

IN THE MUNICIPAL COURT OF MIAMISBURG, OHIO
CIVIL DIVISION

RETIREE HOUSING
MANAGEMENT, INC.

* CASE NO. 09CVG00091

Plaintiff

*

*

vs.

*

SAMUEL MYERS AND ALL OTHERS

*

Defendant

*

MAGISTRATE'S DECISION

2009 FEB 17 PM 2:23
MUNICIPAL COURT
MIAMISBURG, OHIO

*** **

This matter came before the Court for trial pursuant to Count #1 of Plaintiff's Complaint seeking restitution of the premises forcible entry and detainer.

At the close of Plaintiff's case in chief the Defendant made a motion to dismiss the portion of the Complaint seeking restitution of for non-payment of rent based on a defect in the three-day notice. Pursuant to Section 247.4(E) of Title 24 of the Code of Federal Regulations, the Court finds the motion well taken and sustains the same. Therefore the portion of the Complaint seeking restitution for non-payment of rent is dismissed.

Additionally, at the end of the Plaintiff's case in chief the Defendant moved to dismiss the remaining portions of the Complaint for failure to state with specificity the grounds for termination and for failure to inform the tenant of the tenant's rights to make such reply as the tenant may wish pursuant to Title 24, CFR, Section 966.41(L)(3)(ii). This motion was overruled.

The evidence introduced at trial established that the Defendant, Samuel Myers Jr., completed a rental application (Plaintiff's Exhibit #1) for the premises commonly known as 2517 Cross Village Drive, Miamisburg, Ohio, 45342. The application listed as head of household, Samuel Myers, and all others members who will be living in the unit as Samisa L. Myers. The Plaintiff alleges that the Defendant falsified this application in that his daughter, a twelve year old child, was not residing with him.

Mr. Myers testified that although he did not have custody of the child that he did have the standard order of parenting time from Montgomery County Juvenile Court, thus giving him physical possession of the child every other week from Friday at 6:00 p.m. until Sunday at 6:00 p.m. Thus the child would be living with the father from time to time. The Court finds therefore that the Defendant did not perpetrate a fraud upon the Plaintiff in completing his application for rental. The terms and conditions of the document do not require the applicant to list those minor children for whom he has custody rather it merely says all other members who will be living in the unit.

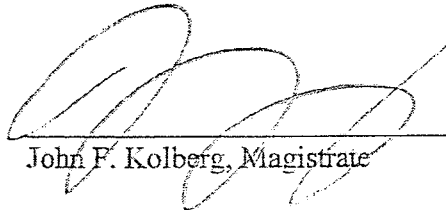
Additionally, the Plaintiff alleges that it is entitled to restitution of the premises for the Defendant's failure to respond to requests to provide information. More specifically, the Plaintiff complains that Defendant's daughter is obtaining two payments

of government subsidizes. Apparently the child's mother has custody of the child and is living in government subsidized housing. Plaintiff further argues that the Defendant is not entitled to a two bedroom apartment but rather should only have a one bedroom apartment as he does not have custody of his daughter. Although the Defendant does not have custody he does have the standard order of parenting time which requires the child to reside in his residence between six and nine days per month. She is a twelve year old girl and needs to have a room separate from her father's. Additionally, Plaintiff testified that the government subsidy had not been terminated and therefore it was receiving the payments through January 2009. Thus the Court finds the Plaintiff's allegation that Defendant failed to respond to requests to provide required information without merit.

Finally, Plaintiff alleges that it is entitled to restitution because the Defendant failed to follow through on agreed terms to move to a one bedroom unit. However, the testimony of the Plaintiff's representative, David Hufnagel, the manager of the apartment community, establishes that there was no written agreement between the parties for Mr. Myers to vacate a two bedroom apartment and move into a one bedroom apartment.

Based upon the foregoing, the Court finds that the Plaintiff has failed to meet his burden of proof and the case is **DISMISSED**.

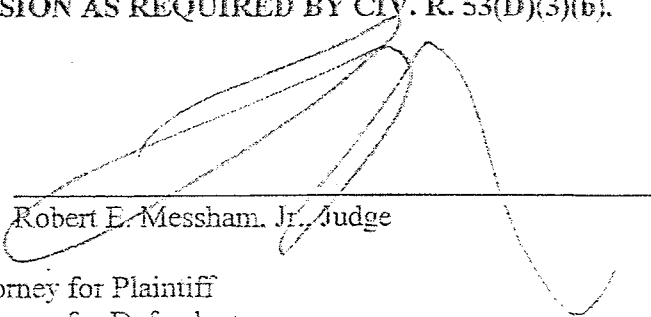
APPROVED:



John F. Kolberg, Magistrate

Upon review of the findings of the Magistrate, the Magistrate's Decision herein is adopted as a permanent **ORDER** of the Court. This **ORDER** shall be stayed upon the filing of objections by 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 Finding of Fact or Conclusion of Law in the Magistrate's Decision unless the party timely and specifically Objects to that Finding or Conclusion as required by Civil Rule 53(E)(3).

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).



Robert E. Messham, Jr., Judge

Copies: Timothy N. Tye, Attorney for Plaintiff
Debra A. Lavey, Attorney for Defendant