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SEP 1984

HANFORD JUSTICE COURT
TIMOTHY S. BUCKLEY, JUDGE

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HANFORD JUSTICE COURT, HANFORD JUDICIAL DISTRICT
COUNTY OF KINGS, STATE OF CALIFORNIA

HOUSING AUTHORITY OF THE)
COUNTY OF KINGS)
Plaintiff,)
vs)
LEVOID SHOALS, JR., and MADENE)
SHOALS, Husband and Wife, and)
Does I through V, inclusive.)
Defendants.)

MEMORANDUM OF DECISION
CIV 6536

The above-entitled case came on before this court for trial on July 26, 1984, Plaintiff, Housing Authority of the County of Kings appearing through counsel, Robert M. Dowd and Defendants Levoid Shoals, Jr., and Madene Shoals appearing personally and with counsel, Peter D. Mook.

The facts are not in significant dispute. In essence, Plaintiff is seeking unpaid rent and possession of the premises leased and presently occupied by Defendants from plaintiff. Defendants admit the money claimed due is in fact unpaid.

Defendants, however, are asserting an affirmative defense which places into issue the rental amount due, which amount is asserted was incorrectly stated on the fourteen day notice served on defendants. It is contended by defendants that because plaintiff has

1 not complied with the Code of Federal Regulations (hereinafter
2 referred to as CFR) which are applicable to the Kings County
3 Housing Authority the amount of rent due is misstated on the four-
4 teen day notice and hence, any proceeding thereon and thereafter
5 is invalid.

6 Evidence was submitted showing that pursuant to CFR 86.404, the
7 defendant's gross rent can be no more than 28% of the family
8 income. From the gross rent a utility allowance is deducted. In
9 the instant case the allowance was set by contract at Twenty-seven
10 (\$27.00) Dollars. (See Court Exhibit I & II). Pursuant to CFR
11 865.475-476, CFR 865.480, 865.482 and CFR 865.471, plaintiff was
12 required to establish utility allowances at a uniform monthly rate
13 based on average monthly requirements for a year. Plaintiff was
14 required to review the allowance each year and monitor the utility
15 rates on a monthly basis. It is admitted by Plaintiff this was not
16 done during the occupancy by defendants and for two years prior
17 thereto.

18 Plaintiff, through testimony, maintained that the failure to
19 comply with the CFR was because of extensive renovation of the
20 apartment complex by plaintiff, which renovation involved the unit
21 occupied by defendants.

22 This contention is not tenable, because of the fact that
23 testimony of plaintiff's agent also disclosed that even after the
24 renovation was completed (April-May, 1983), no audits were con-
25 ducted or attempted. There were "about 20" 4-bedroom units avail-
26 able for comparison, even excluding the 2-bedroom and 3-bedroom
27 units.

28 Testimony and evidence submitted demonstrates that during the

1 time defendants occupied the subject premises the utility rates
2 charged rose appreciably (over 10% in several instances). CFR
3 865.480(C) (1) provides that an appropriate revision (emphasis
4 added), in the allowance shall be made. This assumes the fact
5 that if such rate increases occur, the allowance shall be increased
6 accordingly, which increase would result in a lesser amount being
7 owed by defendants to plaintiff as rent.

8 Defendants argue that this case is analogous to that in Green
9 vs Superior Court, (1974) 10 Cal 3d 622. That case provides for
10 abatement or withholding of the rent if the premises are not
11 habitable. This court does not see that Green vs Superior Court,
12 supra, has application hereto.

13 More simply, this case is resolved as one in which it is
14 clearly shown that the proper amount due was not correctly stated
15 on the fourteen day notice. (see above discussion) Therefore,
16 since the correct amount was not set forth on the fourteen day
17 notice, any action based thereon can not prevail. Canal-Randolph
18 Anaheim v. Wilkowski, (1978) 78 Cal App 3d 477 and the cases cited
19 therein.

20 As to the argument that Defendants waived the affirmative
21 defense mentioned hereinabove by not complying with the grievance
22 procedure set forth in Paragraph eighteen of Court Exhibit I (lease),
23 that paragraph refers to procedures not introduced into evidence
24 in this matter. Therefore, Paragraph 18 is of no value to this
25 court.

26 In CFR 865.481, it is stated that requests for relief from
27 utility supplier billings in excess of the allowances may be sub-
28 mitted to the Housing Authority (emphasis added). If one takes

1 the assumption that individual relief procedure is mandatory, not
2 permissive (use of the word, may, suggests the contrary), the
3 action which would be initiated by the grievance is the same
4 energy audit that the plaintiff was obligated to perform initially,
5 CFR 865.481 (b). In other words, filing for individual relief in
6 this particular instance would have been an empty and unavailing
7 gesture.

8 Accordingly, inasmuch as the fourteen day notice was incor-
9 rectly stated, judgment shall be for defendants with costs and
10 reasonable attorneys fees thereon.

11 Attorney for defendants shall prepare a judgment consistent
12 with this Memorandum of Decision.

13 Dated: September 6, 1984.

TIM S. BUCKLEY, JUDGE

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TIM S. BUCKLEY, JUDGE
HANFORD JUSTICE COURT