FEB 13 1996

STATE OF MINNESOTA — FOURTH JUDICIAL DISTRICT COURT

COUNTY OF HENNEPIN — FILED 96 FEB 12 PM 3:22 — FIRST DIVISION, MINNEAPOLIS

COURT ADMINISTRATOR

Paul Johnson, Case No. UD-1951205504

Plaintiff/Landlord,

vs. **DECISION AND ORDER**

Shirley Bostic,

Defendant/Tenant.

The above-entitled matter came on for hearing before the Honorable Linda J. Gallant, Housing Court Referee, on January 3 and January 10, 1996.

Sandra K. Agvald, Attorney at Law, 1770 Fifth Street Towers, 150 South Fifth Street, Minneapolis, Minnesota 55402-4200, appeared for and on behalf of the Plaintiff, who was also present.

Robin Ann Williams, Attorney at Law, Legal Aid Society of Minneapolis, 2929 Fourth Avenue South, Minneapolis, Minnesota 55408, appeared for and on behalf of the Defendant, who was also present.

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

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SECTION 8\NOTICE\BOSTIC.ord

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FINDINGS OF FACT

1. The Plaintiff owns and operates the rental property located at 3626 Columbus Avenue South, Apartment 1, Minneapolis, Hennepin County, Minnesota. Plaintiff lives at Apartment 2 at the building.

2. Defendant rents the property pursuant to a Section 8 Assisted Lease. Exhibit 1. Defendant has rented the unit since August 1991. The Minneapolis Public Housing Authority pays part of the rent and the Defendant pays part. The rent is not an issue in this case.

3. Plaintiff alleges that Defendant has materially violated the lease by: 1) causing the stove burners to malfunction due to tenant's failure to clean the burners and eliminate grease build-up; 2) disconnecting basement smoke alarm; 3) allowing refrigerator leakage and resulting floor damage; 4) damage to oven-control knob; 5) damage to towel rack and toilet tank; 6) failure to report or repair leaky toilet, causing excessive water bills; 7) sidewalk damage by gum; 8) excessive noise.

4. The tenant failed to regularly clean the stove burners; grease build-up resulted; in late May 1995 and again in summer 1995 and through early September, this caused or contributed to the failure of the burners to light properly; the tenant is responsible for cleaning the stove; a further grease build-up occurred in October 1995; the area

immediately beneath the burners had not been cleaned, Exhibit 7; Plaintiff cleaned the stove; Defendant had never lifted up the top of the stove to clean beneath the burners; Mr. Jeff Garetz has now instructed Ms. Bostic exactly how to properly clean the stove. Mr. Garetz, an experienced residential rental property maintenance person, inspected the stove on December 19, 1995, and determined that it was "very old"; cleaning it did not initially cure the difficulty in lighting the burners; the debris and grease, in his judgment, was not the cause of the problem.

5. The basement smoke detector was not working on May 15, 1995. Exhibit 4. The battery was loose; the Plaintiff tightened it; neither party has any direct knowledge of how or why or when it became loose.

6. The refrigerator was leaking on May 15, 1995 (Exhibit 4); Plaintiff caused repairs to be made; the refrigerator passed the August Section 8 inspection; the repair person advised the Defendant on certain draining and upkeep matters; there is floor damage beneath the refrigerator, the cause of which may be the leak, may be the quality of prior floor repair, or indeed, may be a combination of the two. The refrigerator now works properly and Defendant has learned to avoid repeated leakage.

7. The oven-control knob needed repairs; Plaintiff caused repairs to be done; the control knob is old, not

original equipment, and the cause of its malfunction is not clear.

8. The towel rack has a chip on it; it looks and functions properly; the toilet tank has a small crack above the flushing handle; it looks and functions properly; the Section 8 inspection identified neither problem.

9. The Defendant noticed an excessively "running" toilet sometime between April and July, 1995; Defendant's tank cover had prevented the flush handle from proper functioning; a chain in the flushing mechanism was broke; the Plaintiff fixed it; Plaintiff believes that Defendant purposefully let the toilet "run" as part of her determined effort to increase Plaintiff's costs by increasing the water bill; the water usage for the whole building for the April to July billing period nearly doubled between 1994 and 1995 (Exhibit 13).

10. There has been gum on the public sidewalk and on the extension of that sidewalk on the property leading to the exterior door to Defendant's unit; the source of the gum is unknown.

11. The Plaintiff continues to be disturbed by the noise of the Defendant's two children, ages four and six. The kitchen and bathroom of Defendant's apartment are not carpeted; the hallway and bath are "close to" being above Plaintiff's apartment, probably increasing the travel of

sound from Defendant's to Plaintiff's apartment; Defendant's two carpeted bedrooms are directly above Plaintiff's apartment. One of Plaintiff's guests agreed that Defendant's children are noisy; the third resident of the building, who lives immediately adjacent to Defendant and shares a common wall with her, disagrees, and believes the children's noise is normal and not a bother. Defendant denies excessive noise.

12. Both parties are, at this point, hostile to and uncooperative with each other. Defendant has called Plaintiff a "faggot;" Plaintiff has called Defendant a "bitch;" both parties believe the other is a wholly inappropriate neighbor and a liar; Plaintiff believes Defendant is purposefully trying to adversely affect Plaintiff's life and cost him money ("determined effort...to increase costs"); Defendant believes Plaintiff is 'out to get her' and is unreasonable. Plaintiff has been disturbed by Defendant's failure to promptly notify him of repair needs, to which Defendant responds that Plaintiff's anger and hostility is so high that she avoids contact. Plaintiff started communicating by notes, to which Defendant responds that the notes are unreasonable. Plaintiff posted a "to rent" sign for Defendant's apartment, which naturally upset Defendant. Defendant does not quickly and calmly respond to all of Plaintiff's requests, which naturally upsets

Plaintiff. In summary, the parties treat each other with disrespect and disdain.

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

CONCLUSIONS OF LAW

1. Plaintiff has failed to prove by a preponderance of the evidence that Defendant has engaged in behaviors constituting good cause to terminate the parties' federally subsidized Section 8 lease, in that the Plaintiff has failed to prove that Defendant's lack of knowledge about proper stove cleaning and/or delay in reporting repair needs unreasonably caused harm to Plaintiff or his property; there is insufficient evidence that Defendant's negligence or intentional acts caused the refrigerator or stove repairs, the gum on the sidewalk, or the temporary smoke detector malfunction; there is insufficient evidence that Defendant's two children are unreasonably noisy.

2. The parties have each proven by a preponderance of the evidence that they neither trust nor like nor respect each other.

Now, therefore,

IT IS HEREBY ORDERED:

1. Plaintiff's request for a Writ of Restitution is denied and Defendant is awarded possession of the premises.

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

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

LET JUDGMENT BE ENTERED ACCORDINGLY.

RECOMMENDED BY:

Dated: February 12, 1996

Referee Linda J. Gallant
Housing Court Referee

Dated: February 12, 1996

Judge of District Court

MEMORANDUM

The Court, and counsel, have expressly noted that the relationship of these two parties has so deteriorated that it is one of distrust and hostility. Undoubtedly, the parties' relationship has contributed to, if not caused, the legal issues in this case. Undoubtedly, the parties' relationship will, in all likelihood, prevent either of them from re-establishing an amicable landlord-tenant relationship. Undoubtedly, there will be continuing hostility, petty disputes, name-calling, miscommunication, and similar difficulties. This Court has no solution to this behavior.

The rules and requirements of the Section 8 program prohibit an involuntary eviction in this case. The disagreements between the parties are not wholly, or even primarily, attributable to Defendant's history of noise disturbances, or housekeeping habits that cause damage. Defendant's failure to properly clean the stove and refrigerator appears to have been substantially caused by basic ignorance, which she admits. Defendant now has been properly instructed and it is presumed that she will follow those instructions. No intentional acts or negligent acts or purposeful acts have been shown.

The failure of the parties to settle this case convinces the Court that one or both of them are stubborn.

It appears that Ms. Bostic will do everything within her power to keep her apartment, despite the parties' poor relationship and despite her own inappropriate emotional behaviors, such as calling the Plaintiff a "faggot." Such behavior is wholly inappropriate and offensive to this Court. It appears that Mr. Johnson will do everything within his power to get Ms. Bostic out of the apartment, including blaming her for gum on a quasi-public sidewalk. Such behavior is inappropriate and offensive to this Court.

If these parties desire to raise their conduct above the level to which it has deteriorated, then they will forthwith and immediately determine, with counsel, in writing, and without further rancor, the proper date for their mutual termination of tenancy.

LJG