CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Pianka

Vesta Cleveland LLC; and
American Management Inc.

Plaintiff

-vs-

Joyce Swann

Defendant

DATE: May 15, 2003

CASE NO.: 2003 CVG 5468

MAGISTRATE'S DECISION AND JUDGMENT ENTRY

This case came to be heard May 5, 2003 before Magistrate David Dylan Roberts, to whom it was referred by Judge Raymond L. Pianka, to take evidence on all issues of law and fact.

Plaintiff appeared with counsel Michael Linn. Defendant appeared with counsel Carol Kile.

Findings Of Fact

1. Plaintiff became the owner of 7013 Carson Avenue, Cleveland, Ohio 44114 on or about October 26, 2001. *Stipulations* signed by the parties April 9, 2003.

2. Defendant entered into a written rental agreement with Rainbow Terrace Apartments, Plaintiff's predecessor in interest, on or about January 28, 2000. *Stipulations.* Plaintiff introduced into evidence, without objection, a copy of this lease agreement marked *Plaintiff's Exhibit 5*,

3. Defendant moved into the property on or about January 1998 under a written rental agreement with Associated Estates, predecessor in interest to Rainbow Terrace. *Stipulations.*

4. At all times relevant to this action, rent in the amount of $25 was due on the 1st – 6th day of the month. *Stipulations.*

5. The rental agreement provides for a late charge of $10 on the 6th day and an additional $10 on or after the 11th day of the month. *Stipulations.*

6. Defendant paid rent in December 2002 for the month of December 2002. *Stipulations.*

7. Plaintiff, through an employee named Cathleen Griffin, conducted an inspection of the subject property on November 11, 2002.

8. Plaintiff, through Ms. Griffin, filled out a preprinted "Decent, Safe, and Sanitary Inspection" form in duplicate.

9. Ms. Griffin provided a pink carbon copy of the inspection report to Defendant. Defendant introduced the original of the pink copy as *Defendant's Exhibit A.*

10. Ms. Griffin retained the top white copy of the inspection report. Plaintiff introduced a photocopy of the top white copy as *Plaintiff's Exhibit 1.*

11. Ms. Griffin added words to the Plaintiff's copy of the inspection report after she had already detached the pink duplicate copy. These words were added in the section for "bathroom." The words were "need cleaning," "filthy" and "dirty." The words were not on the pink copy of the report Plaintiff gave to Defendant.

12. Ms. Griffin told Defendant, and Defendant understood, that the first two items on the inspection report form indicated that Defendant needed to clean her stove and the interior of her refrigerator.

13. Defendant cleaned her stove and the interior of the refrigerator after receiving the notice.

14. Plaintiff did not reinspect the property to determine if Defendant had cleaned her stove or refrigerator.

15. Plaintiff served a 30-day notice on Defendant in November 2002 by putting the notice under Defendant's door. *Plaintiff's Exhibit 2.*

16. Plaintiff served a 3-day notice on Defendant January 2, 2003. *Plaintiff's Exhibit 3.*

17. Plaintiff arranged for Mr. Joe McIntyre to take photographs showing the condition of Defendant's unit on February 10, 2003. *Plaintiff's Exhibit 4.*

18. Defendant was not present when Mr. McIntyre took the photographs on February 10, 2003.

Conclusions Of Law

The Court finds for Defendant.

Under the parties' lease, to terminate Defendant's tenancy based on Defendant's failure to perform adequate housekeeping, Plaintiff was obliged to (1) provide written notice of the proposed termination that specifies the date the lease will be terminated and states the grounds for termination with sufficient detail to allow the tenant to prepare a defense; and (2) establish that Defendant's conduct constitutes "material noncompliance" under the lease. *Plaintiff's Exhibit 5 at ¶ 22(b), (f).*

At trial, Plaintiff met the second burden but not the first.

Plaintiff's Complaint alleged that Defendant for "Lease violation paragraph 10 of attached lease. Failure to maintain unit." *Complaint at ¶ 2.* Paragraph 10 of the lease attached to the *Complaint* concerns "Additional Charges." It appears to the Court that Plaintiff intended to cite paragraph 14 which includes the requirement that "The TENANT shall: . . . Keep the LEASED UNIT clean." *Plaintiff's Exhibit 5 at ¶ 14(b)(1).* The lease also states:

> House Rules. The TENANT shall comply with the attached House Rules and additional rules established after the effective date of this AGREEMENT which are reasonably related to the safety, care and cleanliness of the building and the safety, comfort and convenience of all residents and their guests. TENANT shall receive written notice of any additional rule(s) at least 30 days before the rule(s) is/are enforced, unless a shorter period is necessary on an emergency basis.

Id. Plaintiff's Exhibit 5 indicates under paragraph 27 that House Rules and an "Attachment to Lease for Assisted Tenants" were attached to the lease but the attachments are not included in *Exhibit 5,* which is the three page lease only.

The Court finds that Defendant will not be prejudiced by an amendment of the *Complaint*, under Civil Rule 15(B), to conform to the evidence by referring to paragraph 14, not 10. However, the Court will not allow a similar amendment to incorporate any House Rules or Attachment to Lease. Such an amendment, after trial, would prejudice Defendant.

The Court notes that federal regulations for assisted housing programs also require that a notice of termination state the reason for the proposed termination of tenancy. 24 C.F.R. 8, 247.4(a)(2) and 966.4(1), (3)(ii). The notice must be specific "to insure that the tenant is adequately informed of the nature of the evidence against him so that he can effectively rebut that evidence." *Associated Estates v. Bartell*, 24 Ohio App.3d 6, 10 (8th Dist. 1985). Conclusory statements such as "bad housekeeping" or failure to keep the property "safe, clean and decent" are not specific enough. *Winchester*

Gardens v. Swickheimer, No. M9410-CVG-031135 (Muni Ct. Franklin Cty. Nov. 14, 1994).

This Court has repeated affirmed these requirements. *New Longwood Associates v. Tyesha Williams*, 2002 CVG 1431, March 7, 2002. *New Longwood Associates v. Lisa Robertson*, 2002 CVG 8420, May 20, 2002.

In this case, the Court was persuaded that Defendant was a poor housekeeper and that her failure to keep her unit clean constituted material noncompliance with the lease. In particular, Defendant failed to keep the carpet clean of cat feces from her two cats (or other cats which may have entered the apartment through an open basement window) and failed to remove garbage from the unit.

The Court notes that a number of the photographs Plaintiff offered into evidence showed that Defendant was messy without being unclean. It is messy to leave articles of clothing piled on surfaces or cast onto the floor or stuffed into plastic bags but doing so does not constitute material noncompliance with a lease obligation to keep property clean. These habits do not affect the condition of the property itself and do not constitute a health hazard, unless the clothes were to remain in place for so long that they attracted or allowed infestation by bugs or rodents or became piled in such large piles as to create an unsafe accumulation of combustible material. Defendant did not offer any evidence to show that Defendant's clothes caused infestation or a fire hazard.

Although Plaintiff proved that Defendant was a poor housekeeper, Plaintiff failed to show that it had provided sufficient notice to Defendant to terminate her lease for poor housekeeping.

Plaintiff's representative met with Defendant on November 11, 2002 to inspect Defendant's unit. As a result of the inspection, Plaintiff provided Defendant with a written inspection report, *Plaintiff's Exhibit 1* and *Defendant's Exhibit A*, that, almost without exception, listed items that Plaintiff, as landlord, had the responsibility to repair.

The Court finds that Plaintiff did serve a 30-day notice on Defendant in November 2002. *Plaintiff's Exhibit 2.* However, that notice did not meet the lease, in *¶ 22(f)(2)* of the parties' lease to "state the grounds for termination with enough detail for the tenant to prepare a defense." *Plaintiff's Exhibit 5.* That notice did not state any specific items that Defendant needed to clean or had failed to clean. The only specific notice that Plaintiff had was the inspection report.

The most startling fact to the Court about the inspection report is that, while Plaintiff's copy of the inspection report indicates that the bathroom "needed cleaning" and was "filthy" and "dirty," these words are not written on Plaintiff's copy. Apparently, Plaintiff's representative added the words after detaching Defendant's copy. Defendant therefore had no notice of Plaintiff's claim that her bathroom was filthy and needed cleaning.

Defendant's counsel asked Plaintiff's representative, Linda Jennings, why Plaintiff's employee, Cathleen Griffin, had added words to the white copy after she had detached the pink copy. The Court found Ms. Jennings answer unresponsive and thus unpersuasive on the issue of why the notice of needed cleaning was absent from Defendant's copy. Plaintiff did not offer any other testimony explaining the omission of the words from Defendant's copy of the report.

Defendant testified that she understood that the first two items on the inspection report did involve cleaning and were her responsibility. She therefore had notice of the need to clean, at least in part. However, Defendant also testified that she did clean her stove and refrigerator, understanding that Plaintiff would return to inspect these items. Plaintiff's witnesses admitted that Plaintiff did not conduct a follow up inspection of the stove and refrigerator or the bathroom.

Plaintiff based its case almost entirely on testimony and photographs of the state of Defendant's residence in February 2003. But Plaintiff's witnesses could not specify which of the photographs taken in February showed items that were the subject of the inspection report. There is no photograph of the interior of the refrigerator or the top of the stove. There is a photograph of the bathroom but the photograph is consistent with Defendant's testimony that the toilet bowl had developed stains that would not come off with normal cleaning. The other bathroom surfaces in the photograph do not appear filthy.

The parties lease provides that, once landlord has issued notice, "If an eviction is initiated, HUD and the [Plaintiff] agree to rely only upon those grounds cited in the termination notice." *Id. at ¶ 22(g).* In this case, Plaintiff noted only two items, the stove and refrigerator, on its own inspection report. Plaintiff then failed to conduct a follow up inspection on these items.

A notice requirement like the one in the parties' lease offers a tenant an opportunity to correct a problem once the landlord has identified it. Plaintiff, having found in February 2003, cat feces and trash that was not taken out, had the obligation to give separate notice to Defendant about these problems if they were to be the grounds for a lease termination. The Court notes that Defendant testified that in January 2003, while she was pregnant, her children's father physically attacked her, her injuries causing her to be hospitalized as a high-risk pregnancy, the hospitalization lasting until after February 10, 2003. Defendant testified that made an effort to get someone to attend to her cats but did not know anyone who could help her. She testified that she cleaned the unit after giving birth and returning home from the hospital. It is circumstances like these that the parties' lease, with its notice provisions, anticipates.

The Court's decision will leave Plaintiff with the same remedy it has enjoyed since Defendant signed her lease in 1998, to inspect for any material noncompliance, to

follow that inspection with a notice and appropriate opportunity to cure, and, upon a failure to cure, to terminate Defendant's lease for the material noncompliance.

Decision

Judgment for Defendant.

MAG. DAVID DYLAN ROBERTS

Judgment Entry

The Magistrate's Decision is approved and confirmed. Judgment for Defendant.

JUDGE RAYMOND L. PIANKA

IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS REPORT, AND MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THESE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this *Magistrate's Decision and Judgment Entry* was sent via regular U.S. Mail to the following on ___/___/___.

Plaintiff
Michael Linn
1300 East 9th St., 14th floor
Cleveland, OH 44114-1503

Defendant
Carol Kile
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Cleveland, OH 44113