

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss:

Housing Court Department
Western Division
No: 13-SP-1551

ECHO GATEHOUSE PARTNERS, LLC,

Plaintiff,

v.

TRACYLEE BOUTLIER,

Defendant.

ORDER

This matter came before the court on June 10, 2013, for hearing on the defendant (tenant's) motion to dismiss or in the alternative for summary judgment. Both parties appeared through counsel who made oral argument and filed legal memoranda in support of their positions. Subsequent to that hearing, on or about June 26, 2013 (and while the case was under advisement), plaintiff filed a motion to submit supplemental documentation. The tenant is seeking the dismissal of this summary process action, arguing that the plaintiff (landlord) failed to properly terminate the tenancy. For the reasons explained below, the motion was treated as one for summary judgment and is ALLOWED¹.

¹Because the court relied on affidavits, including the ones filed by the landlord as part of its motion to submit supplemental documentation (which was allowed by the court on the papers and without hearing), the tenant's motion is treated as one for summary judgment.

1. **Background:** The landlord, Echo Gatehouse Partners, LLC purchased the subject premises on or about January 1, 2013. The subject premises, Unit 303, consists of one of the multiple units at a housing complex. The tenant was already residing at the premises under a Section 8 Voucher lease, administered by the Amherst Housing Authority, when the landlord purchased the subject premises.

2. On or about February 7, 2013, the landlord sent a Notice of Termination of Tenancy to the tenant stating that the landlord was terminating the tenancy because it wanted to raise the rent. Some 14 days later, on February 21, 2013, the landlord entered into a new Housing Assistance Payments (HAP) contract with the Amherst Housing Authority for the leasing of the tenant's unit with an initial lease term beginning March 1, 2013 and ending August 31, 2013.

3. **Discussion:** The tenant moves this court for dismissal of this eviction action based, among other reasons, on the fact that the HAP contract signed by the landlord and the Amherst Housing Authority and the pertinent Section 8 Voucher Program statutes and regulations prohibit the landlord from bringing an "economic or business" reason termination prior to November 30, 2013.²

4. Perhaps looking at what is clearly stated in black and white in the HAP contract between the landlord and the Amherst Housing Authority is the best way to begin the analysis. That HAP contract unequivocally states at Part A (5) *Initial Lease Term*, that the initial lease term begins on March 1, 2013 and ends on August 31, 2013. (Exhibit 4, tenant's motion to

²The tenant also argues that the notice to quit is insufficient because it does not terminated the tenancy on a "rent day" and because the landlord failed to send a copy of the termination notice to the Amherst Housing Authority when he had the tenant served. Because I dismiss the case based on a different basis, I need not address these two other bases.

dismiss). The HAP contract in Part C (8) *Termination of Tenancy by Owner*, allows for termination of the tenancy only under particular circumstances. At subsection (b)(4)(d) *Grounds, Other good cause*, an owner is prohibited from terminating the tenancy for something other than what the tenant did or failed to do. Additionally, Part B (12)(b) of the HAP contract affords the tenant the right to enforce Part C of the HAP contract against the owner. Thus, it is clear from the signed HAP contract that the owner can not terminate the tenancy because he wants to raise the rent until after August 31, 2013.

5. The landlord's argument on this issue is two-fold. First, the landlord asserts that it didn't mean to enter into a new HAP contract but only signed and submitted the HAP contract as paperwork in support of its request that it be "assigned" the then-existing HAP contract for this tenancy. Second, if the tenant is correct in her assertion that the new HAP contract is binding on the landlord, the consequences would be dire, "profound and far-reaching" and, therefore, the court should not bind the landlord to it.

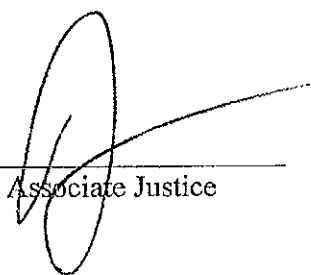
6. The HAP contract, and the supporting statutes and regulations, allow for the assignment of the HAP contract to a new owner. See HAP contract, Part B (14). Assignment would have allowed, in this instance, for the already existing HAP contract to be assigned to the landlord (new owner) and—because the initial lease term had expired—the tenancy would have been a regulated-month-to-month tenancy and the landlord could have terminated the tenancy with proper notice and offered a new tenancy at a higher rent as anticipated and allowed under the HAP contract and the law. This is not what occurred with this tenancy. The landlord was not assigned the then existing HAP contract. Instead, he entered into a new one with a term from March 1, 2013 until August 31, 2013.

7. The court understands from the pleadings that the landlord may have signed the HAP contract at the instruction of the Amherst Housing Authority and under the impression that by doing so it was seeking to be assigned the then-existing HAP contract. Though this may form the basis for the landlord to seek compensation for any losses caused by this confusion from the housing authority—if there are any losses—but it is not the basis to avoid the enforcement of the unambiguous terms of the HAP contract.

8. As to the landlord's second argument that enforcing the HAP contract in the manner being sought by the tenant in this matter would have dire consequences on landlords who wish to renovate newly acquired properties wherein there are existing Section 8 voucher tenancies, the landlord's supposition is faulty. For the reasons stated above, landlords in those situation are afforded the opportunity to have the existing HAP contract assigned to them. Clearly, all such landlords should take heed to not enter into new HAP contracts if what they want is to have the old one assigned them.

9. **Conclusion and Order:** Based on the foregoing, the HAP contract signed by the landlord on February 21, 2013 is binding and accordingly it may not terminate the tenancy for the reasons stated in the February 7, 2013 termination notice. As such, the tenant's motion to dismiss is ALLOWED and this matter is hereby dismissed.

So entered this 16 day of August, 2013.



Robert Fields, Associate Justice