

IN THE CIVIL COURT OF BIBB COUNTY
STATE OF GEORGIA

KINGSTON GARDENS, Ltd.

Plaintiff

v.

Civil Action No. 4702-B

FAY HENDERSON

Dispossessory Action

Defendant

JUDGMENT

The above styled action having been tried in this court on the 15th day of November, 1976, without a jury and based upon the testimony adduced, the court makes the following findings of fact and conclusions of law:

A. FINDINGS OF FACT

1. Plaintiff, as landlord, operates Kingston Gardens, which is a 221(d) (3) federally subsidized project governed by its Regulatory Agreement, Rent Supplement Contract and rules and regulations promulgated by the United States Department of Housing and Urban Development (hereinafter called HUD)
2. Defendant Fay Henderson is a tenant who lives at J-4 Kingston Gardens, and has lived there since May, 1973 pursuant to a written lease.
3. Defendant has been a recipient of federal rent supplements since May, 1973.
4. From the time of defendant's tenancy, plaintiff has assessed late charges in an amount of \$5.00, \$10.00 and \$15.00 a month.
5. In assessing the late charges, plaintiff did so without the prior approval of HUD and without provision for such in the lease.
6. The testimony of Mr. E. D. McAfee, rental manager of Kingston Gardens, showed that the late charges were reported in a coded fashion and not described as late charges.
7. Defendant's uncontroverted testimony showed that she paid \$155.00 in late charges.
8. Plaintiff's dispossessory warrant filed on October 12, 1976, alleged that \$154.40 was due as rent.

B. CONCLUSIONS OF LAW

Based upon the above and foregoing findings of fact, the court makes the following conclusions of law:

1. Under the National Housing Act, 12 U.S.C. Sec. 1701s et seq., and pursuant regulations of the United States Department of Housing and Urban Development, 24 CFR Sec. 215.1 et seq. subsidized housing projects such as plaintiff's are forbiddin from assessing late charges without prior approval of HUD and without including lease provisions for such charges.
2. Plaintiff's disclosure of the assessment of late charges in its financial reports to HUD by way of code of some kind, does not neet the requirements of federal law mandating prior written approval prior to assessment.
3. Charges assessed by a subsidized project in excess of those allowed by the federal statute and regulations are ultra vires and subsidized tenants are not obligated to pay them.
4. Where, as in this case, a subsidized tenant has been assessed late charges in an amount equal to or more than the amount claimed by a subsidized landlord for past due rents, a set-off is proper and the landlord is not entitled to a writ of possession for non-payment of rent.

C. ORDER AND DECREE

Upon the above and foregoing findings of fact and conclusions of law, it is

ORDERED AND ADJUDGED, that plaintiff take nothing and this action be dismissed on the merits, at plaintiff's cost

This the 25th day of Feb 1977.

J. Douglas Carlisle
Honorable J. Douglas Carlisle
Judge, Civil Court of Bibb County