STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

FILED

DEC 06 1994

Jane F. Morrow
COURT ADMINISTRATOR
ANOKA COUNTY, MN

DEPUTY

DECEMBER 1994

TENTH JUDICIAL DISTRICT

Anoka County Community Action Program, Inc., Mary Zagaros, Management Agent,

Plaintiff,

vs.

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

Anoka County District Court

File # C9-94-12587

This action was heard by the undersigned, one of the Judges of this Court, on 11/30/94 -12/1/94 as a contested unlawful detainer court trial. William Huefner, Esq. appeared on behalf of plaintiff. James Utley, Esq. appeared on behalf of defendant.

Whereupon, the Court makes the following:

FINDINGS OF FACT

That the premises described in the Complaint are not unlawfully detained by defendant.

CONCLUSIONS OF LAW

That the plaintiff shall recover nothing from defendant, and that plaintiff is not entitled to a Writ of Restitution concerning the leased premises which are the subject of this unlawful detainer action.

ORDER FOR JUDGMENT

Let judgment be entered accordingly.

BY THE COURT

Dated this 6th day of December, 1994.

Dan Kammeyer

Daniel M. Kammeyer
Judge of Anoka County District Court
Tenth Judicial District

NOTE: The attached Memorandum is a part of this Order and supports the Order.

DMK

App. 155

MEMORANDUM

Plaintiff Anoka County Community Action Program (ACCAP) and defendant ... is entered into a written lease agreement whereby defendant would lease an apartment owned by plaintiff and located at Tyler Heights Apartments, 4641 Tyler Street N.E., apartment #8, Columbia Heights, Minnesota, beginning on 6/1/93.. That lease was then renewed, effective 6/1/94. The premises were leased to defendant Morris under the Section 8 Existing Housing Program.

On 11/2/94 plaintiff ACCAP filed an unlawful detainer action against defendant alleging the following violations of the lease: (1) failure to supervise her children when they are outside to prevent damage to the grounds and danger to smaller children; (2) failure to comply with parking requirements; (3) threatening the caretaker; (4) being involved in a domestic disturbance; and (5) refusing to cooperate with the police after a male guest threatened the caretaker.

When Section 8 assistance is involved, the owner (ACCAP) cannot terminate defendant's tenancy except for:

> (i) Serious or repeated violation of the terms and conditions of the Lease;
> (ii) Violation of Federal, State, or local law which imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or
> (iii) Other good cause.

24 C.F.R. §882.215 (c)(1). See also: 42 U.S.C.A. §1437f (d)(1)(B).

SUPERVISION OF THE CHILDREN: Apparently ACCAP has an unwritten rule that children under the age of four cannot ride their bikes on the sidewalk in the courtyard area in front of the apartment complex. Plaintiff asserts that the management staff had several conversations with defendant about her six-year old boy who rides his bike on that sidewalk. Plaintiff alleges that defendant's children, while unsupervised, have skidded their bikes on the grass, causing there to be holes in the grass.

Defendant , testified that she does supervise her children when they play outside. Additionally, a former-resident of the apartment complex, Geri , testified that a lot of children who live in the apartment complex (other than defendant's children) ride their bikes on the grass.

It is not a condition of the lease that children have to be supervised at all times when they are outside. However, if the children are damaging the property, that would be a problem. However, plaintiff ACCAP has not met its burden of showing that defendant's children have done anything that could be considered to be in violation of the lease agreement. Apparently many children ride their bikes on the grass, so there is no evidence that any damage was caused by defendant's children.

PARKING: The Tyler Heights Tenant Handbook contains a rule about parking in the parking lot at the apartment complex. The rule provides that there is one parking space marked for each apartment and those marked spaces are supposed to be used only by the tenants. The caretaker testified that the parking rule

was amended orally at a tenant meeting sometime during the summer of 1994 to reflect that, if a tenant doesn't own a car, someone else can use that parking space, but only with that tenant's permission. Plaintiff alleges that defendant continually violated the parking rules by allowing her guests to park in the parking lot. One such incident involved defendant's brother's car being parked in the lot in someone else's parking space for about five days. However, a former resident of the apartment complex (Gary and defendant's brother (Bobby both testified that the car was left in the parking lot because was repairing it for Bobby testified that he parked the car in the parking space of a tenant who didn't own a car. Hence, we find that this parking incident did not involve defendant

Additionally, defendant produced evidence that there is one extra parking space next to the spaces that are reserved for each apartment. testified that her guests often park in that extra space. The parking provision in the Tenant Handbook states as follows: "A space is marked for each apartment. These spaces are ONLY for the use of tenants at Tyler Heights. Visitors will have to find another place to park. If you do not have a car, your guest may park in your space, but NOT in any one elses." Tenant Handbook, p. 7 (emphasis in original). It appears that defendant , through her guests, has not violated this rule. Her guests did "find another place to park", namely: in the extra space at the end that doesn't belong to any of the tenants.

Therefore, we find that plaintiff ACCAP has not met its burden in showing that defendant has violated the parking rules (written or oral). If ACCAP considers parking in the extra space a violation, it should revise its rule in the Tenant Handbook to make that clear.

THREATS: Two of plaintiff's listed reasons for terminating defendant's lease have to do with threats made to the caretaker. First, the caretaker, Tracy testified that both defendant and defendant mother (May also a resident at the same apartment complex) threatened to "beat her ass." However, we find that only May and not defendant Earline made such a threat to the caretaker.

Caretaker also alleged that a male guest of defendant's threatened physical harm to her and her family if she didn't leave defendant alone. reported the incident to the police. Plaintiff asserts that defendant refused to cooperate with the police in connection with their investigation of that incident. However, defendant testified that she did not know who made such a threat to the caretaker and that she was cooperative with the police. Plaintiff ACCAP has not met its burden of showing that defendant had anything to do with that incident or that she was uncooperative with the police.

DOMESTIC DISTURBANCE: ACCAP was notified in writing by the Columbia Heights Police Department that defendant was involved in a domestic disturbance in her apartment. However, defendant testified that the incident involved her ex-boyfriend coming to her apartment uninvited. A friend of defendant's called the police because the ex-boyfriend was assaulting defendant . We find that

the domestic disturbance was not brought on by defendant . Rather, she was the victim of an assault and -- as such -- obviously had every right to call the police, and shouldn't be punished for that.

CONCLUSION

Plaintiff has failed to meet its burden of showing that -- under the provision of 24 C.F.R. §882.215 (c)(1) -- defendant (1) has engaged in serious or repeated violations of the terms and conditions of the lease; (2) has violated laws in connection with her tenancy; or (3) should be terminated for other good cause. Hence, we deny plaintiff ACCAP's request for a writ of restitution.

D.M.K

12/6/94

Larry, 11/20/95

• Here ya go ~ again!

Looks like ya might already have this...

HAPPY THANKSGIVING Kate

Post-it™ Fax Note 7671	Date 11/18/95	# of pages ▶ 4
To Kobeni Williams	From Kate	

Post-it™ Fax Note 7671	Date 11/9/95	# of pages ▶ 4
To Larry McDonough	From Kate	
Co./Dept. MMLA RS	Co. MLSC	
Phone # 522-2099	Phone # 228 9105 x 108	
Fax # 522-7245	Fax # 222-7045	