IN THE EUCLID MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

SUMAC REAL ESTATE HOLDING, LLC	)	CASE NO.: 2014-CV-G-00670
	)	April 18, 2014
Plaintiff	)	
	)	
vs.	)	JUDGE DEBORAH A. LEBARRON
	)	
KENDRA MITCHELL	)	
	)	
Defendants	)	**MAGISTRATE'S DECISION**

This matter came before this Court on the 11th day of April 2014, upon the First Cause of Action contained in Plaintiff's Complaint. Present representing the Plaintiff was attorney Michael Heller. The Defendant was represented by attorney Jennifer Sheehe. The court was advised that the matter could not be amicably resolved and the First Cause hearing was commenced.

Plaintiff and Defendant entered into a Residential Lease Agreement for the real property located at 20571 Lindbergh Avenue, Euclid Ohio (Exhibit A). The lease was signed by both parties on November 15, 2013 and was for a period of twelve (12) months commencing November 25, 2013. Plaintiff Sumac Real Estate Holding, LLC is the owner of the real property located at 20571 Lindbergh Avenue, Euclid, Ohio.

Defendant participates in the Federal Section 8 Housing Choice Voucher Program (HAP) administered by the Cleveland Metropolitan Housing Authority (CMHA). Defendant and Plaintiff entered into a Housing Assistance Payment Contract for the leased premises. The contract was for the lease rental obligation of $690.00 a month. Pursuant to the HAP contract CMHA paid Plaintiff $590.00 for the months of December 2013 and January 2014. This is reflected in "Exhibit F" which was a payment ledger supplies by CMHA and explained by

Virginia St. Romaine a CMHA customer service representative. According to Ms. St. Romaine, CMHA did not make any payments to Plaintiff until January 3, 2014. Plaintiff was paid $590.00 for the months of December 2013 and January 2014 and a prorated amount of $118.00 for the period November 25, 2013 to November 30, 2013.

Defendant testified that on December 2, 2013 she paid Plaintiff $310.00 which she believed was her portion of the rental obligation. In actuality, Defendant was obligated to pay $100.00 for December or $20.00 for the prorated period of November. Thus Plaintiff received more rent than the contract called for the month of December. The same amount of money was paid by Defendant for the month of January 2014. On January 4, 2014 Defendant paid $310.00 to Plaintiff, for what she believed to be her portion of the month rental obligation. This was evidenced by "Exhibit B." Plaintiff received a payment of $590.00 from CMHA on January 3, 2014 per the CMHA representative Ms. St. Romaine. Once again Plaintiff was paid in excess of the monthly rental obligation.

Effective February 1, 2014 the Housing Assistance payment contract was adjusted, calling for a CMHA payment of $229.00 and a payment of $461.00 from the Defendant. On February 4, 2014 the CMHA ledger reflects a payment to Plaintiff of $229.00. The Defendant testified that she did not have the funds to pay February's entire rent at one time and that Plaintiff allowed her to split the rental payment into two payments. On February 5, 2014 Defendant paid Plaintiff $231.00 (Exhibit C). On February 17,2014 Defendant paid Plaintiff $255.00 (Exhibit C), for a total of $486.00. All of these payments were verified by Murat Tukel, Plaintiff's owner.

On March 4, 2014 CMHA paid Plaintiff its monthly HAP payment of $229.00. This was returned by Plaintiff to CMHA as Plaintiff had served upon Defendant a statutory three day notice to vacate the premises.

Murat Tukel testified that one March 3, 2014 he served the Defendant with a Notice to leave the premises. He served this notice by attaching it to the side door. In the three-day notice two boxes were checked as to the reason for the three-day notice to vacate. The first box checked indicated non-payment of rent and the second box indicated an unauthorized occupant.

Mr. Tukel also testified that he received two money orders totaling $461.00 after serving the three-day notice. He further testified that he did not cash the money orders and brought them to court as evidence they were not cashed. He admitted under cross examination that he never informed Defendant that he was not accepting these two money orders or that he was holding them to present to the Court.

Defendant testified that every rental payment she made to Plaintiff was picked up at the rental property. She testified that she never mailed a payment to Plaintiff, as either Mr.Tukel or his agent would stop by to pick up the rent. Plaintiff's owner admitted that all rent payments prior to the March 2014 payment were accepted in person at the rental property.

Plaintiff instituted this Forcible and Detainer Action based upon non-payment of rent and breach of lease obligations. Plaintiff's first allegation of an unauthorized occupant clearly was not established. Mr.Tukel testified that while he was at the rental property he encountered Defendant's boyfriend and saw clothing and shoes which led him to believe the boyfriend was living at this property. There was no other evidence introduced with regard to this allegation.

Defendant testified her boyfriend lived on East 77th Street in Cleveland, Ohio. She further testified that he stayed over night possibly two to three times a week. Plaintiff's evidence did not establish that the boyfriend was an unauthorized occupant living at the premises. Plaintiff's claim in this regard is not well taken.

R.C. 1923.04 requires a landlord who wants to evict a tenant to provide the tenant with notice to leave the premises, three or more days before commencing an eviction action against him. Proper service of the three-day notice to vacate the premises is a condition precedent to the commencement of a forcible entry and detainer action. However, if the landlord accepts future rent from the tenant after the landlord has served the tenant with an R.C. 1923.06 notice to vacate the premises, the landlord will be deemed to have waived the notice. In the case at bar, Plaintiff returned the HAP payment to CMHA and brought the two money orders received from Defendant to Court for evidentiary purposes. While Plaintiff's actions are confusing, this Court does not believe that Plaintiff waived the notice to vacate by accepting future rent.

The Court is however, troubled by Plaintiff's method of collecting the monthly rent. The lease agreement entered into between the parties the rent is due on the 1st day of each month and provides a mailing address of P.O. Box 670856 Northfield, Ohio 44067. The lease agreement does not state that mailing is the only method of paying rent. In fact, in this case the relationship between the parties indicates otherwise. Every payment made by Defendant prior to March's payment was picked up at the leased property. Plaintiff's owner testified that he would call his tenants and if in the area pick up the rent. Defendant testified that she spoke with Mr. Tukel on March 3, 2014 and was informed he would stop by the property to pick up the rent. Mr. Tukel denies this part of the conversation. Mr. Tukel did admit that he never informed Defendant that she had to make her monthly payment by mail. In fact, his actions prior to March 2014 indicate the accepted method of payment was picking the rent up at the leased property.

What is troubling to this Court is that Mr. Tukel served the Three-day notice on March 3, 2014. He did this knowing the HAP payment was not deposited in his account before the third or fourth day of each month. The CMHA ledger indicates not one payment was made before or on

the first day of the month. However, because Defendant's portion was not received by March 1, 2014 Mr. Tukel decided to serve her with a Notice to Vacate the Premises.

Equity abhors forfeiture of a leasehold and will only decree it when such relief is clearly required. In this case, it was not unreasonable to assume that Plaintiff's owner or representative would stop by the property to pick up the monthly rent. This has been the course of conduct between the parties since the inception of the agreement, and to serve a three day notice three days after the first of the month, without informing Defendant that she had to mail the monthly rental payment, is inequitable. A late tender, of rent if tendered a few days late, is a minor violation of the lease and does not establish good cause to terminate the tenancy. In the interest of fair play, Plaintiff should have informed Defendant that monthly pick up of the rent at the property was no longer acceptable. There was no testimony introduced that Plaintiff's owner or representative had to go to the rental property because Defendant was not paying the rent. Plaintiff's owner did testify that Defendant was consistently late with her payment, but he never testified that he picked up the rent at the lease property for this reason. Also, in this case, the lease provides for a late fee after the 5th day of the month. A lease provision in posing a late fee implies that the only penalty for a late rental payment is the late fee charge, not termination of the lease.

The Plaintiff also asserts that Defendant did not put the water bill in her name and this is a violation of the lease agreement justifying the eviction. However, Defendant testified that she attempted to put the water bill in her name but the utility company would not allow it due to an outstanding balance. Plaintiff offered no evidence disputing this testimony. Also, once again there was no testimony that Plaintiff contacted Defendant requesting she put the water bill in her name or the lease agreement may be terminated. This Court determines that the failure to put the

water bill in Defendant's name is a minor lease violation, which does not warrant a termination of the leasehold.

Based upon the facts presented the relationship and history of the parties the Court does not find Plaintiff's request for restitution well taken. Judgment is hereby rendered in favor of Defendant and against the Plaintiff on the First Cause of Action. Costs to Plaintiff

FRANKLIN BENI, Magistrate

THE PARTIES HAVE FOURTEEN (14) DAYS FROM THE DATE OF THE FILING OF THIS DECISION TO FILE WRITTEN OBJECTIONS WITH THE OFFICE OF THE CLERK OF COURT. ANY SUCH OBJECTIONS MUST BE SERVED ON ALL PARTIES TO THIS ACTION, AND A COPY MUST BE PROVIDED TO THE EUCLID MUNICIPAL COURT.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THAT DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIVIL RULE 53(D)(3)(b)(iv).