

2. The grievance procedure established is the appropriate vehicle for resolving rent abatement controversies;

3. The Plaintiff tenants having filed the grievance can pay their rent into an escrow account pending resolutions of the grievance; and

4. The Defendant can't evict them for rent non-payment if they pay into escrow pending resolution of the grievance.

Defendant contends that:

1. The Plaintiffs have not properly followed the grievance procedure to entitle them to a formal grievance hearing;

2. Roach infestation does not warrant abatement where the Defendant has provided extensive extermination service and the infestation is caused by the Plaintiffs;

3. A grievance over roach infestation is not a grievance over the payments of rent, and, therefore, payment of rent into an escrow account is not provided by HUD regulations.

ISSUE I

Can Plaintiffs' rent, pursuant to Lease paragraph 8, and HUD Section 866.4 (h), be abated because of roach infestation? The Court concludes the answer to be yes.

The HUD regulation provides that in the event the premises are damaged to the extent that conditions are created which are hazardous to health that provisions shall be made for rent abatement as described in the regulation. Defendant contends the premises were not "damaged", therefore, no abatement. However, "damage", among other definitions, is injury or harm to a person or thing resulting in a loss in soundness or value. Webster's New World Dictionary, See Words and Phrases Volume Damage. Surely, roach infestation of premises, if serious enough, is a condition that could constitute an injury or harm resulting in a loss of value of the premises.

If not caused by the Plaintiffs and if the Defendant did not try to remedy it, rent abatement could result.

ISSUE II

Are Plaintiffs to be denied a formal grievance hearing if they have not strictly followed the grievance procedure?

The Court need not to decide whether the Plaintiffs have or have not strictly followed the prerequisites to a formal grievance hearing since the lease in paragraph 4 (d) of the Grievance Procedures and HUD Regulation Section 866.55 (d) both provide that if the prerequisites are not met the hearing officer or hearing panel for good cause shown may waive the prerequisites if the officer or the panel in fact find they were not met. The Defendant itself cannot decide this issue and deny the formal hearing. It must perform its obligation to appoint its choice of officer or panel and let the officer or panel decide and/or waive the prerequisites.

The Court, therefore, concludes in this regard the Defendant shall provide for a formal hearing and the hearing officer or panel shall decide on issues regarding "prerequisites".

ISSUE III

Is a roach infestation grievance included in the provisions of Lease paragraph 4 (e) and HUD Regulation Section 866.55 (e), so that the Plaintiffs can deposit their rent into an escrow account pending the resolution of the grievance? The Court concludes the answer is no.

The lease and regulation provide escrow deposit only in the case of a dispute over rent as defined in paragraph 2 of the lease and section 866.4 (b) of the regulation. The Court interprets this to mean a dispute limited to the amount of rent only. Obviously this type of issue ordinarily would not be complex or difficult to dispose of justly and quickly. However, a grievance such as roach infestation could be of such magnitude that its causes and corrections could be complex and expensive and it does not lend itself to an escrow deposit system amounting to 100% abatement, that would deny to the Defendant the

money to correct the problem. The application of such system should be strictly limited to grievances involving the amount of rent only and not be applied to many faceted problems or issues. If reasonable abatement of rent is warranted the hearing officer or panel can so decide and the Plaintiffs be given the relief to which they are entitled and the Defendant still be in a position to correct the problems that exist.

ISSUE IV

Can the Defendant evict any of the Plaintiffs for non-payment of rent if they have timely paid their rent to their escrow agent? The Court concludes the answer is no.

Because of the fact that the provisions of lease paragraph 4 (e) and HUD regulation Section 866.55 (e) are not clear and are subject to different interpretations as suggested in Issue III, the Court concludes there has been no breach by Plaintiffs of the rent payment provisions of the lease up to this time, but in view of the Court's decision herein, after entry of Order or Judgment pursuant to this Memorandum, the Defendant is not enjoined from evicting Plaintiffs who fail to pay rent to the Defendant.

ISSUE V

The only remaining Issue concerns Defendant's counterclaim for rent from the Plaintiffs.

In view of the Court's conclusions with reference to Issue III and IV the question of rent would be satisfied by payment to the Defendant of the money in escrow and is, therefore, moot. Any sums that an individual might be delinquent can then be determined on an individual basis and steps for collections taken. The Defendant's counterclaim, therefore, should be dismissed without prejudice.

SUMMARY OF CONCLUSIONS

1. The Defendant should be ordered to proceed with the appointment of a hearing officer or panel so that a

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KENTON CIRCUIT COURT
SECOND DIVISION
NO. 79-CI-443

ED F. SCHROEDER, Clerk

LOUISE BLEVINS, et al.

PLAINTIFFS

VS.

J U D G M E N T

HOUSING AUTHORITY OF COVINGTON

DEFENDANT

* * * * *

The Court having entered Memorandum of Decision and pursuant hereto,

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that:

1. The Defendant, Housing Authority of Covington, is ordered to provide the appointment of a hearing officer or panel pursuant to its Grievance Procedure and the appropriate HUD regulation;

2. The Kenton Circuit Court Clerk shall pay to the Defendant the sums paid to him by the Plaintiffs' escrow agent;

3. The Defendant shall in the future pay their rent to the Defendant when due and the restraint upon Defendant from eviction for non-payment of rent is dissolved as to all future non-payments of rent, but the same shall remain in full force and effect with respect to past failures to pay if the rent was paid to Plaintiffs' rent escrow agent up to this time.

4. The Defendant's counterclaim is dismissed without prejudice.

5. The Plaintiff shall pay one half costs hereof and the Defendant shall pay one half the costs hereof.



WM. R. DUNN, JUDGE
KENTON CIRCUIT COURT
SECOND DIVISION

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Hon. Peter J. Summe
Hon. Richard A. Cullison

formal hearing can be had concerning whether the Plaintiffs met the prerequisites for a formal hearing, and, if not, is there good cause to waive the failure, and, if appropriate, to hear Plaintiffs' grievances, if any, and to grant or deny the Plaintiffs the relief they seek under the law.

2. The Kenton Circuit Court Clerk should be ordered to pay to the Defendant the sums paid to the Clerk by the Plaintiffs' escrow agent.

3. The Plaintiffs shall in the future pay their rent to the Defendant when the same is due.

4. The Defendant is permanently enjoined from evicting any of the Plaintiffs for failure to pay rent if he or she has timely paid the same to the Plaintiffs' escrow agent up to this time.

5. The Defendant's counterclaim for rent being moot should be dismissed without prejudice.

6. Judgment pursuant hereto should be entered. The Plaintiffs shall pay one half and the Defendant shall pay one half the costs hereof.



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