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MUNICIPAL COURT
MIAMISBURG, OHIO

IN THE MUNICIPAL COURT OF MIAMISBURG, OHIO
CIVIL DIVISION

RETIREE HOUSING MGMT INC.

Plaintiff,

vs.

ANNA CHRISTINE LYNCH

Defendant,

*

Case No. 12CVG02402

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Judge Robert W. Rettich, III
Magistrate Margaret M. Quinn

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MAGISTRATE'S DECISION

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This cause came to be heard before Magistrate Margaret M. Quinn on February 5, 2013 on Plaintiff Retiree Housing Management, Inc.'s Complaint for Forcible Entry and Detainer filed December 18, 2012. Defendant filed an Answer to the Complaint on January 11, 2013, and a trial date was set for January 22, 2013. Both parties sought continuation of that date, citing negotiations. The trial was rescheduled for February 5, 2013, and did go forward on that date.

Plaintiff, Retiree Housing Management, Inc., was represented by Attorney Sue Seeberger. Plaintiff admitted Exhibits 1-11 into evidence, which includes: 1) Lease agreement dated 7/15/11; 2) "Lease Change Notice" dated 8/1/12; 3) printout from Warren County Jail dated 10/4/12; 4) printout from Warren County Jail dated 10/18/12; 5) Termination/Violation of Rental Agreement dated 10/19/12; 6) "Case History Listing" regarding State of Ohio vs. Anna Lynch, Warren County Common Pleas Court, case #12CR28212; 7) "Notice to Leave The Premises" dated 12/5/12; 8) "Housing Rules-Final Notice" dated 11/27/12; 9) "House Rules" checklist dated 11/28/12; 10) Letter from Warren County Pretrial Services dated 11/9/12; and 11) "Entry ILC Violation" from Warren County Common Pleas Court, file stamped 10/2/12.

Defendant, Anna Christine Lynch, appeared, represented by Attorney Debra A. Lavey. No exhibits were offered, and at the conclusion of Plaintiff's case in chief, Defense counsel orally moved for a dismissal of the Complaint. The Court took the oral motions, and the presented evidence, under advisement, and a briefing schedule was issued.

On March 8, 2013 Defendant filed a Memorandum in Support of the Oral Motions to Dismiss and on April 8, 2013 Plaintiff filed a Memorandum in opposition. The Motion to Dismiss and the Complaint for Forcible Entry and Detainer are before the Court and ripe for decision.

Defendant's Motion to Dismiss

Three grounds for dismissal are alleged by Defendant: 1) the execution of a new "House Rules" agreement constituted a waiver of the alleged lease violation; 2) the Notice of Termination issued by Plaintiff to Defendant failed to specifically state the grounds for termination; and 3) Plaintiff failed to prove Defendant was in breach of the parties' Lease Agreement.

1) Updated House Rules

By letters dated August 1, 2012 (Plaintiff's Exhibit 2) and November 27, 2012 (Plaintiff's Exhibit 8), Plaintiff provided "modified House Rules" to the Defendant which were to be signed by Defendant and made an "attachment" to the parties' original lease agreement. The November 2012 letter (Plaintiff's Exhibit 8), advised that these modifications would be signed, or Defendant must "vacate no later than Noon, Friday, November 30, 2012." On November 28, 2012, Defendant did execute the House Rules addendum (Plaintiff's Exhibit 9), as did the property manager, Mr. Hufnagle. By presenting this document to Defendant, and making it a condition of continued tenancy, Plaintiff waived any alleged violation of the lease that occurred prior to the signing. The "Termination/Violation of Rental Agreement" notice dated October 19, 2012

(Plaintiff's Exhibit 5) stated that the tenancy "shall be terminated as of December 1, 2012." The subsequent signing of the House Rules addendum, which clearly was to be incorporated into the lease agreement, waives the claimed breach of lease. Therefore, Plaintiff, by accepting and even demanding that the revised rules be signed, waived the right to terminate Defendant Lynch's tenancy.

2) Notice of Termination Not Specific

In the "Termination/Violation of Rental Agreement" dated October 19, 2012 (Plaintiff's Exhibit 5), Plaintiff cited two (2) violations of the lease agreement:

- *Engaging in drug related criminal activity on the premises*
- *Violating a condition of probation or parole under Federal or State Law: On October 2, 2012, Tenant was sentenced to 60 days in jail in the Warren County Court, Case No. 12CR28212, for violating the terms of her probation on drug charges.*

In support of its contention, Plaintiff offered a variety of documentation (Plaintiff's Exhibits 3, 4 and 6). At trial, Plaintiff offered no evidence concerning "drug related criminal activity" occurring on the premises. There was no proof as to the specific violation, or when, where, and with whom those violations occurred.

What the Plaintiff did offer was a "Case History Listing" for Warren County Common Pleas Court, Case No. 12CR28212 (Plaintiff's Exhibit 6). This document references an "Entry Granting Treatment in Lieu of Conviction" filed on 08/24/12. Page 3 of Plaintiff's Exhibit 6 lists a "Report of Intervention in Lieu of Conviction Violation and Notice" filed on 09/18/12, with hearing dates for that allegation, and a disposition note dated 10/02/12 finding "Final Hearing-Continue ILC-Serve 60 days jail, Credit of 14 days." Plaintiff also provided an "Entry ILC Violation" which sets forth this finding (Plaintiff's Exhibit 11).

The fact that the Warren County Common Pleas Court found Defendant Anna Lynch to be in violation of the conditions of her ILC does not support the

Plaintiff's contention that Defendant conducted "drug related criminal activity" on the premises in violation of the lease agreement. There is no evidence before the Court concerning the specifics of Defendant Anna Lynch's ILC violation, and there is clearly no evidence to support that she conducted any "criminal activity" on the premises.

Additionally, Defendant Anna Lynch was not in violation of probation or parole. Intervention in Lieu of Conviction (ILC) is a type of diversion, as set forth in the Ohio Revised Code. It is not a criminal conviction, unless and until a defendant fails to complete the Court imposed conditions of ILC. In the present case, Plaintiff's own exhibits demonstrate that the Warren County Court found Defendant Lynch to be "COMPLIANT with the terms and requirements of her probation." In other words, Defendant Anna Lynch was still on ILC, being monitored by a probation officer, and on a path to completing her ILC (Plaintiff's Exhibit 10). Plaintiff has failed to prove this alleged ground for termination of the lease, that is, that Defendant conducted drug related activity on the premises.

3. Breach of the Lease Agreement

Because Plaintiff has failed to establish the above alleged violations, there has likewise been insufficient proof of a breach of the lease agreement. Plaintiff has not met its burden of proof and therefore the Complaint for Forcible Entry and Detainer should be dismissed.

THIS COURT FINDS Defendant's Motion to Dismiss to be WELL TAKEN. **IT IS THEREFORE THE RECOMMENDATION OF THE MAGISTRATE** that Plaintiff's complaint shall be dismissed, with each party to bear their own cost of litigation.

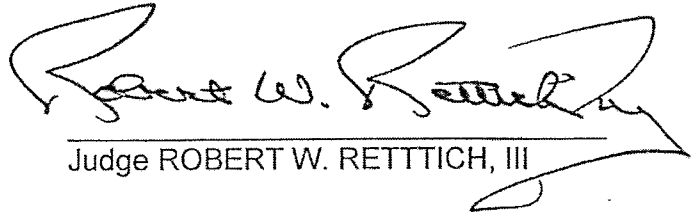
APPROVED:


MARGISTRATE MARGARET M. QUINN

Upon review of the findings of the Magistrate, the Magistrate's Decision herein is adopted as a permanent ORDER of the Court. The ORDER shall be stayed upon the filing of objections of either party within fourteen (14) days of the filing date. This permanent judgment is being adopted pursuant to Civil Rule 53 (E)(4)(c).

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV.R. 53(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV.R.53(D)(3)(b).

IT IS SO ORDERED:



Judge ROBERT W. RETTICH, III

Copies to: Sue Seeberger, Attorney for Plaintiff
Debra A. Lavey, Attorney for Defendant