

IN THE MASSILLON MUNICIPAL COURT
MASSILLON, OHIO

STARK METROPOLITAN HOUSING : 22 PM 1:58
CASE NO. 2015-CVG-2490

Plaintiff,
-vs-

JOHN A. MAERZ
CLERK OF COURT
MASSILLON
MAGISTRATE'S
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

LOUIS SANDERS : Magistrate Amanda L. Kuhn

Defendant. :

Findings of Fact:

Matter came before the court on a first cause of action in a forcible entry and detainer action. All parties appeared and were represented by an attorney.

Under Ohio Revised Code 1923.02(A)(6)(a), a landlord may evict a tenant for certain drug-related activity at the premises, if the landlord has "actual knowledge or reasonable cause to believe" that the tenant or the tenant's guest has engaged in such activity. A landlord has this "actual knowledge or reasonable cause to believe" only if all the elements of the Ohio Revised Code 1923.02(A)(6)(a)(i) definition of that terms are met. Further, a landlord's termination of an assisted housing tenancy is subject to a good cause requirement. A project based assisted housing landlord must also show good cause. Good cause is determined in the state court eviction action.

Subject to three exceptions, a Public Housing tenant is entitled to an opportunity to contest the proposed termination in an administrative hearing under the housing authority's grievance procedure. 24 C.F.R. §§ 966.4(1)(3), 966.4(n), 966.51(a). The three exceptions are cases in which the termination involves: (1) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or housing authority employees, (2) any violent or drug-related criminal activity on or off the premises, or (3) any criminal activity that resulted in felony conviction of a household member.

In the matter at hand, the notice of NOTICE OF TERMINATION OF LEASE AND NOTICE TO VACATE – ILLEGAL DRUG RELATED ACTIVITY AND VIOLENT CRIMINAL ACTIVITY STATES

(1) Notice is hereby given pursuant to Sections 18 and 20 of your lease and under authority of RC 1923.02 and 24 CFR 966.4(1)(3)(i)(B)(2), that your lease of premises at

Com. Atty. Atty.
Dyett 12-2-16
MK
MK

815 E. Lincoln Way #401, Massillon, Ohio has been terminated because of **drug-related and criminal activity**¹ as described in 24 CFR 966.51(a)(2)(i)(B).

In the three day notice to vacate, plaintiff relied on 24 CFR 966.51(a)(2)(i)(B) which states in pertinent part:

§966.51 Applicability.

(a)(1) The PHA grievance procedure shall be applicable (except as provided in paragraph (a)(2) of this section) to all individual grievances as defined in §966.53 of this subpart between the tenant and the PHA.

(2)(i) The term *due process determination* means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in §966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:

...

(B) Any violent or drug-related criminal activity on or off such premises

The court would use the meaning of “drug related criminal activity,” to be applied as meaning “the illegal manufacture, sale, distribution, or use of a drug, or possession of a drug with intent to manufacture, sell, distribute or use the drug.” 24 CFR § 5.100

Here, defendant was not entitled to a grievance hearing on the termination of the lease. Since defendant was not given the opportunity to a grievance hearing he falls under the previous mentioned 24 CFR 966.51(a)(2)(i)(B), which means plaintiff alleges defendant has been involved in any violent or drug-related criminal activity on or off such premises.

Court finds that the testimony given by plaintiff’s witness that he could smell marijuana in the hallway and that he sniffed defendant’s doorway is not enough for a finding of drug-related criminal activity.

Accordingly, the court finds that competent credible evidence was lacking to prove that plaintiff had actual knowledge or reasonable cause to believe that defendant was engaged in any violent or drug-related criminal activity on or off such premises. Also, the court must note that during this whole process, plaintiff has continued to accept rent from defendant and no rent has been returned to the defendant.

¹ Did plaintiff mean to leave the “and” out?

Order: Accordingly, based on the above findings of fact and conclusions of law, the court would dismiss the first cause of action.

DATE: 1/22/2016


HON. AMANDA L KUHN
MAGISTRATE

NOTICE: WRITTEN OBJECTIONS TO THIS DECISION MUST BE FILED WITHIN FOURTEEN DAYS OF THE FILING DATE OF THIS DECISION. THE OBJECTIONS MUST BE SPECIFIC AND STATE WITH PARTICULARITY THE GROUNDS OF THE OBJECTIONS. IF YOU OBJECT TO A FINDING OF FACT, A COPY OF THE TRANSCRIPT MUST BE PROVIDED TO THE COURT PRIOR TO CONSIDERATION OF THE OBJECTIONS. A TIMELY AND SPECIFIC OBJECTION IS NECESSARY TO ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF A MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW.

TO CLERK: Please serve copies of this Order to:

PLTF. – HANDED/MAIL
DEFT – HANDED/MAIL

