

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAMSPORT VILLAGE ASSOCIATES, LLC,	:	NO. 11 - 02,147
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DARNELL WALLACE,	:	
Defendant	:	Non-jury Trial

OPINION AND VERDICT

Before the Court in this landlord/tenant action is Plaintiff's request for an award of possession of the property and unpaid back rent. A trial was scheduled for October 15, 2012, but by agreement of counsel, instead of holding a trial, the court was requested to consider a stipulation of facts, filed October 10, 2012, and briefs filed by each party on October 24, 2012. Rather than make findings of fact, the court will rely on the Stipulation filed October 10, 2012, and such is incorporated herein.

DISCUSSION

In February 2009, the parties entered a lease agreement for an apartment in the subsidized housing project known as Newberry Estates. On September 6, 2011, Defendant was issued a Notice to Quit and Vacate which cited two grounds for termination: criminal charges for possession of marijuana and repeated late rental payments. As the court finds grounds to terminate the lease for repeated late rental payments, the criminal charges issue will not be addressed.

The lease provides, in pertinent part, as follows:

23. Termination of Tenancy:

...

c. The Landlord may terminate this Agreement for the following reasons:

1. the Tenant's material noncompliance with the terms of this Agreement;

...

The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that (a) disrupt the livability of the project; (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project; (3) ..., and (4) Non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

See Stipulation, Exhibit 1. Of significance to this discussion are stipulations number 14, 15 and 19, in which it is stated that from the inception of the lease through October 31, 2011, Defendant was late in making the rental payment 21 times, there is a five-day grace period, many payments were made after the grace period, and three prior evictions were filed by Plaintiff against Defendant. See Stipulation, Paragraphs 14, 15 and 19, and Exhibit 6.

Defendant's payment of the rent after the grace period constitutes "material noncompliance with the lease", according to subsection (4) of Paragraph 23 of the Lease Agreement. It can also be said in this instance to constitute repeated minor violations that interfere with the management of the project under subsection (2), as having to regularly deal with the non-payment, and having to initiate and prosecute three eviction actions clearly adds to the burden of the management. Thus, Plaintiff has established grounds for termination of the lease.

Defendant argues nonetheless that Plaintiff has waived its right to seek termination on this basis by accepting the late payments and by issuing an annual recertification notice after issuing the Notice to Quit. Neither argument has merit. Although Plaintiff did accept late payments, it could not have reasonably, as Defendant contends, "lulled him into a false sense of security". Three eviction proceedings were filed for late payment issues. Clearly, Plaintiff expressed its intention to enforce the terms of the lease. And, with respect to the recertification notice, as long as Defendant remained in the apartment, Plaintiff was required by federal law to

issue the notice.¹ Indeed, the Notice to Quit warns Defendant that “The recertification of your family income which may be in process or after the date of this notice, should not be considered a renewal of your lease and will not serve to void this notice.” Stipulation, Exhibit 2. Defendant’s reliance on this document is thus mis-placed.

Accordingly, the Court draws the following:

CONCLUSIONS OF LAW

1. Defendant’s repeated late payment of rent constitutes material noncompliance with the lease agreement and Plaintiff is therefore justified in terminating the lease.
2. Plaintiff is entitled to possession of the property.
3. Plaintiff is entitled to the rent payments Defendant has paid into the Prothonotary’s office during the pendency of this action.

VERDICT

AND NOW, this 26th day of October 2012, for the foregoing reasons, the Court finds in favor of Plaintiff and against Defendant. Plaintiff is hereby awarded possession of Apartment 263, 2500 Federal Avenue, Williamsport, PA 17701. The Prothonotary is directed to immediately release to Plaintiff, through counsel, the rent payments paid into that office by Defendant during the pendency of this action.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Gary Weber, Esq.
John Person, Esq.
Hon. Dudley Anderson

¹ The Department of Housing and Urban Development requires that a landlord of subsidized housing review every tenant’s income and family composition every year to re-determine rent and assistance levels. The notice reminds the tenant that the process will take place at some designated time in the future and what information will need to be provided by the tenant.