STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
DIVISION 1, MINNEAPOLIS

COMMON BOND HOUSING,
Plaintiff,

v.

MARGARET TERESE BEIER,
Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Case No. U.D. 1951204625

The above-entitled unlawful detainer action came on for trial before the undersigned referee on January 3rd and 16th, 1996. Plaintiff was represented by Margaret M. Barrett, Esq. Defendant was present and represented by William L. Roberts, Esq., and Alexander G. Telos, Esq.

Now, upon all proceedings, files, records herein and upon review of the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff Common Bond Housing was formerly known as Commonbond Management Corporation (EXH. 7). The latter was formerly doing business as Westminster Management Corporation. (EXH. 10)

2. Plaintiff manages the property described as 2910 East Franklin Avenue, Minneapolis, Minnesota (a/k/a, Seward Towers East) pursuant to a succession of management agreements. (EXHS. 7 & 9) Seward Towers is part of a federally assisted program of the Department of Housing and Urban Development and was financed and is operated under Section 221 (d) (4) of the National Housing Act.

3. Defendant Margaret Beier and her daughter have lived in unit 1702 at Seward Towers East since about May 5, 1987. She currently holds possession of the property pursuant to a written lease executed on or about March 29, 1994 (EXH. 1), subject to house rules (EXH. 2) and a lease amendment tendered on or about September 25, 1995, and signed by her on September 27, 1995. (EXH. 64)

4. Under the terms of the lease, Defendant agrees to permit entry for periodic inspections (EXH. 1, para. 20a) and agrees to keep the unit clean (para 10. b. (1).) and to remove garbage and other waste. . . . .(para. 10.b.(6).), and to not do anything that will increase the project's insurance premiums (para. 24).

5. On or about November 18, 1994, Plaintiff's site manager, Phillip Estep, agreed to reschedule Defendant's "annual apartment inspection." (EXH. 22) The inspection was reset to January 31, 1995 (EXH. 24), March 10, 1995 (EXH. 25), April 21, 1995 (EXH. 27) and was finally executed on May 8, 1995.

6. At the time of the May 8, 1995 inspection, Defendant's unit was "cluttered" with books, magazines and school projects in the living room. Boxes and bags of possessions were piled throughout the apartment. In the kitchen, pop cans were stacked high and food containers/boxes cluttered the kitchen work surfaces. It was possible to walk through the rooms but only 20-30% of the living room floor surface was open. At least one door was difficult to open due to the clutter. No rodents or insects were evident. No food containers were found open. The daughter's bedroom was described as "cute". The items which were stored were not described as garbage or trash. No expert was called on issues of fire or health.

7. On May 17, 1995, Plaintiff's property manager sent a letter to Defendant. It did not state she failed the inspection, but did recite an apparent understanding that two more inspections would be forthcoming.

8. On or about July 28, 1995, an inspection was done at Defendant's residence. Plaintiff's assistant manager Denise Anderson stated some things were "better" and some "worse". A representative from the Metropolitan Center for Independent Living could move his wheelchair into the unit and through the living room. The apartment was cluttered but not dirty.

9. Plaintiff did not provide a completed inspection form to Defendant (see e.g., EXH. 60) after either of the inspections. No notices of infraction or failure were issued.

10. On or about August 20, 1995, another inspection was scheduled for September 8, 1995, and rescheduled for September 20, 1995 at Defendant's request. (EXHS. 45 and 46) The inspection did not take place due to phone calls Defendant made to Ms. Barrett (property manager). At this point, Ms. Barrett felt harassed by Defendant, did not reschedule the appointment a third time and decided to have counsel intervene.

11. Plaintiff accepted Defendant's rent on or about September 1, 1995.

12. On or about September 25, 1995, Plaintiff tendered a lease amendment to Defendant which she signed on September 27, 1995.

13. On or about October 1, 1995, Defendant found a notice to "All residents Seward Towers East" concerning "Annual Apartment Inspections." Defendant lives on the 17th floor whose apartments were to be inspected between 1:30 p.m. and 3:30 p.m. on October 19, 1995. (EXH. 63)

14. Plaintiff did not intend to give Defendant the notice of the October inspections and did not intend to inspect her unit.

15. On October 19, 1995, Defendant awaited an inspection which did not take place. While the unit was still cluttered, there was some improvement. Belongings had been organized, many boxes were gone and books returned to bookcases.

16. Defendant has been diagnosed as having fibromyalgia-chronic fatigue syndrome whose symptoms include muscle stiffness, overwhelming fatigue, pain, sleep disorder, shortness of breath, palpitations and memory loss. Defendant cannot sustain normal daily tasks physically, and has difficulty organizing information cognitively. She requires assistance in organizing material, systematizing tasks on a daily basis and dealing with heavy objects.

17. A social worker employed by Common Bond Services Corporation has made referrals to Hennepin County Social Services, Hennepin County Housekeeping, Longfellow Handiwork, and Hennepin County Department of Services for the Handicapped. Defendant did obtain assistance with housekeeping from Hennepin County; however, there was a high turnover of housekeepers. Such services were insufficient in part because of the turnover and in part because such services were unable to help her with organization and planning. Recently, Defendant has been determined eligible for services from an organization known as Community Alternatives for Disabled Individuals, CADI, which can help her with thinking through household chores, listing things to do and can help her with systems to organize her work.

18. Defendant has had a cat on the premises for nearly one year but did not admit it until this litigation arose. On or about April 23, 1995, Defendant wrote a letter to Plaintiff's property manager concerning information Plaintiff received about "one or two animals living in

[Defendant's] home." Without admitting or denying the presence of a cat, Defendant argues no tenant had been in the apartment in quite a few months, no tenant could have seen a cat and she had been "playing a tape of cats 'singing'. . . ." She called the informant a liar, complained of harassment and asked for the "reasonable accommodation" of a companion animal. (EXH. 28)

19. While Defendant's April 23, 1995 letter stated "A letter from my doctor will be forthcoming. . . . .", the only one introduced is from Dr. Nancy Hutchinson dated December 15, 1995. That letter recommends a cat as a companion animal to reduce stress.

20. On or about July 16, 1995, Defendant was involved in a physical shoving and pulling altercation with another resident over competing claims to a microwave cart which had been left at a "free" table to be taken by anyone interested. A warning letter was issued to Defendant (EXH. 39) and to the other tenant.

21. On August 14, 1995, Defendant received another warning letter concerning an incident in which she allegedly harassed another resident.

22. In September, 1995, Defendant became agitated in management offices, "bad-mouthed" management and was escorted away by officer William Blake who was working off-duty as a security supervisor. Defendant's behavior was described as unacceptable but minor by police standards.

23. With the possible exception of the cat, Plaintiff had knowledge of all alleged breaches of the lease cited above prior to September 25, 1995.

24. Alleged notices of termination dated September 29, 1995 and October 16, 1995 (See Complaint para. 8) were not introduced nor were their terms proven.

25. Plaintiff did not file a "Power of Authority" when it filed its Complaint on December 4, 1995.

CONCLUSIONS OF LAW

1. Housing Court Rule 603 does not require Plaintiff to file a Power of Authority where Plaintiff's standing to sue is fully pled in the Complaint, proven at trial and where Plaintiff is represented by legal counsel. Even if the rule did require the filing of such a power, dismissal would be inappropriate in this case.

2. A pre-eviction termination notice as alleged in paragraph 8 of the complaint is required under the terms of the parties' lease. By failing to introduce such notice and proving its terms, Plaintiff has failed to establish an essential element of its case.

3. By accepting rent from Defendant through September 1, 1995 and by amending and renewing Defendant's lease on or about September 25, 1995, Plaintiff has waived alleged breaches of the lease known to it through September 25, 1995.

4.a. Defendant's possession of a cat in her apartment since at least January, 1995, was not definitely known by Plaintiff in September, 1995, and is potentially a continuing violation which would survive waiver.

b. Defendant is a disabled person suffering from fibromyalgia-chronic fatigue syndrome. Her symptoms are both physical and mental and substantially limit one or more major life activities. Under the circumstances of this case, allowing a companion animal, a cat, would be an appropriate, doctor-prescribed accommodation.

5. The attached memorandum is incorporated herein by reference.

NOW, THEREFORE IT IS ORDERED:

1. That judgment be entered in favor of the Defendant.

2. That each party is responsible for its/her own costs and disbursements.

LET JUDGMENT BE ENTERED ACCORDINGLY.

RECOMMENDED BY

Date: 2/23/96

Wesley C. Iijima
Referee

BY THE COURT:

Date: [illegible]

Judge

MEMORANDUM OF LAW

1. Housing Court Rule 603 allows an unlawful detainer action to be commenced "in the name of the owner of the property or other person entitled to possession of the premises." There can be little doubt in the instant case that Common Bond Housing is "entitled to possession . . ." as those terms are used in Rule 603. Rule 604(a) (2) makes proof of ownership or right to possession an element of plaintiff's case with plaintiff carrying the burden of proof. Plaintiff herein has satisfied this requirement. The further requirement in Rule 603 that a Power of Authority be filed arises from a historic development which allowed non-attorneys to represent parties in summary, unlawful detainer proceedings. In the present case, Plaintiff was represented by counsel and no Power of authority was required. Assuming, arguendo, that Common Bond was required to do more than a) be represented by an attorney and b) prove it was entitled to possession in trial, the Rule does not mandate dismissal. Here, there was no intent to deceive, defendant has not been prejudiced, both parties have had an opportunity to obtain discovery and Plaintiff's sworn (verified) complaint clearly states the basis of Plaintiff's standing. Plaintiff's case should not be dismissed on the basis of a failure to file a Power of Authority at the time the complaint was filed.

2. Seward Towers is part of a federally-assisted program of H.U.D. and was financed and operates under Section 221(d)(4) of the National Housing Act. As a Section 221 participant, Plaintiff's lease must meet the standards imposed by federal regulations particularly as they relate to terminations. Pursuant to those mandates, the parties' lease specifies:

5. There is little doubt that Defendant is less than an ideal tenant and it is also apparent that Plaintiff has made significant efforts to work with her. Perhaps because Plaintiff's actions during 1995 were not designed to lead to eviction, there are certain common proofs missing in its evidence. No expert was called from the Fire Department to express an opinion on fire hazard, nor was a Health Division inspector called for an opinion on vermin harborage. No photographs were taken and no inspection check lists utilized. While it is clear that the Defendant's apartment was cluttered, it would be difficult to conclude it was dirty, full of garbage or in a condition which would "increase the project's insurance premiums". Plaintiff's best evidence concerned a push and pull altercation over a cart between the Defendant and another resident on July 16, 1995; however, neither tenant was evicted after the occurrence and it was resurrected five months later as one of a "Collection of Minor Violations" (Plaintiff's Final Argument), p. 13). While "repeated minor violations of the lease" may constitute "material noncompliance" (EXH. 1, para. 23(b) (4)), the incident was not repeated.

For all of the above reasons, judgment should be entered for Defendant.

WC!

Defendant described the knife as a pocket knife; Officer Persons described it as having a four-inch blade with extra attachments. Craig's description of the incident is that he and the other boy were looking at the knife and its screwdriver attachment; that Craig was "psyching out" the other boy by moving the knife backwards and forwards between them; that for some reason, Craig held the knife to his face doing "pretend shaving"; that Craig did not threaten the other boy; that the other boy got mad at Craig when Craig wouldn't let him see the knife.

5. The lease may be terminated only for "material noncompliance" or "other good cause". Exhibit 1, p. 10, #25.b. The Lease Addendum defines any violation of the terms of the Addendum as good cause justifying eviction. Exhibit 2. The landlord bases its proposed eviction on the son's criminal activity near the premises.

6. There is no Petition in the Juvenile Court accusing the son of delinquency based on the events of April 16, 1996. A criminal conviction (or juvenile adjudication) is not necessary in order for the Plaintiff to prove "criminal activity."

7. On June 9, 1996, Craig wrote a letter to Plaintiff's staff, Mary Fixsen, offering Craig's version of the facts.

8. There was a prior incident involving Craig on October 9, 1994.

9. There was no evidence offered as to attempts, by management and/or community resources, to work with the Defendant and her son to facilitate resolution of any problems with Defendant's son.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Plaintiff has not proven by a preponderance of the evidence that the Defendant's son Craig engaged in an assault on April 16, 1996. Plaintiff has not proven by a preponderance of the evidence that Defendant's son Craig, in his actions of April 16, 1996, caused an assault on another resident.

Now, therefore,

IT IS HEREBY ORDERED:

1. Defendant is awarded possession of the premises.

2. Neither party shall be responsible for the other party's costs and disbursements.

3. The attached Memorandum is incorporated here and made a part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

RECOMMENDED BY:

Dated: July 31, 1996

Referee Linda J. Gallant
Housing Court Referee

Dated: July 31, 1996

Judge of District Court

MEMORANDUM

This case is troubling to the Court. The evidence does demonstrate that Craig and the other boy were together on April 16, 1996; that Craig's actions were inappropriate in handling, showing to another, and making any "pretend" use of a knife. What the other boy did and said, to Craig, is based only on Craig's version. The child appears to be an appropriate candidate for some help, some services, many of which are available through the intervention programs of the school systems, the Police Department, and the many private social service agencies that exist in and around Golden Valley.

While the incident certainly was disturbing to the other boy's mother, the testimony presented is insufficient to attribute such blame and responsibility on the child to support eviction of the family and loss of Defendant's Section 8 assistance.

The Court fully expects that the Defendant will seek out help for her son so that he has no further adverse contact with the police, other children, or neighbors. In the event he does any future actions which show equally inappropriate actions involving handling, showing, or threatening with a knife, or other instrument that may be

used a weapon, then the Plaintiff's proof of such incident, taken with this event, and considering the parties' use of community resources, may demonstrate a pattern of behavior constituting "good cause" to evict. The evidence, at this point, is insufficient.

LJG