

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampden, ss

Hampden Division

No. SP8054-H86

Housing Court Department

SARGEANT WEST APARTMENTS)
MARTIN BEREZIN,)
PLAINTIFF)

FINDING

VS.)

MARIA AYALA,)
DEFENDANT)

The plaintiff has brought this summary process action alleging the defendant has materially violated the terms of her lease by repeated late payment of rent and by failure to pay bills arising from her tenancy.

With regard to the bills, the plaintiff contends the defendant owes \$60.00 for electrical usage attributable to operation of her air conditioner. The lease between the parties provides for energy usage for air conditioning to be the responsibility of the tenant. The plaintiff charges a flat rate of \$60.00 per cooling season irrespective of actual usage. The defendant admits responsibility for this charge and has manifested a willingness to pay it. The plaintiff also has charged the defendant \$25.00 for failure to prepare for an extermination. The Court can find no lease term that permits this charge nor does the Court have any regulation before it that authorizes a penalty. While the Court is cognizant of the need to exterminate all apartments in a building in order to be effective, it finds no legal basis for this charge. Finally, the plaintiff has charged the defendant \$19.00 for two broken screens. The defendant denies the kitchen screen is broken and has testified she removed it and has it stored in her closet. The storm door screen was broken but the landlord has failed to repair it. The lease calls for the tenant to pay "the cost of all repairs and to do so within 30 days after receipt of the landlord's demand for the repair charges."

With regard to late payment of rent the defendant admits the lease calls for the first of the month to be rent day but maintains that she pays her

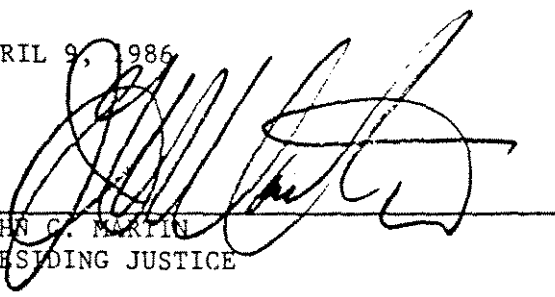
her rent from welfare checks which are received on or about the tenth and twenty-fifth of each month. For the past two years she has rather faithfully paid the month's rent out of the check received on the tenth. She contends the acceptance of this practice, several 14 day notices notwithstanding, constitutes a repeated reinstatement of the tenancy after each notice. The Court will however also rely on MGL C186 SECT. 11 and find that in the absence of any evidence that the tenant paid the rent after "the day the answer is due", this practice does not constitute a material non-compliance nor does it terminate the tenancy.

In summary, the Court does find two very technical and de minimus short comings in the defendant's performance under the lease. The Court, as a matter of public policy, cannot abrogate such an important and valuable property interest over a \$69.50 dispute.

Judgment for the defendant for possession and for the plaintiff on the counterclaim since the defendant has not offered credible evidence of insufficient hot water.

So entered.

APRIL 9, 1986



JOHN C. MARTIN
PRESIDING JUSTICE

kdr

Commonwealth of Massachusetts

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Hampden, ss

Housing Court of County of Hampden

No. SP8054-H86

SARGEANT WEST APARTMENTS
MARTIN BEREZIN, Plaintiff(s)

VS.

MARIA AYALA,
Defendant(s)

NOTICE OF JUDGMENT ENTERED

This action came on for hearing before the court, Edward C. Peck, Jr., Justice, presiding, and the issues having been duly heard and findings having been duly rendered, it is ORDERED and ADJUDGED under Rule 58, M.R.C.P. and Rule 10 of the Uniform Rules of Summary Process judgment enter for the ~~Plaintiff(s)~~/Defendant(s) for possession and damages in the amount of -0-

~~XXXXXX~~ and judgment for the plaintiff on the counterclaims since the defendant has not offered credible evidence of insufficient hot water.

Judgment entered at 10:00 a.m. APRIL 23, 1986



JERROLD B. WINER
CLERK/MAGISTRATE