

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
SUMMARY PROCESS
NO. 09H84SP005000

**AMY LOWELL APARTMENTS ACTING
BY AND THROUGH
HAIKEEN MANAGEMENT CORPORATION,**
Plaintiff

VS.

ANN KILBRIDE,
Defendant

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

This is a summary process action in which the plaintiff is seeking to recover possession of the premises from the defendant. The plaintiff alleges that the defendant, in violation of her lease obligations, failed to report certain income on her final application and certification statement at the time she commenced her tenancy. The defendant filed a written answer in which she denied the allegations.

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

The plaintiff, Amy Lowell Apartments, owns the multi-family apartment development known as Amy Lowell House at 65 Martha Road, in Boston. The residential apartments at Amy Lowell House are subsidized under the federal Low Income Housing Tax Credit (LIHTC) program. See, Section 42 of the Internal Revenue Code of 1986, as amended (per Schedule A of lease). HallKeen Management Corp. manages Amy Lowell House. The defendant, Ann Kilbride, resides at 65 Martha Road, Apartment 2G, subject to the terms of a written occupancy

agreement. She has occupied the premises since July 1, 2007. Her LIHTC subsidized rent is \$946.00. She is current with her rent. She lives alone.

On October 2, 2009, the plaintiff served Kilbride with a lease termination notice. In the notice the plaintiff alleged that in violation of her obligations set forth in ¶¶ F(15), H(1) and P of the occupancy agreement, Kilbride “failed to report household income during your initial certification in July 2007 . . .” Specifically, the plaintiff alleged that at the time she signed her updated rental application (on June 27, 2007) and her income verification form and lease (on July 1, 2007), she failed to disclose that she was receiving unemployment payments from the Commonwealth of Massachusetts.

Paragraph G(10)(b) of the occupancy agreement states that management may terminate the residents tenancy for other “material noncompliance” with the occupancy agreement. Paragraph F(15) of the occupancy agreement obligates the tenant “to comply with the rules, regulations and responsibilities pertaining to Resident under an Applicable Subsidy Program.” Paragraph H(1) of the occupancy agreement obligates the tenant to complete the annual recertifications and “Resident agrees to complete and file with Management each year a recertification form providing accurate information as to household income, employment and composition . . .” Paragraph P of the occupancy agreement provides in relevant part that “If Resident knowingly fails to report or falsely reports information on any application or recertification . . . on which Resident’s eligibility or rent is determined, and as a result is charged a rent less than the amount required by applicable subsidy rules under any Applicable Subsidy Program, Resident agrees to reimburse Management for the difference between the rent that should have been paid and the rent charged. In addition, Resident may be subject to eviction because of material noncompliance with this Agreement . . .”

Kilbride first applied for subsidized housing at the Amy Lowell House on December 22, 2006. She was placed on a waiting list. At that time, Kilbride had two part-time jobs. She worked for Delta Airlines as an “on-call” employee. She worked only when needed on short notice. She also worked for H&R Block as a tax preparer. Her tax preparation work was seasonal. The plaintiff acknowledges that the financial information that Kilbride provided to the plaintiff was accurate and complete when she submitted her application.

On April 23, 2007, the plaintiff notified Kilbride that she had risen to the top of the waiting list and that an apartment would be available. Kilbride met with the plaintiff's assistant property manager on April 24, 2007, and provided most of the information necessary to process her application. The plaintiff was specific with respect to what documentation Kilbride was required to provide as proof of her income and assets. She was required to provide the following documents: benefits statement From Social Security, award letters from pension or annuity sources, pay stubs if employed, two most recent bank statements, landlord history for the past five years, social security card, driver's license or identification card and birth certificate. Kilbride provided the plaintiff with all of the documents she had that were responsive to the above referenced list. At the time she met with the plaintiff's property manager in April 2007, her sole source of income continued to be her salaries from Delta and H&R Block.

On May 11, 2007, in response to a suggestion she received from her H&R Block manager, Kilbride went to the Massachusetts Division of Employment and Security (DES) and applied for unemployment benefits. On May 29, 2007, DES asked Kilbride to provide additional documents in support of her application for benefits. Kilbride did not hear anything more from DES until July 19, 2007.

The plaintiff notified Kilbride that she could move into her new apartment on July 1, 2007. On June 27, 2007, Kilbride completed and signed an updated rental application. In that application she reported accurately her annual income from Delta and H&R Block. She did not report any other income in the section entitled "Other Sources of Income by Household Member." I find that as of June 27, 2007, Kilbride did not have or receive income from any other source. Specifically, she had not been approved for and had not received any unemployment compensation benefits from DES.

On July 1, 2007, Kilbride completed and signed the plaintiff's "Tenant Income Certification" form. On that form she again reported accurately her annual income from Delta and H&R Block. She also reported accurately income she received from assets held by Bank of America, Delta Community Credit Union, Citizens Bank and Muriel Siebert & Co (IRA accounts). I find that as of July 1, 2007, Kilbride did not have or receive income from any other source. Specifically, she had not been approved for and had not received any unemployment compensation benefits from DES.

On July 1, 2007, Kilbride signed her occupancy agreement and commenced her tenancy at 65 Martha Road, Apartment 2G. Based upon the income and asset information that Kilbride provided to the plaintiff, Kilbride's LIHTC subsidized rent was set at \$946.00 per month.

On July 19, 2007, DES first notified Kilbride that her unemployment compensation application had been approved.¹ This was three weeks after Kilbride had completed her annual certification and commenced her LIHTC subsidized tenancy. In June 2008, at the close of the first year of her tenancy, Kilbride completed her annual recertification. In addition to the income she earned from Delta and H&R Block, Kilbride reported accurately the unemployment benefits she had actually received from DES starting on July 19, 2007 and ending on January 12, 2008.

I find that Kilbride testified truthfully with respect to (1) the income she reported to the plaintiff for 2006, 2007 and 2008, (2) the date on which she first learned that her DES application had been approved and she received her first unemployment compensation check, and (3) her communications with the plaintiff regarding her unemployment benefits.

In 2008 the Massachusetts Department of Housing and Community Development (DHCD) retained a private company, Spectrum Enterprises, Inc. (Spectrum), to conduct an audit to monitor the plaintiff's compliance with the provisions of the LIHTC program. In a monitoring report dated October 3, 2008, Spectrum determined that the plaintiff was not in compliance because Kilbride's "household income above the income limit upon initial occupancy" (sic). Specifically, Spectrum determined that:

"It has been discovered that Ms. Kilbride did not disclose all income at her 7/1/2007 initial certification. Ms. Kilbride began receiving unemployment shortly after moving in and had applied for unemployment prior to move-in. This income put Ms. Kilbride over the income limit. This has been verified by her 2007 tax returns. Continuing noncompliance from 7/1/2007."

The plaintiff commenced this eviction action against Kilbride only because Spectrum determined that Kilbride's unit was not eligible for the LIHTC subsidy.

Spectrum is correct that Kilbride began receiving unemployment benefits shortly after she moved into her apartment. However, Spectrum's finding that Kilbride did not disclose all of her income at her July 1, 2007 initial certification is incorrect.

¹ Kilbride learned that she had been approved only upon her receipt of the first unemployment check. DES had not communicated with Kilbride orally or in writing between May 29 and July 19, 2007.

I find and rule that Kilbride truthfully and accurately disclosed to the plaintiff all the income she had actually received and was receiving at the time she completed her initial certification on July 1, 2007. As of that date her only earned income came from Delta and H&R Block (together with nominal income from her bank assets).

There is nothing in Kilbride's LIHTC occupancy agreement (or in the rules or regulations of the LIHTC program as best as I can discern them to be) that obligates a tenant to report on her annual income certification form that she had applied for a governmental benefit where the application has not as yet been approved by the governmental agency. This makes perfect sense to me because LIHTC program eligibility is based upon income actually earned and received. While a benefits application is pending the tenant cannot know whether her application will be approved and she cannot know what the dollar amount of the benefit would be if she were to be approved. The LIHTC income certification process should not be reduced to a game of "gotcha" where the tenant risks losing her housing (and the landlord risks losing reimbursement of the subsidy amount) solely because she does not disclose that she might qualify for a governmental benefit and thus receive other income at some indeterminate date in the future. I rule that a LIHTC-subsidized tenant is required to report her receipt of such income only after she is notified that the governmental agency has approved the application and will provide a cash benefit in a specified amount commencing on a specified date.² Here, it was not until July 19, 2007, that DES first notified Kilbride that her unemployment compensation application had been approved and her payments commenced. This was after Kilbride had completed and signed her first annual certification form on July 1, 2007. Kilbride received unemployment compensation

² The agencies responsible for the LIHTC program could require participants to report their "potential" for additional income based upon a pending governmental benefit application. However, to add this reporting obligation the agencies would have to amend the LIHTC program rules and regulations to require as part of the housing application process or as part of the interim/annual recertification process that a tenant notify the landlord wherever she has applied for a governmental benefit (such as SSDI, SSI, TAFDC or unemployment compensation). How the agency would incorporate the unknown amount of this possible benefit into the LIHTC income formula is unclear to me.

from July 19, 2007 until January 12, 2008. She was not required to report her receipt of unemployment benefits until her next annual recertification date.³ It is undisputed that at the time of her 2008 annual recertification, in compliance with ¶H(1) of her occupancy agreement, Kilbride fully and accurately disclosed that she had received these unemployment benefits.

Based upon these factual findings, I rule that since her tenancy commenced on July 1, 2007, Kilbride has complied with all of the resident obligations set forth in her occupancy agreement. First, she has complied with the rules and regulations of the LIHTC program in accordance with ¶F(15). Second, she provided complete and accurate financial information to the plaintiff at the time of her initial and first annual certification in accordance with ¶H(1). Third, she did not violate ¶P of the occupancy agreement. Specifically, she did not knowingly fail to report or falsely report income information on any application or recertification form. Finally, Kilbride did not engage in any conduct by act or omission that would constitute “material noncompliance” within the meaning of ¶G(10)(b) of the occupancy agreement.

Kilbride is an honorable and honest person who has complied with her obligations as a LIHTC-subsidized tenant at Amy Lowell House.

The plaintiff has not established its case to recover possession of the premises from the defendant, Ann Kilbride.

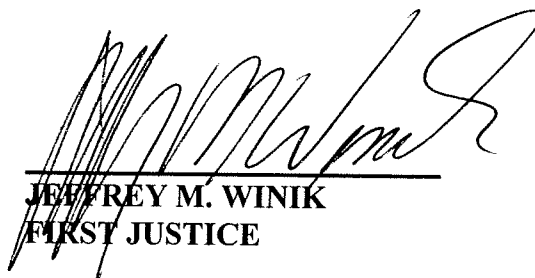
ORDER FOR JUDGMENT

Based upon all the credible testimony and evidence presented at trial in light of the governing law, it is **ORDERED** that:

³ ¶15(2) of the occupancy agreement addresses when a tenant must complete an interim recertification. ¶15(2) provides in relevant part that a resident must report within 30 days “any change in household income cumulatively by more than \$200.00 per month.” Kilbride received unemployment benefits beginning on July 19, 2007 only after H&R Block laid her off and she stopped receiving employment income. Accordingly, her receipt of unemployment benefits did increase her monthly household income by more than \$200.00. In fact, her monthly income decreased during the period she was unemployed. Her unemployment benefits ended when she returned to her seasonal job at H&R Block. Therefore, Kilbride was not required to report a change in her income within 30 days of July 19, 2007, and was not required to complete an interim recertification.

1. Judgment enters for the defendant on the plaintiff's claim for possession.

SO ORDERED.



JEFFREY M. WINIK
FIRST JUSTICE

March 22, 2010

cc: Jeffrey Turk, Esquire
Ann Kilbride