

IN THE LICKING COUNTY MUNICIPAL COURT

LICKING COUNTY
MUNICIPAL COURT

2005 JUN 23 P 2:46

NEWARK OHIO
LARRY R BROWN
CLERK

TRAIL WEST APARTMENTS,

Plaintiff

vs.

Case No. 05CVG01267

JODI ZIGAN,

Defendant

JUDGMENT ENTRY

This matter came on for trial on the complaint of plaintiff seeking to evict the defendant from federally subsidized Section 8 housing. The defendant filed a motion to dismiss alleging the Court lacked jurisdiction because of insufficient notice being given to the defendant regarding the reasons for the termination of the lease.

The Court finds the notice received by the defendant was proper. It conformed to the requirements of Ohio Law and Federal regulations pertaining to Section 8 subsidized housing. Accordingly, the Motion to Dismiss is overruled.

The Court finds however that the plaintiff has not shown by preponderance of the evidence that the defendant was in material breach of the lease. The plaintiff was unable to show by credible evidence repeated minor violations of the lease and or any substantial violation of the lease.

Plaintiff's primary contention and justification for evicting the defendant involved an individual plaintiffs contend was an unauthorized occupant of the premises and one engaged in criminal activity. The Court, after considering all of the evidence presented on these points has determined that the alleged unauthorized occupant was not engaging in criminal activity and further that he was not in fact an unauthorized occupant at all inasmuch as he was a permanent resident of Ohio's penal system during all relevant times in question. The defendant was able to show by convincing evidence that on each of the dates the unauthorized occupant was alleged to have been living in the premises that he was actually in the custody of the State of Ohio in a correctional institution. Additionally, the Court notes that even assuming the unauthorized occupant was a registered sex offender and living in the premises that in and of itself does not violate the relevant terms of the lease pertaining to criminal activity. The Court's reading of the lease requires a person to be engaging in criminal activity not to have had a past history of criminal activity.

Judge
W. David Branstool

Judge
Michael F. Higgins

40 W. Main St.,
Newark, O. 43055

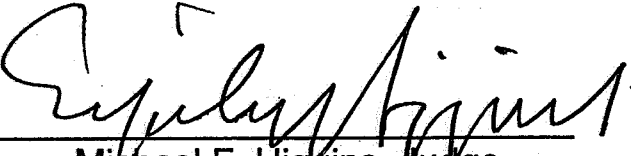
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Plaintiff also contends that the defendant either instigated or was present at a fight in a parking lot of her premises. With respect to this allegation the defendant presented convincing evidence that she was in the hospital recovering from surgery to her esophagus on that date.

With the exception of the defendant's admission that she for a very short period of time harbored a pit bull dog in her unit, the court cannot find any basis for the proposition that the defendant was in violation of her lease agreement.

Much, if not all, of the plaintiff's case was based upon anonymous complaints and hearsay testimony from employees of the plaintiff. For instance, the plaintiff's property manager testified as to what had been related to her by employees of plaintiff working under her. The Court wishes to go on record to indicate that defendants will not be evicted from Government subsidized housing on the basis of evidence of this nature. Plaintiff very easily could have subpoenaed the proper people who had first hand knowledge of the alleged violations into court but chose not to do so.

Accordingly, the Court finds that the defendant has not breached the lease agreement to such an extent as to justify her removal from the premises and accordingly the plaintiff's complaint is dismissed with costs to it.



Michael F. Higgins, Judge

MFH:ajj

cc: Benjamin D. Horne, Esq. ✓
Attorney for Defendant
Dimitrios G. Hatzifotinos, Esq.
Attorney for Plaintiff