STATE OF MINNESOTA

FOURTH JUDICIAL DISTRICT

COUNTY OF HENNEPIN

FILED

DISTRICT COURT

Dominium Management Services, Inc 03 MAR -4 PM 1:10

Plaintiff(s)

BY

HENNEPIN DISTRICT COURT ADMINISTRATOR

Vs

DECISION AND ORDER

Case No.: HC 1021106500

Defendant(s)

The above-entitled matter came on for hearing before the undersigned, Referee of Housing Court, on January 27, 2003, February 3, 2003, and February 4, 2003.

The Plaintiff was present and was represented by Malcolm Terry. The Defendant was present and was represented by Amber Hawkins.

Now, therefore, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff is the registered agent and property manager for the 638-unit apartment complex where Defendant resides.
2. Defendant has resided at since October 1, 1996, pursuant to a series of consecutive one-year leases. The last lease expired on October 31, 2002.
3. On August 9, 2002, Plaintiff notified Defendant that her lease would not be renewed and that she should vacate the property by October 31, 2002.
4. On October 31, 2002, Defendant's attorney notified Plaintiff's attorney that Defendant would not vacate. Defendant remains in possession of the subject premises.
5. Defendant's tenancy at the subject premises during the lease terms has been subsidized by the U.S. Department of Housing and Urban Development Section 8 Voucher Program, pursuant to which Plaintiff is paid the subsidy by the Richfield Housing and Redevelopment Authority.
6. The management of has had notice since Defendant moved into the premises in 1996 that she was seeing a psychiatrist. At that time, she was allowed to keep a dog in her apartment pursuant to the psychiatrist's recommendations. No information as to Defendant's diagnosis was requested or provided at that time.
7. On November 6, 1998 Defendant filed a complaint with HUD alleging that the Plaintiff's predecessor in the management of had discriminated against her based upon her disability. The DETERMINATION OF NO REASONABLE CAUSE issued by HUD on February 20, 2002 makes it clear that Plaintiff's management predecessor was informed that Defendant claimed a disability and made efforts to accommodate the alleged disability. Although there is no statement as to what the disability was, the HUD DETERMINATION refers to mental health advocate asking for repairs to apartment. s
8. Plaintiff's records contain a copy of a September 18, 2000 letter from Plaintiff's previous attorney, Robert J. Foster, to Defendant, which states: "As I have stated in the past, my client is committed to reasonable accommodation of your disability. We will continue to work with you to accommodate your disability. I would request that we also continue the agreed upon method of communication, that being that every correspondence between the parties is verified by a

written letter from the requesting party. I have also again stressed to my client that you do not want contact at your apartment without prior written notice. That accommodation is also acceptable to my client.**** While every best effort will be used to explain to the new employees the reasonable accommodations that we have both agreed upon, there may be in the future mistakes made where you are accidently (sic) contacted at your apartment without prior written notice."

9. Plaintiff received notice of the HUD DETERMINATION OF NO REASONABLE CAUSE on or about February 23, 2002.
10. Plaintiff was on notice long before it refused to renew Defendant's lease that she had a disability related to her mental health. Plaintiff attempted to make reasonable accommodations for that disability by allowing her to have a dog in her apartment and by usually keeping its employees from knocking on Defendant's apartment door or coming to her apartment without advance written notice.
11. Defendant would not give out her current telephone number to Plaintiff and insisted upon written notice from Plaintiff for scheduling maintenance in her apartment. Defendant called Plaintiff to request repairs and maintenance.
12. For several years, Defendant has been diagnosed with schizoaffective disorder. This diagnosis was not communicated to Plaintiff until September 13, 2002, when her attorney sent a letter to Plaintiff requesting reasonable accommodations for this condition. Currently, Defendant is diagnosed with either schizoaffective disorder or schizophrenia, paranoid type.
13. Defendant's mental illness produces symptoms of irrational fears, delusional thoughts, and over-sensitivity to matters that most people would deem inconsequential. She is isolative and is too mistrustful of others to have close social relationships. She receives Social Security Disability benefits. She has a representative payee at the request of her psychiatrist due to her compulsive purchases of huge quantities of similar items which she could not afford. She does work part-time a couple of nights per week, stocking shelves in a discount store after the store is closed for the night; she has been unable to maintain full-time employment during daytime hours due to her paranoid fears of leaving her dog alone and her inability to interact appropriately in a workplace which involves frequent contact or cooperative work with others, due to her paranoid perceptions that others are intent upon harming her. She clearly has a mental impairment which substantially limits her ability to work in any category that requires interaction with other people. Her disability also substantially limits her ability to handle her own funds.
14. Defendant has made numerous complaints about the condition of the apartment complex, the conditions in her apartment, and management practices during the years she has lived at [redacted]. Many of her complaints were determined to be unfounded by HUD in its DETERMINATION OF NO PROBABLE CAUSE. Some of the things she complained about demonstrate her mental illness symptoms in that they reflect her beliefs that many ordinary business practices that took place at [redacted] were intended to discriminate against her due to her disability, or her erroneous perceptions that others received privileges that Defendant did not. However, some of the complaints have been found to be valid by the City of Richfield authorities and some have been found by the Plaintiff itself to be well-founded.
15. Defendant notified Plaintiff's Community Manager by letter dated June 24, 2002 that she intended to appeal the February 23, 2002 HUD DETERMINATION OF NO PROBABLE CAUSE and her intent to file a discrimination charge based upon Defendant's allegation of over-occupancy of a neighboring unit. Plaintiff's management also observed Defendant actively participate in tenant meetings convened for the obvious purpose of asserting tenants' habitability covenant rights. At least one of these meetings occurred within the 90 days immediately preceding Plaintiff's notice of nonrenewal of Defendant's lease.

16. Plaintiff alleged that Defendant breached the most recent lease between the parties by failing to permit access to her apartment for maintenance and repairs. Paragraph 15 of the lease states: "Owner or any other person authorized by owner has the right to enter the Apartment, without notice, at any reasonable time, in the event of an emergency or perceived emergency or to inspect, make repairs or alterations or to exhibit the Apartment for rent or sale. "
17. Over two years prior to the nonrenewal of Defendant's lease, Plaintiff had agreed not to contact Defendant at her apartment without prior written notice as an accommodation to Defendant's disability. Defendant would not disclose her telephone number to Plaintiff so Plaintiff could not call her. She did disclose her telephone number to [redacted], Leased Housing Specialist for the Richfield Housing and Redevelopment Authority, who attempted to make appointments with Defendant to allow Plaintiff's employees access to her apartment to make repairs.
18. **Defendant** usually permitted access to Plaintiff's employees and contractors for maintenance and repair work if advance written notice was given and the workers strictly complied with the terms of the advance notice. Any deviation from the terms of the notice was likely to result in Defendant denying access. During August of 2002, Defendant insisted upon a maintenance supervisor, Mike Gray, doing or personally supervising the work on her air conditioner after a subordinate employee installed it improperly.
19. There have been a number of occasions when Defendant has refused to utilize the services of Plaintiff's Latino employees and employees of color. Most of those refusals can be attributed to Defendant's desire to deal with the Plaintiff's management rather than staff. However, on one occasion sometime during the summer of 2002, Plaintiff made a remark to an African American employee that she did not let persons of color into her apartment. Plaintiff did, however, allow that employee into her apartment on at least one occasion. She did allow Latino employees into her apartment when accompanied by Mike Gray, a white Caucasian supervisor, in August of 2002.
20. Dr. Seymour Gross, a psychologist, examined Defendant at the request of her counsel after Defendant was served with the notice of nonrenewal of her lease. Dr. Gross proposed that Defendant's disability could be accommodated, and she could live successfully in her present apartment, if she had a case manager who could serve as an intermediary and conduit for communication between Defendant and Plaintiff. The case manager could discuss proposed communications that Defendant wished to make to Plaintiff to assist Defendant in making her requests reasonable in content and manner. The case manager could also receive Plaintiff's communications on Defendant's behalf and then explain them to Defendant so that she does not irrationally perceive them as intended to threaten or harm her.
21. Dr. Gross' proposal would prevent Defendant from writing intemperate, haranguing, and insulting letters to Plaintiff, and would promote Defendant's cooperation with Plaintiff's requests for access to her apartment. The case manager could also be present for scheduled appointments between Defendant and Plaintiff's employees to assuage Defendant's paranoid fears and to prevent Defendant from making unreasonable demands or racist remarks. However, the request for a case manager cannot come from Plaintiff. It must come from Defendant, and there is no evidence that she offered or attempted to do this until after she was given the notice of nonrenewal of her lease. There was no evidence admitted at trial showing that Defendant communicated Dr. Gross' proposal to Plaintiff before trial of this case, although pleadings filed in mid-November, 2002 in a related case between these two parties refer to Dr. Gross' opinion on Defendant's mental health condition and the likely impact of eviction from her apartment on her mental health.
22. Plaintiff made reasonable efforts to accommodate Defendant's disability, even though those efforts were sometimes imperfectly executed, prior to giving Defendant the notice of nonrenewal. However, additional reasonable efforts are possible now that Defendant is

willing to comply with the services of a case manager to assist her in achieving the level of cooperation with Plaintiff that is necessary for Defendant to live in a large apartment complex. If Defendant is cooperative with the case manager and makes all non-emergency requests and notifications to Plaintiff through the case manager, she should be able to reside independently in an apartment complex; if she does not cooperate with the case manager, Defendant may need to live in an assisted living or treatment facility in order to adequately address her disability symptoms.

23. There is no evidence that Defendant's mental illness poses a threat to the health and safety of person or property.

CONCLUSIONS OF LAW

1. Minn.Stat.Sec. 504B.285, Subd. 2 applies to this case, prohibiting retaliatory eviction. Although this statutory section uses the language "notice to quit" and the instant case involved a notice of nonrenewal, there is no definition of "notice to quit" in Chapter 504B. As defined in BLACK'S LAW DICTIONARY, the term "notice to quit" is not exclusively applicable to termination of a tenancy at will but also includes a notice to vacate at the expiration of a lease term.
2. Plaintiff has not rebutted the statutory presumption under Minn.Stat.Sec.504B.285, Subd. 2 that eviction within 90 days after assertion of the tenant's rights under her lease, the state statute on tenant privacy, and the housing code is retaliatory.
3. Defendant is disabled as defined by Minn.Stat.Sec.363.01, Subd.13 and 42 U.S.C. Sec.3602 (h).
4. Plaintiff made reasonable accommodations for Defendant's disability until some time after Plaintiff sent Defendant the August 9, 2002 notice of nonrenewal, when Defendant requested the further accommodation of communication through a case manager. At that time a duty arose to attempt to accommodate Defendant's disability if the requested accommodation was reasonable. *See* Radecki v. Joura, 114 F3d 115 (8th Cir. 1997). Plaintiff now has the duty to permit Defendant to continue her tenancy. This duty is conditioned upon Defendant's compliance with the proposal to have all non-emergency requests and notifications between the parties transmitted through a mental health case manager whose services shall be arranged by Defendant, Defendant's compliance with mental health case management services, and the case management services effectively preventing Defendant from making racist remarks or delusion-based, unreasonable demands upon Plaintiff.
5. Defendant is entitled to recover costs and disbursements herein from Plaintiff.

ORDER FOR JUDGMENT

1. This case is hereby dismissed with prejudice.
2. Defendant is awarded her costs and disbursements herein from Plaintiff.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Recommended by:

[signature] 3/4/03
Housing Court Referee

By the Court:

[signature]
District Court Judge

Decision and Order with findings
Last Revised 11/19/02