

1995

Housing Authority of Salt Lake City v. Louise Lopez Delgado : Unknown

Utah Court of Appeals

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Law Offices of L. Zane Gill.

Eric Mittelstadt, Utah Legal Services.

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FILED

November 20, 1995 Utah Court of Appeals

NOV 21 1995

Marilyn M. Branch
Clerk of the Court

Court Clerk
Utah Court of Appeals
400 Midtown Plaza
230 South 500 East
Salt Lake City, Utah 84102

RE: HOUSING AUTHORITY OF SALT LAKE CITY vs. LOUISE LOPEZ DELGADO
CASE # 950300 - CA

Dear Court Clerk:

Enclosed is a copy of the case St. Clair County Housing Authority vs. Turner. We cited this case in our Brief of Appellee. If you have any questions, please call me.

Sincerely,

Barbara Baker
Paralegal

UTAH COURT OF APPEALS
BRIEF

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DOCUMENT
KFU

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DOCKET NO. 950300CA

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MAY 24 1989

NATIONAL CLEANINGHOUSE
FOR LEGAL SERVICES

IN THE CIRCUIT COURT
TWENTY-THIRD JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

44,680
B
7 P.
1011848

ST. CLAIR COUNTY HOUSING
AUTHORITY,

Plaintiff,

vs.

ERNESTINE TURNER and
UNKNOWN OCCUPANTS,

Defendants.

95-0300-CA

89 LM 451

FILED
APR 18 1989
C. H. H. !
CIRCUIT CLERK

MOTION TO DISMISS

Now comes Ernestine Turner, defendant, by her attorney, Bradley S. LeBoeuf, Land of Lincoln Legal Assistance Foundation, Inc., and moves to dismiss plaintiff's complaint pursuant to Ill. Rev. Stat. ch. 110, ¶2-619 (a)(1), (9). Defendant states in support of her motion as follows:

1. Plaintiff, as lessor, alleges that defendant, as lessee, is indebted to plaintiff for rent owed and that plaintiff is entitled to possession of the premises commonly known as 600 S. Sixth St., Apt. 133, Brooklyn, Illinois (hereinafter "premises") because of defendant's failure to pay rent.

2. Plaintiff is required prior to filing a complaint in forcible entry and detainer to terminate defendant's tenancy on the basis of nonpayment of rent with a proper notice of termination of tenancy. 24 C.F.R. §966.4(1)(2)(i) (1988), Ill. Rev. Stat. ch. 110, ¶9-209 (1987).

3. Plaintiff issued a "Fourteen Day Rent Demand" to defendant dated March 11, 1989. (A copy of the notice is

12. Plaintiff's "Fourteen Day Rent Demand" is defective and insufficient to terminate defendant's tenancy because it includes other charges in the demand for rent.

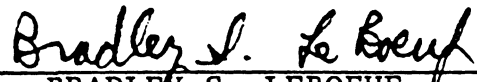
WHEREFORE, defendant prays as follows:

A. The court find that defendant is not indebted to plaintiff for any delinquent rent;

B. The court find that plaintiff's "Fourteen Day Rent Demand" is fatally defective and insufficient to terminate defendant's tenancy in that the notice includes charges against defendant other than rent.

C. The court dismiss plaintiff's complaint with prejudice according to Ill. Rev. Stat. ch. 110, ¶2-619(a)(1) for lack of subject matter jurisdiction and/or ch. 110, ¶2-619 (a)(9) in that plaintiff's claim is barred by other affirmative matter avoiding the legal effect of or defeating the claim; and

D. Costs be assessed against plaintiff.



BRADLEY S. LEBOEUF
Attorney for Defendant

Bradley S. LeBoeuf
Land of Lincoln Legal
Assistance Foundation, Inc.
327 Missouri Ave., Suite 300
East St. Louis, IL 62201
(618) 271-9140 or 398-0688

I wish to remain a
8. I wish to remain a public housing tenant in St. Clair
County Housing Authority Property.

Further affiant sayeth not.

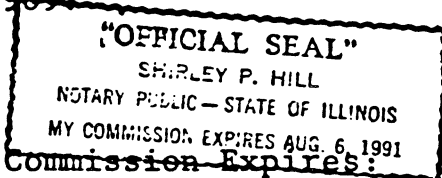
VERIFICATION

STATE OF ILLINOIS)
)ss
COUNTY OF ST. CLAIR)

ERNESTINE TURNER, being duly sworn, state that I am the
defendant in the above entitled case, that I have read the
foregoing Affidavit in Support of Defendant's Motion to Dismiss
and have knowledge of the matters alleged herein, and that those
matters are true.

Ernestine Turner
ERNESTINE TURNER

Subscribed and sworn to before me on this 17th day of
April, 1989.



My Commission Expires:

Shirley P. Hill
NOTARY PUBLIC
Aug. 6, 1991



TENANT COPY-DO NOT RETURN

277-3290 • 398-6017

ST. CLAIR COUNTY HOUSING AUTHORITY

100 NORTH 48TH ST. - BELLEVILLE, IL 62223
24 Hour Service Request No. 398-8463

STATEMENT OF RENTS
AND OTHER CHARGES

BALANCE FWD.	RENT	RETRO	OTHER
0.00	0.00	0.	0.00

DATE	DESCRIPTION	REF	AMOUNT
09-30	BALANCE FORWARDED		10.00
10-20	RENT	442	250.00
11-01	DWELLING RENT		51.00

DUE DATE 11/01/85 TOTAL DUE 311.00

11300-100-001 -0153-00
600 N. 14th St. Belleville
Belleville, IL 62223
31259

PAYMENTS RECEIVED AND CHARGES AFTER
10/31/85
APPEAR ON NEXT MONTHS BILL

EXHIBIT B

MAY 24 1989
NATIONAL GUARDIANHOUSE
FOR LEGAL SERVICES

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

44,680
C
6P
1011848

ST. CLAIR COUNTY HOUSING)
AUTHORITY,)
)
Plaintiff,)
)
vs.)
)
ERNESTINE TURNER,)
)
Defendant.)

89 LM 451

FILED
MAY 19 1989
CLERK

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS

STATEMENT OF FACTS

Plaintiff, as lessor, seeks to evict defendant from her public housing tenancy on the basis of nonpayment of rent. Total tenant payments made to the lessor, however, indicate only a delinquent account for "other charges" and not for "rent."

ISSUE

May the lessee's public housing tenancy be terminated on the basis of a fourteen day notice to quit for nonpayment of rent when the total payments made to the lessor indicate only a balance due for "other charges" and not for "rent"?

I. A PUBLIC HOUSING TENANT MAY NOT BE EVICTED FOR NONPAYMENT OF "RENT" SOLEY BECAUSE OF NONPAYMENT OF "OTHER CHARGES."

Federal regulations provide that a public housing authority may assess a tenant's account under two separate charges: "rent" and "maintenance and repair beyond normal wear and tear." 24 C.F.R. §966.4(b)(1), (2). Rent is a tenant obligation independent of other charges for maintenance and repair. The

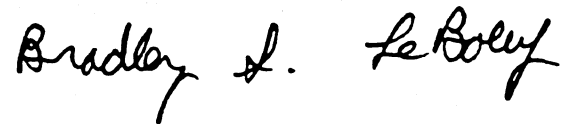
Furthermore, in Beckham v. New York City Housing Authority, 592 F. Supp. 785, 792-93, rev'd on other grounds, 755 F.2d 1074 (1985), the court found that public housing regulations "prohibit the inclusion of miscellaneous charges and penalties as rent."

The St. Clair County Housing Authority is seeking herein to terminate defendant's lease on the basis of nonpayment of \$51.00 rent. The fourteen day notice to quit also included a demand of \$59.40 for other charges. The other charges consist; in part, of a \$250.00 assessment on October 20, 1988 for the replacement of a gas range in the tenant's apartment. Plaintiff alleges at the time of filing its complaint that defendant is indebted a total of \$110.40.

The current bureaucratic habit of plaintiff in dissecting tenant payments into two separate accounts without first crediting the rent account is prejudicial to the lessee's continued occupancy. Instead of posting payments to the two separate accounts and showing a deficiency in both accounts, the lessor should first credit tenant payments towards rent. When the rent charges are paid, then the excess should be credited towards the other charges. If an eviction is based on the application of payments other than first towards rent, "it appears that the application of such rules would work an injustice." Village of Winfield v. Reliance Insurance Co., 64 Ill. App. 2d 253, 212 N.E.2d 10,12 (2d Cir. 1965).

The lessor, therefore, lacks good cause to terminate defendant's lease for nonpayment of rent. Additionally, the inclusion in plaintiff's notice to quit of charges other than for rent renders plaintiff's notice fatally defective. Thus, defendant requests that plaintiff's complaint in forcible entry and detainer be dismissed with prejudice.

Respectfully submitted,

A handwritten signature in black ink that reads "Bradley S. LeBoeuf". The signature is written in a cursive style with a large, stylized 'B' and 'L'.

Bradley S. LeBoeuf
Attorney for Defendant

Bradley S. LeBoeuf
Land of Lincoln Legal
Assistance Foundation, Inc.
327 Missouri Ave., Suite 300
East St. Louis, IL 62201
(618) 271-9140 or 398-0688

STATE OF ILLINOIS

44,680

MAY 24 1989 IN THE CIRCUIT COURT OF THE JUDICIAL CIRCUIT

A

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1011848

(15 pp.)

NATIONAL CLEANHOUSE FOR LEGAL SERVICES

COUNTY

St. Clair County Housing Authority, A Municipal Corporation, Plaintiff

vs.

No. 89 LM 451

Ernestine Turner and Unknown Occupants, Defendant, 600 S. 6th St. Apt. 133, Brooklyn, Illinois 62059

COMPLAINT IN FORCIBLE ENTRY AND DETAINER

St. Clair County Housing Authority, A Municipal Corporation

plaintiff

allege that he entitled to possession of the following-described premises, situate in the City of Brooklyn St. Clair, County, Illinois, to wit: 600 S. 6th St. Apt. 133

that the defendant unlawfully withhold possession thereof from plaintiff, and furthermore indebted to said plaintiff for rent of said premises in the sum of \$ 51.00

Wherefore, plaintiff pray judgment against the defendant for possession of said described premises, and for the sum of \$ 51.00 and costs of suit

Stephen Rice, 110 E. Lincoln St., Belleville, Illinois 62221, 277-6010, Attorney at Law

FILED APR 06 1989 ADMONITION OF RENT DUE

Dated March 28, 19 89

Signature of Stephen R. Rice (Plaintiff)

being duly sworn, on oath say that he the plaintiff in the within cause, that the demand of the plaintiff in said cause is for possession of the said premises and rent therefor for the months of

and that the amount due to the said plaintiff from the defendant in said cause after allowing to said defendant all just deductions, credits and setoffs, if any, is Dollars and Cents.

Signed and sworn to before me

19

(Clerk of the Circuit Clerk — Notary Public)