keep her pet cat and consequently agreed to pay from her own pocket \$218.00, the difference between the Section 8 money and what the defendant landlord wanted.

In August of 2006 plaintiff paid only the rent due under the terms of the revised Section 8 Addendum (\$12.00), and not the amount of the parties’ prior arrangement. One month later plaintiff received a notice to leave the property for, among other reasons on the form, “failure to timely pay rents”. No mention is made of rent for a pet fee.

In addition to the above plaintiff seeks the return of her security deposit in the amount of \$650.00 under the provisions of Ohio Revised Code Sec. 5321.16.

This matter comes on for consideration on plaintiff’s motion for summary judgment under Civil Rule 56(C). Plaintiff has the initial burden of demonstrating that there is no genuine issue of material fact and that she, as movant, is entitled to judgment as a matter of law. Defendant did not contest the statement of law set out in the supporting brief to the plaintiff’s motion; both the law and the parties’ understanding of it are clear.

Of fundamental importance in this dispute is the August 2005 written agreement of the plaintiff, defendant and Dayton Metropolitan Housing Authority, the Section 8 voucher program Lease Agreement. This agreement requires the Landlord defendant to enter into an agreement with the DMHA for the rental of his property by Tenant, the plaintiff.

The “amount of total monthly rent payable to the Landlord... (called the “Contract Rent”) shall be determined in accordance with the Contract between the Landlord and DMHA. The tenant’s rent as set by the DMHA “is the maximum amount the Landlord can require the Tenant to pay as rent for the dwelling unit, including all services.... to be

provided by the landlord in accordance with this lease." The lease has no mention in it of a pet fee or pet rent.

As previously stated, Section 5 Program Abuse succinctly provides: "Extra or side payments in excess of the Tenant's share of the rent are prohibited." Tenant's share was specified in the lease as \$0.00. Misrepresentations with respect to such extra or side payments, a Landlord is cautioned, could result in federal criminal charges. It might be argued that the defendant made no misrepresentations to Montgomery County Job and Family Services since he on several occasions filed statements with it admitting he collected \$650.00 as rent. He has, in effect, admitted taking extra or side payments. Such is not to conclude, however, that the tenant was not misled to her detriment. Also, defendant admits in his deposition that the "cat rent" matter had been agreed to (with tenant) before the Section 8 lease was signed. This merely begs the question since the lease provisions certainly control.

There is no question that these three parties were free to contract. Defendant wanted to lease out his property for \$650.00 and plaintiff wanted to live in it. The DMHA would pay \$432. At that point there was no meeting of the minds and landlord and tenant should have walked away, or tried to get a higher rent from Section 8 of the DMHA.

Defendant in this case weaves a tangled web and falls into it. For purposes of the defendant the extra \$218.00 was a pet fee or pet rent. For Job and Family Services purposes he collected \$650 as rent for the premises, not for both cat and plaintiff. Plaintiff received receipts for rent from defendant in the monthly amount of \$218.00. The record in this case is replete with admissions against interest by defendant; these are matters he will have to live with as the court may not rewrite the record for his purposes.

In his brief defendant concedes that Section 8 simply prevents additional rent being paid by the tenant for herself. What was the lease with Section 8 of the DMHA for? Cats don't pay rent; the cat has not been joined a party, thankfully; and in the process of this lease a government agency paid out money to plaintiff and defendant's benefit that should not legally have been paid.

This case brings to mind the childhood riddle, often attributed to Lincoln, -- If you call a tail a leg, how many legs does a cow walk around on? Still, only four. Calling it one does not make it one.

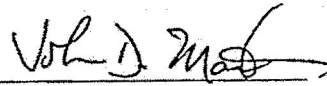
Defendant has breached the contract he entered into and summary judgment should be granted plaintiff for her damages for that breach. Judgment cannot be granted on grounds of fraud since it would appear that she might have participated in it with, rather than being misled by, the defendant. The issues of fraud and punitive damages are therefore reserved for trial.

With respect to the rent deposit, defendant did not timely provide plaintiff with an itemized list of what the deposit was used for nor did he raise the issue of setoff in either

his answer or amended answer. Accordingly judgment may be awarded plaintiff in the amount of \$650.00 and again for \$650.00 as per the provisions of Ohio Revised Code Section 5321.16.

The issue of damages for breach of contract will be reserved for hearing to determine precisely what overpayments of rent were made by plaintiff, i.e., unless the parties are able without intervention by the court to determine the number and amounts of overpayments for purposes of drawing up an entry.

Costs of this proceeding to date are assessed to the defendant.

A handwritten signature in black ink, appearing to read "John D. Martin", written over a horizontal line.

Judge John D. Martin

CC: Atty. Debra A. Lavey
Atty. Julia C. Kolber