

[Cite as *Gold Key Realty/Senior Village Apts. v. Phillips*, 2015-Ohio-2555.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

GOLD KEY REALTY/SENIOR VILLAGE	:	
APTS.	:	
	:	C.A. CASE NO. 26450
Plaintiff-Appellant	:	
	:	T.C. NO. 14CVG1889
v.	:	
	:	(Civil Appeal from
MINNIE PHILLIPS	:	Municipal Court)
	:	
Defendant-Appellee	:	

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OPINION

Rendered on the 26th day of June, 2015.

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FROELICH, P.J.

{¶ 1} Gold Key Realty appeals from a judgment of the Dayton Municipal Court, which sustained Minnie Phillips’s objections to the magistrate’s decision granting Gold Key restitution of Phillips’s apartment. For the following reasons, the trial court’s

judgment will be affirmed.

{¶ 2} Senior Village at Dayton View Apartments is a housing community for individuals who are 62 years old or older, or 55 years old or older if they have disabilities. Gold Key is the management agent for the property; as of June 2014, Melinda Everhart had been the on-site property manager for approximately two years. According to Everhart, the property is owned by the Dayton Metropolitan Housing Authority and is subsidized by the Department of Housing and Urban Development (HUD).¹

{¶ 3} Phillips is a tenant of Senior Village, residing on the third floor. She signed a one-year written lease in March 2004 and is currently a month-to-month tenant.² Phillips was required by federal regulations to recertify annually with Gold Key to maintain her eligibility to reside at Senior Village; Everhart stated that Phillips had not been recertified in 2014. However, Senior Village has been accepting the federally subsidized portion of her rent.

{¶ 4} On May 8, 2014, Gold Key filed a forcible entry and detainer action against Phillips, alleging that Phillips had violated her lease at Senior Village by “boisterous conduct, having a bottle of liquor in the community room and smoking in the hallway breaking the quite [sic] enjoyment of others.” Attached to the complaint were two 30-day notices of termination, dated of January 28, 2014, and April 1, 2014. The notices stated as grounds for termination that, on January 24, 2014, Phillips “was disrespectful cursing

¹ Phillips’s 2004 written lease indicated that the property was operated under the rules and regulations of the Federal Low Income Housing Tax Credit program, 26 U.S.C. § 42. The record does not specify the HUD program under which Phillips’s rent was subsidized.

² Although there was little testimony on the topic, it appears that, after Phillips’s one-year written lease expired, Phillips became a month-to-month tenant under the same terms. See *Vlcek v. Brogee*, 2d Dist. Montgomery No. 25499, 2013-Ohio-4250, ¶ 42 (discussing the different tenancies that can be created after a written lease expires).

another tenant yelling in the hallway. You also had a bottle of liquor in the community room & was smoking in the hallway which is prohibited.” Also attached was a three-day notice, dated May 2, 2014, which contained the same allegation regarding January 24, 2014, and further stated that on February 1, 2014, Phillips “approached another resident calling her names.” Gold Key sought restitution of the premises.

{¶ 5} Phillips filed an answer, denying that she had violated her lease and raising several affirmative defenses.

{¶ 6} A trial on Gold Key’s eviction claim was held on June 12, 2014 before a magistrate. Gold Key presented the testimony of Phillips (as on cross-examination), another resident, Ethel Hairston, and the property manager, Everhart. Phillips also testified on her own behalf and offered the testimony of another resident, Judy Williams.

{¶ 7} Hairston described an incident on January 24, 2014, during which Phillips was allegedly “rude and disrespectful” to Hairston’s adult granddaughter (although Hairston did not witness the encounter between Phillips and the granddaughter) and later cursed at Hairston; Hairston stated that Phillips was drunk at the time. Hairston testified that, a “little bit before this incident happened,” she had seen Phillips smoke a cigarette going down the hallway from her (Phillips’s) apartment to the elevator. Hairston also testified regarding a prior incident with Phillips that occurred six or seven years before, when Phillips was “very intoxicated” and hit Hairston’s young grandson. Hairston stated that Phillips is intoxicated almost daily and “walks around with a glass of alcohol every day,” including in the community room, which is not allowed.

{¶ 8} Everhart testified that she has received complaints that Phillips was cursing at other residents, drinking in the hallway, smoking in the hallway, drinking in the

community room, and “just being disrespectful with residents or the guest of residents.” Everhart received three written complaints regarding Phillips’s conduct on January 24, 2014, including complaints from Hairston, from another resident of the third floor, and an unsigned complaint. In response to the complaints, Everhart issued a 30-day notice to vacate. Everhart stated that Phillips requested a meeting about the proposed termination of her tenancy; when the meeting was held, Phillips denied all of the allegations. Everhart stated that she had had prior meetings with Phillips about similar past behavior. Everhart stated that Phillips’s behavior on January 24 was part of a continuing course of conduct, and that she would like Phillips to be removed from the premises. Gold Key issued a second 30-day notice and a 3-day notice in April and May 2014. Everhart testified that, as of June 2014, Phillips had not paid rent since February 2014.

{¶ 9} Phillips denied that the incident on January 24, 2014 occurred as Hairston described, and she testified that there had been no incidents since the January 24 incident. Phillips indicated that she had offered to pay her March rent, but it was not accepted by management. Williams testified that when Phillips went to Hairston’s apartment to ask Hairston to lock up the community room in January 2014, Hairston “came out hollering and screaming at her.” Williams testified that she had never seen Phillips smoke in the hallway.

{¶ 10} The same day as the trial (June 12), the magistrate granted restitution of the property to Gold Key, and the trial court adopted the magistrate’s decision. The next day, June 13, Phillips requested findings of fact and conclusions of law so that she could file objections to the magistrate’s decision. Phillips also sought a stay of execution of the

writ of restitution. A hearing was held on the amount of bond. On July 1, 2014, the trial court granted a stay, provided that Phillips posted bond, as set forth in the court's order. Phillips posted bond.

{¶ 11} The magistrate filed findings of fact and conclusions of law on July 25, 2014. Phillips objected to the magistrate's findings of fact and conclusions of law. On August 18, 2014, a hearing was held on a motion by Gold Key to remove the stay and authorize a writ of restitution. The magistrate granted Gold Key's motion, and Phillips filed a motion to reinstate the stay. On September 9, 2014, the trial court ordered that the writ of restitution be stayed until the trial court had reviewed and ruled on Phillips's objections to the magistrate's decision awarding restitution to Gold Key.

{¶ 12} On September 29, 2014, the trial court vacated the magistrate's decision granting restitution of the premises to Gold Key and the writ of restitution.

{¶ 13} Gold Key appeals from the trial court's ruling, raising two assignments of error. Gold Key's first assignment of error states:

The trial court erred by overruling the magistrate and denying a writ of restitution to Appellant.

{¶ 14} Gold Key's first assignment of error claims that the trial court erred in overruling the magistrate's decision to grant restitution of the property to Gold Key. Gold Key argues that the evidence, as reflected in the trial transcript and the transcript of subsequent hearings, indicates that Phillips engaged in an ongoing pattern of "abhorrent" behavior, which warranted her eviction from the premises.

{¶ 15} In overruling the magistrate's decision, the trial court stated, in part:
Defendant objects to the Magistrate's Decision because Plaintiff is a HUD

subsidized landlord who may not terminate a month-to-month tenancy without good cause; only the January 24, 2014 incident was specifically listed in the Notice of Termination, the incident involving striking a resident's grandchild occurred approximately seven years ago and was not listed; and there was no evidence submitted of violations occurring after the issuance of the 30-Day Notice. Further, the Notices of Termination did not mention that Defendant's behavior was a course of continuing conduct with a list of specific incidents and dates.

{¶ 16} R.C. 5321.05(A) imposes obligations on a tenant, including a requirement to conduct himself or herself "in a manner that will not disturb his [or her] neighbors' peaceful enjoyment of the premises." If a tenant fails to fulfill any obligation under R.C. 5321.05, the landlord "may deliver a written notice of this fact to the tenant specifying the act or omission that constitutes noncompliance with the pertinent obligations and specifying that the rental agreement will terminate upon a date specified in the notice, not less than thirty days after receipt of the notice. If the tenant fails to remedy the condition specified in the notice, the rental agreement shall terminate as provided in the notice." R.C. 5321.11.

{¶ 17} Phillips's 2004 lease also required her "not to disturb or annoy other tenants of the apartment community or the neighborhood." Pl.Ex. 7, ¶ 8, Use and Occupancy. Her obligations as a tenant also included that she abide by all HUD regulations and regulations issued by management, including the property rules and regulations. *Id.* at ¶ 21(d), Tenant's Obligations. Violations of those regulations would constitute a violation of the lease. *Id.*

{¶ 18} The Management Obligations portion of the lease provided that management must “notify Tenant of the specific grounds for any proposed adverse action by the Management,” including proposed lease termination. *Id.* at ¶ 20(e).

{¶ 19} “[D]ue process requires a federally-funded landlord to pursue an eviction only on the grounds listed in the termination notice. This must be so ‘to insure that the tenant is adequately informed of the nature of the evidence against him so that he can effectively rebut that evidence.’” *Cincinnati Metro. Hous. Auth. v. Patterson*, 1st Dist. Hamilton No. C-130161, 2013-Ohio-5323, ¶ 18, quoting *Associated Estates Corp. v. Bartell*, 24 Ohio App.3d 6, 12-13, 492 N.E.2d 841 (8th Dist.1985).

{¶ 20} Part 24 of the Code of Federal Regulations establishes requirements for the eviction of residents from certain HUD-owned and HUD-subsidized projects. 24 C.F.R. 247.3 provides, in relevant part:

(a) General. The landlord may not terminate any tenancy in a subsidized project except upon the following grounds:

- (1) Material noncompliance with the rental agreement,
- (2) Material failure to carry out obligations under any state landlord and tenant act,
- (3) Criminal activity by a covered person * * *.
- (4) Other good cause.

No termination by a landlord under paragraph (a)(1) or (2) of this section shall be valid to the extent it is based upon a rental agreement or a provision of state law permitting termination of a tenancy without good cause. No termination shall be valid unless it is in accordance with the provisions of §

247.4.

(b) Notice of good cause. The conduct of a tenant cannot be deemed other good cause under § 247.3(a)(4) unless the landlord has given the tenant prior notice that said conduct shall henceforth constitute a basis for termination of occupancy. Said notice shall be served on the tenant in the same manner as that provided for termination notices in § 247.4(b).

(c) Material noncompliance. The term material noncompliance with the rental agreement includes:

- (1) One or more substantial violations of the rental agreement;
- (2) Repeated minor violations of the rental agreement that:
 - (i) Disrupt the livability of the project,
 - (ii) Adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities,

* * *

24 C.F.R. 247.3.

{¶ 21} In addition, 24 C.F.R. 247.4(a) specifies what information must be included in a termination notice. It states:

(a) Requisites of Termination Notice. The landlord's determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated on a date specified therein; (2) *state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense*; (3) advise the tenant that if he or she remains in the

leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense; and (4) be served on the tenant in the manner prescribed by paragraph (b) of this section.

(Emphasis added.) Gold Key and Phillips agree that these federal regulations apply to Senior Village.

{¶ 22} Gold Key provided Phillips with two 30-day notices of termination. The first was delivered on January 28, 2014, and the second on April 1, 2014. Both notices stated that Phillips had violated Rules and Regulations (28), which prohibited any “boisterous conduct or other action which will disturb the peace and quiet enjoyment of the premises by other Tenants.” The first notice indicated that Phillips had violated the provision on January 24, 2014 by cursing at another resident, smoking in the hallway, and having liquor in the community room. The second notice added an allegation that on February 1, 2014, Phillips approached another resident and called her names.

{¶ 23} Gold Key offered evidence at trial of prior conduct by Phillips that interfered with other tenants’ enjoyment of the community. Hairston described an incident with her grandson from several years before, and there was testimony that Phillips was frequently intoxicated. Everhart testified that she previously had meetings with Phillips about incidents prior to the January 24 incident; those prior incidents also involved Phillips’s being intoxicated, arguing with other residents and guests, and drinking in the hallway. Phillips had denied those allegations. Gold Key offered no evidence regarding the alleged incident on February 1, 2014, and Phillips testified that no incidents had occurred since January 24, 2014.

{¶ 24} Gold Key did not allege in its notices that Phillips's behavior on January 24, 2014 was a continuation of a course of conduct that disturbed the quiet enjoyment of the premises by other tenants. Thus, Phillips was not put on notice that Gold Key's decision to terminate her tenancy was based on prior encounters with Hairston or members of Hairston's family, on confrontations with other residents or their guests, or on the alleged prior instances of drinking and smoking. *Contrast Fed. Prop. Mgmt. v. Brown*, 2d Dist. Montgomery No. 17424, 1999 WL 961275 (June 24, 1999) (tenant received letter alleging history of violations and continued failure to abide by lease, rules, and regulations, and the notice of violation included a detailed list of incidents).

{¶ 25} At oral argument, Gold Key referenced *Northland Village Apts. v. Hamp*, 2d Dist. Montgomery No. 12407, 1991 WL 108717 (June 20, 1991) for the proposition that a tenant can be provided the necessary notice by being told the specific basis for the eviction at the 10-day notice meeting. In *Hamp*, the tenant received an eviction notice that stated, "You are hereby notified that your tenancy is terminated as of 5-7-90. The specific reasons for this termination are as follows: Failure to reimburse the landlord within thirty days for repairs made under paragraph 11 of this agreement." The tenant claimed that the notice did not satisfy the specificity requirements of 24 C.F.R. 882.501, which had a specificity requirement similar to 24 C.F.R. 247.4(a). We disagreed, explaining:

The purpose of the specificity requirement, according to the regulation, is "to enable the Family to prepare a defense." Facts and circumstances otherwise known to the family *and of which they are given notice by reference through the written termination notice* are within the

contemplation of the regulation. It is not necessary that the written notice state with exactitude every detail within the landlord's reasons for termination in order to give the family sufficient notice to enable it to prepare a defense.

(Emphasis added.) *Hamp* at *1. We note that the tenant in *Hamp* did not provide a transcript of hearing before the magistrate, and we were required to presume the regularity of the proceedings before the trial court.

{¶ 26} Because the court in *Hamp* lacked a hearing transcript, *Hamp* did not (and could not) specify what additional facts and circumstances were considered by the magistrate to determine that the family was provided sufficient notice of the basis for the termination. Here, the only basis for termination referenced in Gold Key's January 30-day notice of termination was the January 24 incident; there was no reference to any prior incidents or course of conduct.

{¶ 27} Everhart and Phillips both testified that they met to discuss the allegations in the January 30-day notice of termination. However, there is no indication from their testimony that any other allegations from prior incidents were discussed at that meeting. Everhart testified that she "went over the incident with [Phillips] that happened on Friday the 24th. I asked her, you know, what happened." Everhart stated that she told Phillips that she had received several complaints from residents; Phillips denied the allegations. Everhart testified that she had had prior meetings with Phillips about similar incidents, but Everhart did not testify that she mentioned those prior incidents at the January 2014 30-day notice meeting. Even if we were to accept Gold Key's argument that Phillips could be evicted for prior incidents discussed at the 30-day notice meeting (an argument

we do not necessarily accept), the record does not substantiate that any prior incidents were discussed.

{¶ 28} Absent notification to Phillips that the basis for the proposed termination of her tenancy was a series of incidents occurring over a period of time, Gold Key could not evict Phillips for her course of conduct, and the trial court properly considered only the evidence related to the January 24 incident in determining whether Gold Key had good cause to terminate Phillips's tenancy. And, Gold Key does not argue that the January 24 incident, by itself, was sufficient cause to justify Phillips's eviction.

{¶ 29} Gold Key's first assignment of error is overruled.

{¶ 30} Gold Key's second assignment of error states:

The magistrate should have permitted Appellant to present further testimony regarding Appellee's continuous disruptive behavior and erred by prohibiting such testimony.

{¶ 31} Gold Key claims that the magistrate erred in not allowing Gold Key to present additional witnesses regarding Phillips's behavior at a hearing on June 27, 2014.

{¶ 32} The June 27, 2014 hearing was held two weeks after the magistrate issued her decision granting restitution of the apartment to Gold Key. Phillips had requested a stay of the writ of restitution, asking for a use and occupancy bond, and Gold Key had requested a hearing on the bond amount. The issue before the court at the June 27 hearing was the amount of bond that Phillips would be required to post.

{¶ 33} At the beginning of the hearing, counsel for Gold Key indicated that Gold Key believed it was entitled to market rate rent, as Phillips had not been recertified for the HUD contract rate. Counsel further stated that, left to her own devices, Phillips

“becomes a nasty drunk” and that Gold Key had “additional witnesses that can testify about other incidents.” The magistrate responded that she had “no desire to enter into that type of scenario * * * for the purposes of this hearing * * * based on the testimony that [she] already heard * * * when [she] made [her] initial decision.” The parties then discussed proposed bond amounts.

{¶ 34} Given the procedural posture of the case on June 27 and the purpose of the June 27 hearing, we find no abuse of discretion in the magistrate’s decision not to allow additional testimony regarding Phillips’s course of conduct at Senior Village. Moreover, as discussed above, such evidence would be superfluous, as the notices of violation were limited to Phillips’s conduct on January 24, 2014 and February 1, 2014.

{¶ 35} Gold Key’s second assignment of error is overruled.

{¶ 36} The trial court’s judgment will be affirmed.

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FAIN, J. and DONOVAN, J., concur.

Copies mailed to:

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