STATE OF MINNESOTA — FOURTH JUDICIAL DISTRICT

COUNTY OF HENNEPIN COUNTY — FIRST DIVISION MINNEAPOLIS

Case Type: Unlawful Detainer

Bloomington Associates,
a Minnesota Limited Partnership,

Plaintiff,

v.

Ruth Wade,

Defendant.

File No. UD-1990706521

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND MEMORANDUM

The above entitled matter came on for hearing and trial before the Honorable Francis Connolly, Judge of Hennepin County District Court, on July 27 and 28, 1999 and by written submission.

Sandra Agvald, 150 S 5th St #1770, Mpls, MN 55402, appeared for and on behalf of the plaintiff.

Paul Birnberg, HOME Line, 7462 Oxford St., St. Louis Park, MN 55426, appeared for and on behalf of the defendant.

Based upon the evidence adduced, the arguments presented, and all the files, records, and proceedings, the Court makes the following:

FINDINGS OF FACT

1. Defendant rents from Plaintiff a townhouse located at 10563 Sumter Lane, Bloomington, MN 55438 in a complex known as Sumter Lane Townhouses.
2. Plaintiff is the fee owner of the property. It received H.U.D. financing for the property and manages the property subject to H.U.D. regulations. The property

App. 378

and the parties' lease is subject to the regulations found in H.U.D. HANDBOOK 4350.3.

3. On May 28, 1999, Plaintiff gave Defendant a written Notice of Termination of Lease as of June 30, 1999 (Complaint, Ex. A). The Notice complied with the procedural requirements of the HANDBOOK. The Notice alleged that the lease was terminated for cause, specifically for "material noncompliance with the lease" and for "other good cause".

4. The Notice listed eleven alleged lease violations and referenced a November 25, 1998, notice as providing allegations of other good cause. Each allegation is discussed in turn below.

5. The re-entry clause of the lease is set by federal regulation. Both H.U.D. HANDBOOK 4350.3 (Para. 4-18 to 4-23) (hereinafter, "Handbook 4350.3) and the H.U.D. - mandated Lease (Para. 25) state that

> The Landlord may terminate this Agreement [Lease] only for:
>
> (1) the Tenant's material noncompliance with the terms of the Agreement;
> (2) the Tenant's material failure to carry out obligations under any State Landlord and Tenant Act; or
> (3) criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenant or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control; or
> (4) other good cause....

"Material noncompliance" is defined as:

> (1) one or more substantial violations of the lease;
>
> (2) repeated minor violations of the lease that:
>
> (a) disrupt the livability of the project,
>
> (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities,
> (c) interfere with the management of the project, or
> (d) have an adverse financial effect on the project;...

The landlord cannot depend on "other good cause" unless it has given prior notice of the extra requirement which the tenant must follow.

6. Defendant had been involved in a domestic assault by Charles Delaney in November 1998. In a January 7, 1999, agreement with Plaintiff, Defendant agreed to exclude Delaney from the premises and agreed that her failure to do so would be a material breach and good cause to terminate her tenancy. In return, Bloomington Associates agreed not to enforce the November 25, 1998, Notice of Termination of Tenancy while reserving the right to use the allegations in the notice in future litigation to the extent they were provable.

7. The only evidence introduced regarding "other good cause" and the domestic assault was that (i) Ms. Wade was Delaney's victim on November 20th; and (ii) Delaney has not returned since January 7th. Plaintiff did not prove "other good cause" to evict Defendant.

8. No proof was offered with regard to an alleged non-payment of a Minnegasco bill on May 24, 1999, or to an alleged incident on May 18, 1999.

9. With regard to an alleged incident on May 25, 1999, Defendant telephoned manager Melanie Lewis to complain about a warning for allegedly violating the lease on May 21st. Sharp words were exchanged and Defendant cursed. However, Lewis testified that fielding such calls was part of her job. Other tenants were not affected by the call. The call was not a lease violation.

10. With regard to an alleged incident on May 22, 1999, at about 10:30p.m., Defendant's sons Stephan (10) and Charles (5) were with several other Sumter Lane children riding bikes in the upper circle of the complex. Plaintiff's employees Chris Hobbs and Bill Nelson went to speak to the children. Stephan complained, "Aw man, there's nothing to do inside," but then joined with Charles in withdrawing and then riding home. Some other children apparently had also been using a shovel to dig up the grass, but neither Stephan nor Charles had done so.

11. This was a violation of Boisclair Rule 10 (Ex. 2) which provides:

> 10. **CURFEW:** Between the hours of 10:00p.m. and 7:00a.m. the volume of radios or music must be held to a reasonable level. No persons may play/loiter on the premises after 10:00p.m.

12. This curfew violation was a minor lease violation by Defendant who is responsible for her childrens' actions.

13. With regard to an alleged incident on May 21, 1999, Defendant herself was in Minneapolis from the time she left for work in the morning until she returned at 2:00a.m. on May 22nd. Nicole Gray, Defendant's 17-year old daughter, was at home doing the hair of a neighbor, Katrice Warren. Nicole heard a car radio, waited some time, then went out to talk to the car's owner, driver Dante Jackson, and to his passenger, Dante's cousin Safari. Dante and Safari are son and nephew of and live with Gwendolyn Jackson, another tenant at Sumter Lane Townhomes. Nicole spent part of her time in the car, selecting a compact disk to borrow and record. She returned inside with the CD. Dante and Safari stayed in the car and played their car radio loudly enough to disturb several residents. The police were called. The police spoke to Nicole briefly at her doorstep, then dealt directly with Dante and Safari. Eventually, Gwen Jackson drove the car home and the boys walked home.

14. The noise from the car radio was the fault and responsibility of Dante and Safari, not Defendant's daughter.

15. With regard to an alleged incident on May22, 1999, at about 4:30a.m., the relevant part of the complaint had alleged:

> Four of your [Defendant's] guests were leaving your party (from the night before) at 4:30a.m. Residents reported that they had the bass on their car radios turned up and were talking so loudly so as to disturb other residents...

Plaintiff proved that about four cars' radios played loudly for about 15 minutes and awoke some neighbors. However, (i) the cars were parked near but not on Wade's property; (ii) there was no proof of a connection between the four cars and the Wade home; (iii) the only proven guest was Katrice Warren who had left before midnight on May 21st. Plaintiff failed to prove involvement by either Defendant or her family with this noise.

16. With regard to an alleged incident on May 15, 1999, this involved a gathering of children, including Stephan, in the late afternoon. Some children trampled some

flowers, but there was no proof that Stephan himself did. Eventually, some of them went into a tool shed but nothing was taken. Finally, they were seen near an unlocked door to Melanie Lewis' home from which Lewis' cat escaped. The cat has returned. There was no lease violation attributable to Defendant in this incident.

17. With regard to an alleged incident on Mother's Day, Sunday, May 9, 1999, Defendant threw a barbecue and birthday party for her 10-year old son Stephan. The party lasted from about 1:00p.m. to 7:00p.m. Six to eight adults and a few children were invited. During that party, Defendant turned on her bedroom radio and for a time her car radio loudly enough to bother some of the neighbors. After being asked to turn it down, the music continued for some time. Some neighbors testified that they could not enjoy their homes because of the noise. Three other neighbors testified that the music level was appropriate for a weekend, daytime gathering.

18. The May 9th party was a minor lease violation by Defendant.

19. With regard to an alleged incident on May 3, 1999, this was an argument primarily between two other tenants. Defendant's daughter, Nicole, joined the argument later, raised her voice and cursed. There was no proof that either of the other tenants was upset in a lasting way by the argument. Defendant herself came even later and acted as peacemaker, convincing Nicole to withdraw. Nicole's actions did not constitute a violation of the lease.

20. With regard to an alleged incident on April 3, 1999, the complaint alleged illegal parking of 13 cars. The evidence was that one guest of Wade's parked a car across the neighbor's driveway. Plaintiff's employee Bill Nelson asked Wade to have the car moved. The car was moved promptly. This was not a violation.

21. With regard to the allegation that Defendant allowed unauthorized occupancy by her niece, DonTrice Eskew, Ms. Eskew moved to the Twin Cities area from Gary, Indiana on or about March 23, 1999. Prior to coming, Eskew contacted her Uncle Victor Wade and Aunt Joy Jones, owners and sole occupants of a house at 4736 4th Ave S, Mpls. Wade and Jones agreed to rent Eskew one room and general-area privileges for $270/month on an oral lease.

22. On the weekend of March 23rd Eskew moved her personalty into the room. With Ms. Eskew were her two children, a 9-month old baby and a pre-schooler. She was given a key to 4736 4th Avenue which she carries with her, she arranged to register her car at that address, and receives mail at that address. She pays rent to Wade and Jones through vendor payment from the welfare office. She applied for food stamps and public assistance through that address.

23. In late April, Eskew got a temporary job working second shift (4:00p.m. to 12:30 or 2:00a.m.), Sunday through Thursday, at Amerisource in Eden Prairie.

24. Starting in April, Ms. Eskew visited Ruth Wade frequently. Later, when she got the job in nearby Eden Prairie, she often would drop by shortly before work, leave her children with Defendant's daughter Nicole, and let Nicole and then Ruth Wade (when she got home from work about 6:00p.m.) baby sit her children. After her work ended, she would return and either take her children home or sometimes spend the night and then go home with the children. During May and June (until she lost the Amerisource job), Ms. Eskew stayed overnight at Ruth Wade's a few times per week, but not on consecutive nights. She never paid rent in any form to Wade. She had no door key or mailbox key. She did not have her name on the mailbox or receive mail there. She had just a very few items of personalty at Wade's. From time to time she did use Wade's mailbox key to pick up Wade's mail and used the house key at least once to get something for Wade.

25. DonTrice Eskew did not reside with Defendant. From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. To effectively terminate Defendant's lease, Plaintiff had to demonstrate:

   A. Defendant was involved in one or more violations among those alleged in Ex. A of the Complaint.

   and;

   B. Either

      (a) one of the violations was substantial - - ie. it was severe enough to merit deprivation of a welfare entitlement, and it caused loss to the landlord or affected a real interest of the landlord; or
      (b) there were several material, non de minimis violations which formed a pattern of repeated minor violations of the lease and were not merely isolated incidents.

   41 Fed. Reg. 43, 330-43, 334 (Sept. 30, 1976) (constitutional issues); Waimanalo Village Residents' Corp. v. Young, 956 P.2d 1285, 1299 (Haw. Ct. App. 1998) citing North Shore Plaza Associates v. Guida, 459 N.Y.S.2d 685, 687 (N.Y. Civ.Ct. 1983) (real interest of landlord issue); Waimanalo Village, 956 P.2d at 1300 citing Mid-Northern Management, Inc. v. Heinzeroth, 599 N.E.2d 568, 574 (Ill. Ct. App. 1992) (pattern issue); Berry v. Lane, Henn. Cty. Dist. Ct. File No. UD-1980629502 (Minn. Dist. Ct. July 22, 1998) (de minimis issue).

2. Plaintiff only demonstrated two lease violations attributable to Ruth, the noise on Mother's Day, May 9, 1999, and the curfew violation by her sons Stephan and Charles on May 22, 1999.

3. Plaintiff demonstrated no lease violations attributable to either Wade or her family members other than the May 9th incident and May 22, 1999 incidents.

4. The May 9th violation was a minor violation, not a substantial violation.

5. The May 22nd violation was a minor violation, not a substantial violation.

6. These two violations were minor violations, they were not repeated violations but rather two separate incidents involving two separate kinds of violations.

7. Plaintiff proved no "other good cause" to terminate Defendant's lease.

8. Plaintiff's May 28, 1999, Notice of Termination of Tenancy is not effective because Plaintiff did not prove the underlying facts required to terminate the lease.

9. This notice was the basis on which Plaintiff brought this case. Therefore the case must be dismissed.

IT IS HEREBY ORDERED:

1. That this case is dismissed with prejudice and judgment shall be entered for the Defendant.
2. That Defendant shall be awarded her costs and disbursements.
3. That the Court Administrator shall release all the rent escrowed with the court to Plaintiff Bloomington Associates forthwith.
4. That the attached Memorandum is incorporated into the Order of this Court.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 19, 1999

Honorable Judge Francis J. Connolly
Judge of District Court

MEMORANDUM

The issue before this Court was whether the tenant's conduct provided the basis for her eviction from her public housing townhome. The Plaintiff had the burden of proving by a preponderance of the evidence that Defendant's conduct constituted material non-compliance with the terms of the lease agreement dated November 1, 1995. See Kahn v. Greene, Court File No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 5, 1994).

"Material noncompliance" is defined as:

(1) one or more substantial violations of the lease;

(2) repeated minor violations of the lease that:

(a) disrupt the livability of the project,

(b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities,

(c) interfere with the management of the project, or

(d) have an adverse financial effect on the project,

H.U.D. Handbook 4350.3 § 4-18 to 4-23, 24 C.F.R. § 880.-607(b)(3)(1992).

Although Plaintiff offered a variety of alleged lease violations by Defendant, the Court does not find that there was a preponderance of evidence to support any of them except for the May 8, 1999, Mother's Day party where Defendant engaged in loud noise in violation of Section 8 of the Home Rules and Regulations, see Court Ex. No. 2., and the May 22, 1999, curfew violation by her children which violated Section 10 of the Home Rules and Regulations. The Court finds that these were minor violations but not repeated ones. Indeed, they were two separate and different violations that occurred two weeks apart. Although the party certainly did adversely effect certain tenants' rights to the quiet enjoyment of their leased premises, the same can not be said for the curfew violation. Indeed, Mr. Nelson told the children to go home and they did so. In any event the Court agrees with Defendant that these were not repeated violations. See Waimanalo Village Residents Corp. v. Young, 956 P.2d 1285, 1300 (Haw. Ct. App. 1998); and see Mid-Northern Management, Inc. v. Heinzeroth, 599 N.E.2d 568, 574 (Ill. Ct. App. 1992). As such, they do not give grounds to evict the Defendant. Two minor lease violations are

not enough to find material non-compliance. "Material non-compliance" requires a pattern of repeated minor violations of the lease, not isolated incidents. North Shore Plaza Associates v. Guida (1983), 117 Misc.2d 778, 779; 459 N.Y.S.2d 685, 686.

As to the other incidents whether it was the Minnegasco bill, the May 22, 1999, disturbance, the May 15th incident, or the April 3rd incident, the Defendant either offered no proof at all, or not enough proof that this Defendant was responsible for the incidents. For example, as to the May 22nd incident although the Defendant's daughter was present it would appear that the true culprits were other tenants' children. As to the May 15th incident the Court doesn't find enough evidence to link the Defendant's children to it.

As to the alleged substantial violation of having another party reside with the Defendant, clearly if Plaintiff had proved that DonTrice Eskew was residing with Ruth Wade that would be a substantial violation that would give grounds for eviction. However, the Court doesn't find that this was proved by a preponderance of the evidence. The testimony of Plaintiff's key witness, Mr. Nelson, as to this issue was not credible. He testified that he saw Ms. Eskew wear a uniform when she left Ms. Wade's apartment. Ms. Eskew did not wear a uniform to work. This causes this Court to question his testimony on other points. Other evidence produced at trial by Defendant showed she got her mail elsewhere and was more likely residing with her Aunt and Uncle. Although there is no doubt Ms. Eskew visited Ms. Wade frequently and even let her children spend the night on multiple occasions and spent several nights there herself, it was not proved she resided at this address. Section 6 of the Home Rules and Regulations allows persons to stay up to 48 hours. In short, Ms. Wade may have come very close to the line on this issue, but there was not enough evidence introduced to prove she crossed it.

Plaintiff has failed to meet its burden of proof as any substantial lease violations. Plaintiff met its burden of proof as to two minor violations. This Court, however, finds that they were not repeated violations because they were separate in time and type. Therefore, Defendant prevails.

F.J.C.