

Brinton Manor Apartments v. McKinley

Landlord and Tenant—Federally-Subsidized Housing—Complaint for Possession—HUD Regulations

1. A landlord of federally-subsidized housing cannot terminate or refuse to renew a lease without reasonable justification, and cannot obtain possession of the premises without first meeting HUD termination requirements.

2. HUD requires that a landlord's notice to terminate a lease be in writing and that the notice state the reasons for the landlord's action with sufficient specificity to enable the tenant to prepare a defense. Deficiencies in the notice are not cured by providing the tenant with an opportunity to meet and discuss the proposed termination.

(David A. Petersen)

James J. Schwartz, for Plaintiff.

Jacqueline Grachen, for Defendant.

No. LT 93-0265. In the Court of Common Pleas of Allegheny County, Civil Division.

OPINION

Wettick, J., November 8, 1993—Plaintiff is a landlord and defendant is a tenant of federally-subsidized housing. Following the tenant's appeal from a district justice judgment awarding possession of the rental premises to the landlord, the landlord filed a complaint for possession in which it alleges that the tenant is in material noncompliance with the terms and conditions of paragraphs 22 and 23 of the parties' lease agreement by disturbing and harassing other tenants, engaging in disorderly conduct, consuming and permitting others to consume alcoholic beverages in outdoor areas of the leasehold, repeatedly engaging in activities resulting in police action on the property, failing to maintain the leasehold, failing to observe quiet hours, breaching the security of the building, and allowing pets in the leasehold.

The landlord has attached to its complaint a thirty-day notice dated April 15, 1993 which it served on the tenant at least thirty days before it instituted proceedings before the district justice to recover possession of the premises. This notice states that the lease is being terminated because the tenant is in material noncompliance with the lease agreement in the following particulars:

Breach of lease provision(s) contained in paragraph(s) (6) Condition of Dwelling (10) b. 1, 3, 4—Tenant agrees to: (11) a. Damages (13) d. e. General Restriction) (Amendment to Rental Agreement—Termination of Tenancy) "A" Consuming, or permitting to be consumed, any alcoholic beverages in the outdoor areas of the project;

The thirty-day notice also contains a paragraph which advises the tenant that she has ten days from the date of the notice within which to discuss the proposed termination of the tenancy with the property manager. The notice contains a handwritten note that the tenant called on 4/28/93 to schedule an appointment on 4/29/93 and failed to show.

The tenant has filed preliminary objections which request dismissal of this lawsuit on the ground that the landlord's April 15, 1993 notice does not comply with applicable HUD regulations or the termination requirements in the parties' lease. These preliminary objections are the subject of this Opinion and Order of Court.

The tenant occupies the leasehold premises through a month-to-month lease. The lease provides that it is automatically renewed unless terminated by either party. In a private landlord and tenant relationship, a landlord may terminate a month-to-month lease for any reason. However, in a series of cases decided in the early 1970's, the United States Supreme

Brinton Manor Apartments v. McKinley

Court held that government benefits are property interests protected from arbitrary termination by the Fourteenth Amendment. See, e.g., *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893 (1976) (social security disability benefits); *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970) (public assistance benefits). This case law bars a landlord of federally-subsidized housing from either terminating or refusing to renew a lease for an additional term without reasonable justification. *Joy v. Daniels*, 479 F.2d 1236 (4th Cir. 1973). This case law serves as the basis for various HUD regulations, including 24 C.F.R. §247.4(a) set forth at page 4 of this Opinion, which establish grounds for eviction and administrative procedures that the landlord must follow in order to terminate a lease.

In this case, the landlord seeks possession on the ground that it properly terminated the lease. HUD regulations allow a landlord to terminate a lease covering federally-subsidized property for serious and repeated violations of the rental agreement that disrupt the livability of the project, adversely affect the health or safety of any person, or interfere with the rights and quiet enjoyment of other tenants. Consequently, the general allegations within the complaint that the tenant has failed to observe quiet hours, breached the security of the building, disturbed and harassed other tenants, etc. constitute a proper justification for terminating this month-to-month lease.

The HUD regulations and the parties' lease also contain procedural requirements for terminating the lease. Paragraph 22(b) of the parties' lease provides that "[a]ny termination of the Agreement by the Landlord must be carried out in accordance with HUD regulations . . . and the terms of this Agreement." HUD Regulation 24 C.F.R. §247.4(a) requires the landlord's notice to terminate to state the reasons for the landlord's action with sufficient specificity so as to enable the tenant to prepare a defense:

(a) *Requisites of Termination Notice.* The landlord's determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated on a date specified therein; (2) state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense; (3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense; and (4) be served on the tenant in the manner prescribed by paragraph (b) of this section. (Emphasis added.)

This language was included by the landlord in its lease which states at paragraph 22(c) 2. that the termination notice must "state the grounds for termination with enough detail for the tenant to prepare a defense."

In the present case, the landlord's notice to terminate simply advises the tenant that the landlord has concluded that portions of the lease have been violated. It does not describe any factual information upon which the landlord will rely to establish a reasonable justification for terminating the lease.

Both HUD Regulation 24 C.F.R. §247.4(a) and the lease use the same specificity standard—the writing must state the reasons for the landlord's decision to terminate the lease with sufficient specificity so as to enable the tenant to prepare a defense. At the very minimum, this requires the notice to set forth each incident, including dates, locations, and descriptions of the incident.

In the present case, neither the notice nor the complaint gives the tenant any idea of the nature of the evidence that will be presented at the hearing. Consequently, the tenant is not in a position to challenge effectively any evidence that the landlord may present.

In its brief, the landlord states that the tenant was given ten days from the date of the notice within which to discuss the proposed termination with the landlord. Consequently, if

Brinton Manor Apartments v. McKinley

tenant wanted more information, the tenant simply had to request a meeting. According to the landlord, this opportunity to discuss the proposed termination cures any deficiencies in the notice.

This argument is without merit for several reasons. First, the lease provides for both notice and the opportunity for a meeting. Second, a meeting is not a substitute for a written notice. There may be different versions of what occurred at a meeting. Also, a tenant who obtains verbal information at a meeting is not in the same position to assist his or her counsel as a tenant with a written notice stating the reasons for the landlord's action with sufficient specificity so as to enable the tenant to prepare a defense. Third, HUD Regulation 24 C.F.R. 247.6(b) provides that in any judicial action instituted to evict a tenant, "the landlord must state the grounds which were set forth in the termination notice served on the tenant under the lease." This regulation becomes meaningless if the grounds can be as broad as the provisions within the lease.

As I previously said, the landlord is not entitled to possession unless it properly terminated the lease agreement. The lease agreement requires any termination to comply with HUD regulations and the terms of the lease agreement. The landlord's complaint on its face shows that the landlord did not properly terminate the lease because of its failure to comply with the HUD requirements and the provisions of the lease which require the termination notice to set forth the reasons for the landlord's determination to terminate with enough specificity so as to enable the tenant to prepare a defense. Consequently, I am dismissing the complaint for failure to state a cause of action.

This ruling is consistent with case law in other jurisdictions which holds that a landlord of federally-subsidized housing cannot obtain possession of the premises without first complying with the HUD termination requirements. See, *Housing Authority of the City of Jersey v. Jackson*, 749 F. Supp. 622, 633 (D.N.J. 1990); *In re Sudler*, 71 Bankruptcy Rptr. 780, 781 (E.D. Pa. 1987); *Noble v. Bethlehem Housing Authority*, 617 F. Supp. 248 (E.D. Pa. 1985); *Man v. Rockville Housing Authority*, 99 F.R.D. 314 (D. Md. 1983); *Staten v. Housing Authority of the City of Pittsburgh*, 469 F.Supp. 1013 (W.D. Pa. 1979); *Duran v. Housing Authority of Denver*, 761 P.2d 180, 181 (Colo. 1988); *District of Columbia v. Willis*, 612 A.2d 180 (D.C. 1992); *Gorsuch Homes, Inc. v. Wooten*, 597 NE2d 554, 559 (Ohio App. 1992); and *County Housing Authority v. Santiago*, 15 D.&C.3d 295 (Bucks 1980).

For these reasons, I enter the following order of court:

ORDER

On this 8th day of November, 1993, it is hereby ORDERED that defendant's preliminary objections are sustained and plaintiff's complaint is dismissed.

BY THE COURT
/s/Wettick, J.