

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

HOUSING COURT DEPARTMENT  
CITY OF BOSTON DIVISION  
SUMMARY PROCESS  
NO. 10-H84-SP-0/0/3/3/5/1/

October 27, 2010  
Steven D. Pierce,  
Chief Justice

**U.S. Bank National Association vs. Davis**

**Memorandum of Decision and Order on Defendant's Motion to  
Dismiss Or, in the Alternative, for Summary Judgment**

**Introduction**

This is a summary process action in which the plaintiff is seeking possession of 7 Verndale Street in Mattapan neighborhood of Boston ("the premises") and \$700.00 per month in unpaid rent/use and occupancy from the date on which the property was foreclosed, January 15, 2009. . . .

**Discussion**

The defendant is seeking dismissal of this action or, in the alternative, summary judgment on the plaintiff's claims, alleging that the plaintiff failed to properly terminate her tenancy. In support of her Motion, the defendant avers that the Notice to Quit sent to her by the plaintiff was defective under the federal Protecting Tenants at Foreclosure Act (PTFA) as well as state law. Since the parties have submitted affidavits and documents for the Court's consideration that are outside the pleadings, the Court shall treat the defendant's Motion as one for summary judgment. Mass. R. Civ. P. 12(c). . . .

The facts in this case, some of which are disputed as indicated, are as follows. In 2006, the former owner of the premises, Amelia Masucci, granted a mortgage on the premises to

Mortgage Approval Services, which was recorded at the Suffolk County Registry of Deeds. While Amelia Masucci still owned the premises, she entered into a two-year lease agreement to let the premises to the defendant. The lease term runs from December 1, 2008 to December 1, 2010.<sup>1</sup> The defendant paid the rent owed every month to Ms. Masucci's son, Randolph McNeil. Presumably, the mortgage was assigned to the plaintiff at some point. Ms. Masucci later defaulted on her obligations, and the plaintiff instituted foreclosure proceedings and eventually held [a] foreclosure sale on or about January 15, 2009. It is assumed that the plaintiff was the high bidder at the sale and a foreclosure deed transferring ownership of the premises to itself was executed. On May 10, 2010, the plaintiff caused a 90-day Notice to Quit to be served on the defendant.

Section (a) of the PTFA, which became effective May 20, 2009, provides that any immediate successor in interest to a residential property foreclosed on or after the effective date of the Act assumes the interest subject to the rights of any bona fide tenant.<sup>2</sup> Under Section (a), the immediate successor in interest must provide a notice to vacate at least 90 days before the effective date of such notice. Tenants with leases must be permitted to stay in the residence until the end of their lease unless the property is sold after foreclosure to a purchaser who will occupy the premises.

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<sup>1</sup>The plaintiff alleges that the lease is invalid because it does not appear to have been signed by Ms. Masucci herself. Regardless, the fact that the defendant resided at the premises as a tenant albeit perhaps a tenant at will, is not in dispute.

<sup>2</sup>A tenant is "bona fide" if (1) he or she is not the child, spouse, or parent of the mortgagor, (2) the lease or tenancy was the product of an arm's length transaction, and (3) the rental amount is not substantially less than the fair market rental value of the property or the rent is reduced due to a federal, state, or local subsidy.

Viewing the evidence in a light most favorable to the plaintiff, the Court rules that there is no genuine dispute as to any of the material facts relevant to the plaintiff's claims in this case. The only purported dispute is whether the lease is valid. However, the Court deems this fact immaterial as it finds that the PTFA does not apply because the property was foreclosed on prior to the Act's effective date. Even though the PTFA is not applicable here, the Court finds that the defendant is still entitled to summary judgment on the plaintiff's claims as a matter of law because the Court finds that the plaintiff did not comply with state law in terminating the defendant's tenancy.

M.G.L. c. 186, § 13 provides in relevant part that "[w]henver a tenancy at will of premises occupied for dwelling purpose . . . is terminated, without fault of the tenant, . . . no action to recover possession of the premises shall be brought . . . until after expiration of a period, equal to the interval between the days on which the rent reserved is payable or thirty days, whichever is longer.<sup>3</sup> This has been interpreted to require that a notice to quit, other than one for non-payment of rent, must terminate a tenancy on a date on which the rent is payable.

The defendant's lease indicates that rent is due on the first day of the month.<sup>4</sup> The Notice to Quit, which was served on the defendant on May 10, 2010, purports to terminate the tenancy, and therefore, the Notice to Quit is not legally sufficient. As the Plaintiff cannot show that the defendant's tenancy was properly terminated, it is unable to prove its prima facie case for possession of the premises. Accordingly, the defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment is hereby allowed.

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<sup>3</sup>M.G.L. c 196 § 13A provides that a tenant occupying residential premises pursuant to a lease becomes a tenant at will upon foreclosure of the premises.

<sup>4</sup>All but a couple of the defendant's rent receipts received from Mr. McNeil are dated the first of the month. Therefore, even if the lease is invalid and the tenancy is deemed as one of will, the defendant has shown that rent was payable on the first day of the month.