

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,SS:

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
SUMMARY PROCESS
NO. 06-SP-0/2/8/1/5/

**713 DUDLEY STREET ASSOCIATES,
c/o Abrams Management Company, Inc.,
Plaintiff**

VS.

**EARTHA ODOM and
RAYMOND M. RICE,
Defendants**

**FINDINGS OF FACT, RULINGS OF LAW,
AND ORDER FOR JUDGMENT**

This is a summary process action in which the plaintiff seeks to recover possession of the premises from the defendants for certain lease violations. The defendant Eartha Odom filed a written answer and a **Motion To Dismiss (Failure to Comply with Subsidy Requirements, HUD Multi-Family Housing)**. Since this Motion requires the Court to consider facts beyond the pleadings in order to rule on this Motion, it will be resolved in the course of this decision.

Based upon all the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

The defendant Eartha Odom has resided at 713 Dudley Street, #9, Dorchester, MA (“the premises”) as a tenant under a written Occupancy Agreement since approximately 1976.¹ The plaintiff, 713 Dudley Street Associates, c/o Abrams Management Company, Inc. (“713 Dudley Street Associates”), is the owner of the premises and is the defendant’s landlord. The contract rent for the

¹Since the defendant Raymond M. Rice, Ms. Odom’s son, is an authorized occupant of the premises, but not the tenant under the Occupancy Agreement, the balance of this decision will refer solely to the defendant Eartha Odom.

premises is **\$1,277.00**, the defendant's portion of the monthly rent is **\$164.00** and is due on the first day of each month. The plaintiff does not contend that the defendant owes any unpaid rent.

The Court finds that, on July 8, 2006, the plaintiff served the defendant with a legally sufficient 30 Day Notice To Quit. This Notice To Quit provides, in pertinent part:

"A. Your tenancy at the above referenced apartment will be terminated thirty (30) days from the date that you receive this notice.

"B. Your tenancy is subsidized and/or regulated by the Section 8 Program and can be terminated only for serious or repeated violation of your lease or tenancy, for violation of federal, state, or local law, or for other good cause. Your tenancy can be terminated only at the end of the Initial Term or at the end of a Successive Term for other good cause, or during the Initial Term or Successive Term for serious or repeated violations of this Lease, violation of Federal, State or local law. The reason for termination of your Lease is due to the fact that (1) you have failed to actively and properly supervise your son, Raymond M. Rice on the premises; (2) you have caused and/or allowed your son, Raymond M. Rice to engage in a pattern of unlawful acts on the premises, including but not limited to, the possession of controlled substances; and (3) on or about May 22, 2006, Boston Police Officers and members of the Longwood Security Services, Inc. arrested your son, Raymond M. Rice on the premises for breaking and entering into another resident's apartment and possession of controlled substances. Said actions are in violation of Paragraphs F2, F12, F13 and F14 of your lease agreement as well as the provisions of Massachusetts General Laws, chapter 139, section 19....

"D. You have the right to discuss the proposed termination of tenancy with Management at any time prior to the termination date as set forth in Paragraph A. If you choose to discuss this termination, the landlord will meet with you. You must request such a meeting by delivering a

written request to the landlord...”

The defendant contends that this action must be dismissed, pursuant to M.R.Civ.P. 12(b)(1), because the plaintiff did not meet with the defendant to discuss the proposed termination of her tenancy after she requested such a meeting.


The Court finds that, on July 10, 2006, the defendant made a written request to the plaintiff for a hearing to discuss the proposed termination of her tenancy. Kimberly Parker, the plaintiff’s property manager, testified that, on an unspecified date after receiving the defendant’s written request for a hearing, she was on the property and saw the defendant. She testified that the defendant came downstairs, and that she talked about the case with the defendant as they stood at the front door of the building. She testified that, at the conclusion of this conversation, she asked the defendant if she still wanted a meeting, and that the defendant told her she did not need one. The defendant testified that, on the day in question, she saw Ms. Parker and called to her from her window, then went downstairs. She testified that she asked Ms. Parker whether she had received her request for a meeting, and that Ms. Parker replied that she had received it “last Friday.” She testified that she never told Ms. Parker that she did not want a meeting. The Court credits the defendant’s testimony on this issue, and finds that there was no credible evidence at trial that the defendant had withdrawn her request for a hearing to discuss the proposed termination of her tenancy. The Court finds that the plaintiff’s failure to hold such a hearing requires that the complaint be dismissed. See Versailles Arms v. Pete, 545 So.2d 1193 (La. App. 1989); Gorsuch Homes, Inc. v. Wooten, 73 Ohio App.3d 426, 597 N.E.2d 554 (1992); Wingate Mgt. v. Tilleria, Boston Housing Court No. 02-SP-01817 (Edwards, J., November 4, 2002).

Accordingly, the defendant’s **Motion To Dismiss (Failure to Comply with Subsidy Requirements, HUD Multi-Family Housing)** is **ALLOWED**. The complaint shall be dismissed

(SUMMARY PROCESS 06-SP-/0/2/8/1/5/)

(713 DUDLEY ST. V. ODOM & RICE)

without prejudice and without costs.


ANNE KENNEY CHAPLIN
ASSOCIATE JUSTICE

Date: January 17, 2007

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Eartha M. Odom
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