

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS RUSSELL HOOPER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT, et al.,

Defendants.

Civ. No. 6:17-cv-00031-MC

ORDER

MCSHANE, Judge:

Plaintiff Dennis Russell Hooper moves for Temporary Injunction seeking a stay in state eviction proceedings to prevent the disposal or removal of plaintiff's personal property. ECF No. 15. The Motion is accompanied by Plaintiff's Memorandum (ECF No. 16), Plaintiff's Declaration (ECF No. 17), and Amended Complaint (ECF No. 18). Because Plaintiff has not shown a likelihood of success on the merits, Plaintiff's motion seeking temporary injunction (ECF No. 15) is DENIED.

BACKGROUND

For the limited purpose of Plaintiff's Motion and without reaching the ultimate merits of the amended complaint, the Court accepts the asserted facts as true. Plaintiff is or until recently was a residential tenant of Coos-Curry Housing Authority. Amend. Compl., ECF No. 18. On February 22, 2017, plaintiff was served an eviction summons with the cause listed for eviction to be a lease violation. Pl.'s Memo 1-2, ECF No. 16. The Curry County Circuit Court, State of Oregon held a hearing on March 1, 2017 under the case number 17LT02905. The Circuit Court granted default judgment in Coos-Curry Housing Authority's favor. Plaintiff states he appeared by telephone, but had incorrectly e-filed his answer and fee waiver. A Notice of Restitution was issued granting defendant Coos-Curry Housing Authority possession. Defendant then gave Plaintiff until April 4, 2017 to remove all of his personal property from the rental unit. Plaintiff has appealed to the Oregon Court of Appeals.

Plaintiff argues he is unable to retrieve his personal property, because he is homeless and physically disabled. Pl.'s Memo 2, ECF No. 16. The personal property at the apartment unit consists of many boxes of records and legal documents in support of his claims against defendant, a secondary wheelchair, wheelchair parts and accessories, durable medical equipment, i.e. shower bench, leg braces, various medications, some of which require refrigeration, and personal items such as clothes. Plaintiff has paid rent for the month of March 2017. Plaintiff declares his income is limited to SSI in the amount of \$516.00, he is homeless and unable to afford permanent shelter; and has no place to store his legal or personal records. Pl.'s Decl. 1, ECF No. 17.

Plaintiff alleges the eviction constitutes retaliation against plaintiff for filing this lawsuit in January 2017. Pl.'s Mot., ECF No. 15; Amend. Compl. 20-22, ECF No. 18. Plaintiff's

Amended Complaint outlines the timeline of facts. On November 29, 2016, Coos-Curry Housing Authority conducted an annual inspection of Plaintiff's residence. Amend. Compl. 20-22, ECF No. 18. On December 21, 2016, Housing Authority notified Plaintiff there were "certain failed items that needed to be addressed by the resident" and that Plaintiff's residence would be re-inspected on January 19, 2017. Failed items include covering the window with a sheet and using a type of heat source to heat a room that is not allowed. The Amended Complaint reads that "Plaintiff elected not to comply with the request" believing that Defendant's requests were not mandatory.

On January 18, 2017, Plaintiff told Defendant Housing Authority that they would not be allowed to re-inspect the "failed items." Amend. Compl. 21-22, ECF No. 18. By letter dated January 19, 2017, Housing Authority stated that Plaintiff's tenancy would be cancelled and that if no action to remedy the violation is taken, the eviction procedure will continue forward. Plaintiff underwent the Housing Authority's grievance procedure to aggrieve the notice of cancellation. Plaintiff's grievance was ultimately denied and a Residential Eviction Complaint was filed on February 21, 2017.

STANDARD OF REVIEW

A party seeking a preliminary injunction must establish that it is likely to succeed on the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 374 (2008). The mere possibility of irreparable harm is not enough. Rather, the plaintiff must establish such harm is likely. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The standards for issuing a temporary restraining order are similar to those required for a preliminary injunction. *Lockheed*

Missile & Space Co., Inc. v. Hughes Aircraft Co., 887 F.Supp. 1320, 1323 (N.D. Ca. 1995). The court's decision on a motion for a preliminary injunction is not a ruling on the merits. *See Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

DISCUSSION

Whether Plaintiffs have shown a likelihood of success on the merits is a threshold inquiry. *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013). I find here that there is not a likelihood of success on the merit. First, the timeline of dates does not support Plaintiff's claim for retaliation. While the initial complaint was filed January 9, 2017, the process that led to eviction began on November 29, 2016 from a required annual inspection which has occurred every year since Plaintiff had first moved into the unit in 2012. Defendant discovered Plaintiff's non-compliance with Housing Authority's policies during the November 29, 2016 inspection, six weeks prior the filing of this lawsuit. Plaintiff's Amended Complaint states clearly that he chose not to address the "failed items" and refused to allow Defendant entry into his rental unit to conduct a re-inspection in violation of the lease. A lease violation is a valid, prima facie reason to evict Plaintiff irrespective of any motivation to retaliate.

CONCLUSION

Because Plaintiff has not shown a likelihood of success on the merits, Plaintiff's motion seeking temporary injunction (ECF No. 15) is DENIED.

IT IS SO ORDERED.

Dated this 4th day of April, 2017.

/s/Michael J. McShane
Michael J. McShane
United States District Judge