

AUG 10 1992

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FILED

MPLS. LEGAL AID SOCIETY

DISTRICT COURT

AUG - 7 1992: FOURTH JUDICIAL DISTRICT
DIVISION IV, SOUTHDALE
UNLAWFUL DETAINER

HENNEPIN COUNTY DISTRICT COURT ADMINISTRATION

D.C. File No. UD4920624902

Hegenes Properties, d/b/a,
Windfield Estates,

Plaintiff,

v.

Carla Lisette Reed,

Defendant.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

* * * * *

The above-entitled matter came on for trial before the Honorable Bruce Hartigan, one of the judges of this Court, on July 13, 1992.

David S. Holman, Esq., appeared on behalf of the Plaintiff. Thomas J. Conley, Esq., appeared on behalf of the Defendant.

Upon all of the files, memoranda and proceedings herein and the argument of counsel the Court now makes the following:

FINDINGS OF FACT

1. On November 1, 1991 Plaintiff, as landlord, and Defendant, as tenant, entered into a Lease Agreement for one of the apartment units in Plaintiff's apartment complex at 10151 East Bloomington Freeway, Apt. #105, Bloomington, MN 55420. Plaintiff and Defendant participate in the Section 8 Existing Housing Certificate Program which is governed by 42 U.S.C. Sec. 1437f and 24 C.F.R. Sec. 882 (1991).

16.B.7

2. Paragraph eight of the Lease Agreement provides as follows:

8. **USE.** RESIDENT agrees to use the leased premises only as a residence for the persons designated as occupants, RESIDENT further agrees to the following . . .

(c) RESIDENT shall not disturb or annoy other residents of the premises with noise, music, or other sounds. RESIDENT is responsible for their guests as well.

Defendant, as the "RESIDENT" under the terms of the lease, was bound to abide by this anti-noise covenant.

3. Plaintiff's complaint and notice of termination contained a number of allegations of incidents on which defendant disturbed other residents by making loud noise between the dates of May 30, 1992 and June 14, 1992. At trial, however, plaintiff presented evidence substantiating only one date on which defendant was disturbing other residents with loud noise: June 3, 1992. Plaintiff also introduced evidence which substantiated its allegation that defendant violated the fire code on June 14, 1992. According to the testimony of Bloomington Police Officer Chorzempa, on June 14 defendant had placed her barbecue grill too close to the apartment building, in violation of a Bloomington city ordinance. Officer Chorzempa said that he appeared twice on June 14 regarding the barbecue grill because at the time he first appeared he was not certain that the barbecue grill placement violated the city code. When Officer Chorzempa appeared a second time and informed defendant that her grill placement violated a city ordinance, defendant complied with the ordinance and moved her grill.

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4. Plaintiff also proffered evidence of defendant's repeated violation of plaintiff's "1992 Pool Rules" which state, in part:

"Anyone under 18 years old must be accompanied by an adult resident, ON THE LEASE. An adult can only be responsible for two children. If you have three children, another adult must accompany you to the pool. This does not mean two kids in the pool, one sitting at the tables. This means only two kids inside the locked fenced area of the pool with each adult. And remember one of those adults must be a resident, ON THE LEASE."

As written and enforced, the pool policy acts to prevent the Defendant, single parent, from using the pool with her three children at the same time.

CONCLUSIONS OF LAW

1. Consistent with this court's ruling prior to the trial of this matter, evidence regarding defendant's alleged violations of the pool use policy shall not provide grounds for a termination of the tenancy because the policy discriminates against defendant based on her marital and familial status, arbitrarily denying defendant and her family the use of privileges, services or facilities connected with the apartment complex. Minn. Stat. Sec. 363.03, subd. 2, 42 U.S.C. Sec. 3604 et seq, 20 C.F.R. Sec. 100.65.

2. A "Section 8" federally subsidized tenancy may be terminated for:

- (1) Serious or repeated violation of the terms or conditions of the lease;
- (2) Violation of federal, state or local law which imposes obligations on the family in connection with the occupancy and use of the dwelling unit and surrounding premises; or

16. §. 1

(3) Other good cause.

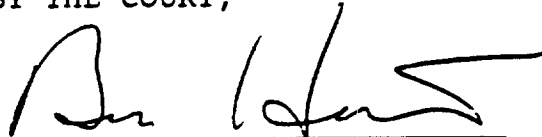
24 C.F.R. Sec. 882.215(c). Plaintiff suggests that it has shown repeated and serious violations of the anti-noise covenant in the lease. However, at trial plaintiff was only able to substantiate one date, June 3, 1992, on which defendant was disturbing other residents with loud noise. Defendant's violation of the noise provision in the lease on one occasion and her violation of the city code regarding the placement of barbecue grills on one other occasion do not together amount to proof of "serious" or "repeated" violations of terms or conditions of the lease within the meaning of 24 C.F.R. Sec. 882.215(c). Hence, plaintiff has failed to show a basis for termination of the Section 8 tenancy.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Judgment shall be entered for Defendant.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT,



BRUCE HARTIGAN
Judge of the District Court

Dated: 8-5-92

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