

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

ABC MANAGEMENT COMPANY :
Plaintiff, :
-vs- : CASE NO. M'86 CVG 34323
ERIC & CHERLYN WILLIAMS :
Defendants. :

REFEREE'S REPORT

This cause came on for hearing before Referee Susan E. McNally on plaintiff's complaint in forcible entry and detainer.

Plaintiff appeared represented by Boyd Binning, Attorney at Law.
Defendant appeared represented by Paul Spaeth, Attorney at Law.

A court reporter was present. From the sworn testimony taken the referee finds as follows:

FINDINGS OF FACT

1. On or about September 1, 1984 plaintiff and defendant entered into a written rental agreement for premises commonly known as 1978-C Maryland Avenue in Columbus, Ohio. This is federally subsidized housing subject to the rules and regulations of the Department of Housing and Urban Development.

2. The issue presented is whether certain repair charges totalling \$34.50 are properly charged against defendant and remain unpaid in violation of the lease causing a material non-compliance with the lease provisions and grounds to evict the tenant under state code and federal regulations.

3. Plaintiff was called to the unit to make repeated repairs to unstop the defendant's toilet. Defendant was billed \$5.00 for each of these repairs and was billed for replacement and repair of screens on July 1st and July 9th of 1986.

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4. Defendant had paid for the previous service calls to unstop the toilet although the defendant states that she objected at the time stating that these were routine maintenance calls and not caused by her negligence. She stated that the entire complex had problems with the plumbing.

5. Plaintiff is seeking eviction based on unpaid bills from July and August. Plaintiff presented the the ledger account back to January of 1986 which shows that the tenant paid to have the toilet unstopped on February 21, 1986, April 1st, July 1st, July 9th, and August 6, 1986. Defendant paid the charges of \$5.00 per visit for the first three visits but the last two visits remain unpaid.

6. Defendant was served with billings and told that they must be paid by August 23rd. The defendant was then served with a notice of eviction on September 11, 1986 based on service bills outstanding for July 1st, July 9th and August 6th.

7. The defendant testified that she tendered the payment at the end of the 10 day period in fact she introduced a envelope received in the office on September 24th at noon that she intended to pay the bill that Friday. She was instructed by the management company that the case had already been filed and that she could no longer pay it.

8. The defendant tendered the service bill payment and October's rent in a timely manner but this was returned to her since the eviction was proceeding.

9. The tenant admits that the screens may have been caused by herself or her five children but states that she paid at least \$25.00 in service charges to have the toilet unstopped which should have been the landlord's obligation under the landlord tenant act and that she and her family did nothing to cause this problem.

10. Plaintiff did not present sufficient testimony to prove that the

problems with the toilet were caused by the defendant's negligence. The plaintiff's witness testified that she did not know what stopped up the toilet but that the tenants knew that if the landlord unstopped the toilet it would be a \$5.00 charge and they accepted this.

11. There was further evidence that the plaintiff was charged a \$25.00 penalty for failing to prepare the house for extermination. There was no testimony by the landlord that \$25.00 reasonably reflects the cost of the landlord to have the apartment re-exterminated on a different date when the tenant is not prepared for extermination. However the tenant admitted that she owed this amount of money because she had not prepared her apartment. She paid the penalty and did not object.

12. It appears that the tenant was willing to tender payment of the service charge on September 26th. This case was not filed until October 9, 1986.

CONCLUSIONS OF LAW

Plaintiff has failed to prove by a preponderance of the evidence the right to return of the premises. The court finds that the real issue presented is whether the tenant has to pay for repairs charged. The tenant admits that the screen repairs were probably caused by her family but states that the toilet has apparent problems. There was no testimony of an expert witness for the plaintiff or testimony from the maintenance person who had actually worked on the toilets to give the court sufficient evidence to find that the continuing blockage of the toilet was caused by the tenant's negligence. Revised Code Section 5321. puts the burden on the landlord to maintain the plumbing. Without some testimony regarding the cause of the blockage, the court cannot find that the plaintiff has met its burden of proof. Plaintiff wants to restrict the courts consideration to the last few bills. However the court finds that it is reasonable to look over the

entire year of 1986 regarding the service charges paid for the purpose of set-off. The court finds that there has been inadequate proof that some monies already paid were in fact owing and that some of the monies for which the tenant is to be evicted should in fact be charged against the tenant. The court notes that the landlord charges a reasonable fee for maintenance if in fact the maintenance is caused by the defendant's negligence. However the court feels that the landlord failed to carry its burden of proof in this particular case.

The court will not evict a tenant from federally subsidized housing for \$5.00 or \$10.00 dollars which may be uncontested on the repair of the screens.

REFEREE'S RECOMMENDATION:

Judgment for defendant. Costs taxed to plaintiff on the first cause of action for possession of the property.

Susan E. McNally

REFEREE SUSAN E. MCNALLY

COPIES TO:

J. Boyd Binning, attorney for plaintiff

Paul Spaeth, attorney for defendant

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November 12, 1986