

IN THE WILMINGTON MUNICIPAL COURT
WILMINGTON MUNICIPAL COURT
WILMINGTON, OHIO
1989 APR -7 PM 2: 22

APR 11 REC'D

Wilmington Green Apartments,

Timothy K. Long

Plaintiff

) CLERK

-vs-

Karen Estep,

Defendant

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Case No. 88-CVG-64

MEMORANDUM DECISION

and JUDGMENT

On December 10, 1985, plaintiff and defendant entered into a lease agreement for the rental of an apartment unit owned by plaintiff at 120 E. Reba Drive, Wilmington, Ohio. (Plaintiff's Exhibit B) This unit is part of a so-called Section 8, subsidized housing program operated by the plaintiff in co-operation with the U.S. Department of Housing and Urban Development (H.U.D.). In fact, as of December 10, 1985, plaintiff was receiving a \$588 assistance payment per month from H.U.D. for the leased unit pursuant to this program. The defendant's initial contribution to the total monthly rent was only \$25.00. (Plaintiff's Exhibit C).

On October 27, 1987, plaintiff notified defendant by letter that plaintiff was terminating the lease agreement effective November 30, 1987. (Plaintiff's Exhibit E) This letter was sent consistent with Paragraph 23 of the written lease agreement. (Plaintiff's Exhibit B). Paragraph 23 specifically requires any termination of the tenancy to be carried out consistent with ... "HUD regulations, State and Local law, and the terms of this agreement..." Further, Paragraph 23(d) limits the plaintiff-landlord to relying in the eviction proceeding "...only upon those grounds cited in the termination notice..." Accordingly, strict analysis of Plaintiff's Exhibit E, the 30 day termination letter, is initially mandatory to ensure extraneous matters do not cloud the true issues before the Court.

In plaintiff's Exhibit E, plaintiff lists six numbered reasons which plaintiff believes to represent " Material Non Compliance with the terms of the lease." In reviewing these " reasons " and comparing them to the evidence presented by plaintiff at trial, one reason can be dismissed outright. No evidence was presented by plaintiff in support of the fifth reason listed for terminating the lease involving alleged improper behavior by a babysitter. While some evidence was presented regarding three of the other six listed reasons, the plaintiff presented insufficient evidence on those three issues to justify detailed analysis of those issues. Specifically, this Court finds no persuasive evidence that defendant repeatedly damaged the apartment unit as alleged in reason number 2. This Court finds no persuasive evidence that defendant failed to report added income as stated in reason number 4. In that regard, plaintiff's witness, Lillie Rhoades, testified that interim certification of tenants with added income is only required when over \$40.00 per month more is earned. Mrs. Rhoades did not know how much more defendant allegedly earned as a waitress at the Manhattan Lounge. This Court cannot speculate on this important issue, especially in light of defendant's own testimony that she earned less than the threshold amount of \$40.00 monthly. Finally, this Court finds no persuasive evidence that defendant did not keep her unit clean and sanitary as alleged in reason number six. This Court finds suspect plaintiff's allegations that defendant's tenancy caused roach infestation at the complex. Other tenants testified that the roach problem existed at the complex prior to defendant moving into her unit. In addition, the evidence is not convincing that defendant was such an unsanitary housekeeper justifying termination of the tenancy. Accordingly, with respect to the four numbered reasons discussed, the Court finds plaintiff's complaint without merit.

The other two listed reasons for termination of the tenancy deserve closer scrutiny. Much time was expended by plaintiff at

hearing attempting to demonstrate that one Dana Fields had "accommodations" in the unit as alleged in reason number 3 of plaintiff's Exhibit 5. While one witness of plaintiff, Marsha Scarberry, did suggest that Dana Fields resided in defendant's apartment, this testimony must be tempered by the fact that Mr. Fields allegedly resided with Ms. Scarberry in her apartment at the complex for some two consecutive weeks. This fact would account for part of the constant viewing of Mr. Field's motor vehicle at the complex. In addition, Mr. Field's fiance, Cindy Brown, regularly babysat for defendant and other tenants of the complex. Paragraph 23 of the written lease prohibits unauthorized persons from living in defendant's apartment. This Court does not find that defendant violated this term by allowing friends and employees such as Cindy Brown to intermittently stay overnight as defendant's guests.

Neither is the Court persuaded that Dana Fields was living at defendant's apartment by virtue of his providing defendant's address as his mailing address when he applied for an Ohio operator's license. There is no indication that defendant sanctioned or even knew that Mr. Fields provided the Ohio Bureau of Motor Vehicles such information. A mailing address is not equivalent to one's residence. As Mr. Fields was allegedly living in his motor vehicle for a short time, the Court finds it plausible if not legally proper that Mr. Fields used his friend's mailing address to receive his Ohio operator's license without his friend's knowledge.

If the plaintiff is so concerned about tenants having overnight guests, the Court suggests that plaintiff modify its lease to require such guests to be registered with management before spending the night. Absent such a requirement, the plaintiff must prove that an unauthorized person had made his home in a tenant's apartment to succeed on this issue. Such a burden, as this case demonstrates, is most difficult to meet absent some admission by the tenant or the unauthorized visitor. Accordingly, for all of

the above-stated reasons, the Court finds no merit in reason number 3 as listed in plaintiff's Exhibit 5.

Finally, with respect to the final issue raised by plaintiff, did defendant fail to reimburse the plaintiff for damages caused by defendant within 30-days of billing? The answer to this question is, of course, defendant did not fully re-imburse the plaintiff for the alleged damages. However, an excellent reason existed for defendant's refusal to fully pay plaintiff. Defendant denied liability for the damages. This Court finds it to be unconscionable to attempt to terminate a tenant's lease merely because the tenant fails to pay for damages which the landlord alone claims to be owed. Such a procedure circumvents the judicial system entirely. The procedure would require a tenant such as Ms. Estep to pay the requested damages and then initiate a Court case to recoup the payment. Such a process unjustly turns the legal system around by shifting the burdens. If no agreement can be reached with regard to liability or the amount of damages, the landlord should be like any other allegedly injured party. The landlord should initiate a complaint in Court to determine liability and to recover damages. On such issues, the landlord should bear the burden of proof in Court, not the tenant. As matters now stand, a tenant must either pay-up or like Ms. Estep, face eviction proceedings for a debt she disclaims liability. This is not to say that if a tenant refuses to pay or is unable to pay for Court-ordered damages, a lease provision justifying termination of the leasehold may be acceptable. This Court, however, refuses to follow the policy espoused by plaintiff in this case and in its lease by sanctioning the remedy of eviction of a tenant for failing to pay a disputed billing.

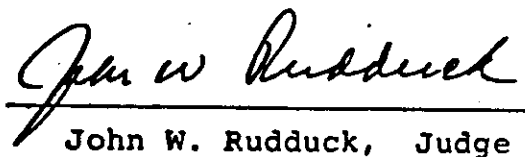
With respect to plaintiff's second cause of action, for money damages, however, the Court is persuaded by a preponderance of the evidence that defendant is responsible for the \$75 in damages suffered by plaintiff. The Clerk is instructed to turn over to plaintiff the \$25.00 check which the Clerk has been holding in escrow

as partial satisfaction of the judgment to be entered.

With regard to defendant's motion for Reformation, this Court has neither the time nor inclination to intervene in what should be private contractual matters. This Court is not an arbitrator or a negotiator. This Court will not give advisory opinions but rather decide cases on a case by case, issue by issue basis. The Court does encourage plaintiff to review carefully the language of its lease agreement and consider the impact of some of the provisions. This Court has held in this case that at least one of the provisions is unenforcible. There may be more. If indeed a Tenant's Union has been created at the complex, it would behoove the parties to communicate rather than litigate. In any event, the Motion for Reformation is overruled.

For all the foregoing reasons, the Complaint of plaintiff seeking restitution of the premises at 120 E. Reba Drive, Wilmington, Ohio is denied. Judgment, however, is granted plaintiff against defendant on its second cause of action in the amount of \$75.00 plus interest at 10% and the costs of this action. IT IS SO ORDERED.

Enter this 7th day of April, 1988


John W. Rudduck, Judge