

STATE OF MAINE
PENOBSCOT, ss.

DISTRICT COURT
BANGOR
DOCKET NO: SA-10-408

B & L PROPERTIES, LLC,
Plaintiff

v.

FINDINGS AND DECISION

SUSAN BERNARD &
ALL OTHER OCCUPANTS,
Defendant

The Plaintiff's complaint for forcible entry and detainer came before the Court for its consideration on the jointly submitted stipulated record of the parties. The stipulated record, and the separate written arguments of the parties were submitted to the Court on June 14, 2010. Based upon these submissions, the Court makes the following findings.

1. The parties entered into a written lease on December 1, 2009 with respect to the premises located at 5 Thompson Road, Veazie, Maine, Unit #27, which is owned by the Plaintiff, B & L Properties, LLC.
2. The parties lease agreement incorporates a Housing Assistance Payment contract (HAP) which establishes the monthly rental due for the unit in the amount of \$763.00.
3. The HAP includes a part C, tenancy addendum which is required by the Section 8 Housing voucher program.
4. Pursuant to the HAP, the Bangor Housing Authority, the Public Housing Agency involved in these premises, pays the Plaintiff \$698.00 per month toward the outstanding rent due for this unit.
5. The portion of the monthly rent payable by the Defendant directly is \$65.00.
6. \$732.80 of the \$763.00 April 2010 was timely paid; \$698.00 having been paid by the Bangor Housing Authority, and \$34.80 having been paid directly by the Defendant.
7. Because \$30.20 of the April 2010 rent due directly from the Defendant was not timely paid. Pursuant to the lease, Plaintiff was entitled to assess a late fee in the amount of \$2.60 for the past due rent owed.
8. Plaintiff served the Defendant with a Notice of Termination of Lease on April 20, 2010 which listed a rent arrearage (including the late fee) of \$32.80.

9. On April 26, 2010, Defendant tendered \$32.80 to the Plaintiff. The Plaintiff refused to accept the tendered rent.

ANALYSIS

Defendant, in part, argues that the Court should consider and apply equitable principles in rejecting the Plaintiff's termination of the tenancy at issue. The Court declines to exercise equity in its resolution of this case. The issues may be resolved fully in accordance with the provisions of the contract between the parties and the applicable federal regulatory provisions which govern the Section 8 Housing Voucher Program which also apply to this tenancy.

Although the Plaintiff's argument relies upon Section 29 of the Lease Agreement as the basis for its termination of the parties' tenancy, the contract between the parties is clear that the tenancy addendum as contained in Part C of the HAP also applies, and in fact controls in the case of any conflict between the tenancy addendum and any other provision of the Lease Agreement. (Part C, Section 2 (b) and Section 14 (b)). Section 8 (b) of Part C of the HAP states, in pertinent part,

Grounds. During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:

(1) Serious or repeated violation of the lease;

...

The applicable regulatory provisions which govern this issue are found in 24 CFR §982.310(a), where it states,

(a) Grounds. During the term of the lease, the owner may not terminate the tenancy except on the following grounds:

(1) Serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease;

...

The issue, therefore, for the Court's consideration is whether the Defendant's conduct in failing to timely pay the \$32.80 portion of the April 2010 rent constitutes a "serious" violation of the parties' lease.

Plaintiff contends that the Court should not engage in any kind of qualitative analysis in determining whether the conduct in this case constitutes a “serious” violation. In essence, Plaintiff contends because the full amount of the rent payment was not tendered on the date due, a “serious” violation must be found to have occurred. In support of Plaintiff’s argument, the Plaintiff relies heavily upon the reference in the applicable regulations that parenthetically refers to “failure to pay rent” as an example of a serious violation.

The Court declines to take such a rigid mechanical approach to the analysis in reaching its decision in this case. At the outset, the Court would note that the contractual language between the parties does not include the parenthetical reference contained in the regulations. Thus, the Court in analyzing the terms of the contract between the parties must make a determination of what should be considered a “serious” violation. Moreover, even a reference to the regulatory provision does not preclude the Court from analyzing whether the conduct in this case constitutes either a “failure to pay rent” or, more broadly, a “serious” violation.

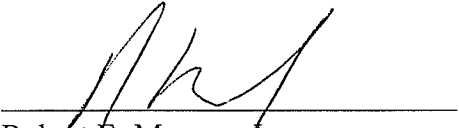
In the facts of the case before the Court, the April 2010 rent was in fact paid, in a timely manner, in the amount of \$698.00 by the PHA, and in the amount of \$34.80 by the Defendant directly. In addition, the full amount of the April 2010 rent was paid (or tendered for payment) within six days of receiving the Plaintiff’s Notice of Termination on April 26, 2010.

The contract terms between the parties envisioned circumstances where such a late payment might occur given the contract terms which allow for the Plaintiff to receive late payment fees once the rent payment has not been received by the fifteenth day of the month. (Lease paragraph 7, Late Charges).

In conclusion, the Court declines to automatically interpret the regulatory phrase “failure to pay rent” as meaning, as the Defendant might contend, failure to pay any rent, or as the Plaintiff might contend “failure to pay the full amount of rent when due”. Such an automatic conclusion is not invited by the parenthetical language included in the applicable regulatory provision. Thus the analysis of whether the specific conduct at issue constitutes a “serious violation” must take place. Accordingly, the Court’s analysis based upon the facts in this case lead the Court to conclude that the Defendant’s one time failure to make the full tender of the rent payment when due does not constitute a serious violation. Without a serious violation, the Plaintiff did not have grounds for termination of the lease. Accordingly, judgment is rendered for the Defendant.

This Order is to be incorporated upon the civil docket pursuant to 79(a) of the Maine Rules of Civil Procedure.

Dated: July 14, 2010



Robert E. Murray, Jr.
Judge, Maine District Court