

STATE OF MAINE

Location BANGOR DISTRICT COURT
Docket No. BANDC-SA-2009-00279

JUN 15 2009

THE HOUSING AUTHORITY OF THE CITY OF BANGOR
V.

SHEILA JACOBSEN

JUDGMENT
FORCIBLE ENTRY AND DETAINER

and All Other Occupants

This matter came on for hearing on 06/11/2009 at 08:30. The court finds that the summons and complaint were duly served on the defendant. The plaintiff did ~~(not)~~ appear. The defendant did ~~(not)~~ appear.

It is Ordered and the entry will be:

The complaint is dismissed with(out) prejudice by the plaintiff.

Judgment is rendered: by default.
 by agreement.
 after hearing.

Judgment is granted to the defendant.

Judgment is granted to the plaintiff for possession of the following described premises or items(s): 11A DOWNEAST CIRCLE, BANGOR, MAINE 04401

Other findings & conclusions to follow

The writ of possession shall issue seven calendar days after the judgment is entered.

Date: 6/11/09

[Signature]
Judge

A true copy, Attest:

Clerk

STATE OF MAINE
PENOBSCOT, ss.

FILED
JUL 27 2009

DISTRICT COURT
DIV. OF SO. PENOBSCOT
Location: BANGOR
Docket No. BAN-SA-09-279.

BANGOR DISTRICT COURT

HOUSING AUTHORITY OF)
THE CITY OF BANGOR,)
)
Plaintiff,)
)
vs.)
)
SHEILA JACOBSEN,)
)
Defendant.)

DEFENDANT'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

After notice and hearing on June 11, 2009, with both parties present and represented by counsel, the Court hereby makes the following findings of fact and conclusions of law pursuant to Rule 52 of the Maine Rules of Civil Procedure:

Findings of Fact

1. Plaintiff manages federally-subsidized public housing in the City of Bangor, including the premises at 11-A Downeast Circle.
2. Defendant Sheila Jacobsen is a tenant of Plaintiff who has lived at 11-A Downeast Circle in Bangor, Maine, pursuant to a lease with Plaintiff, since 1996.
3. The lease between Plaintiff and Defendant was amended in October 2007 to prohibit smoking in or near the premises.
4. Defendant suffers from schizophrenia, for which she receives benefits under the Social Security Act as a disabled individual.
5. Defendant smoked cigarettes in her apartment on a regular basis prior to October

29, 2008, but has not smoked since November 2008.

6. On October 28 or 29, 2008, one of Defendant's neighbors called Plaintiff to report water leaking in her apartment.

7. On October 29, Plaintiff's maintenance workers traced the water leak to Defendant's apartment.

8. Plaintiff's maintenance workers determined that the water leak had been caused by Defendant's toilet and/or sink, which had been clogged with cigarette butts and ashes and had overflowed.

9. The water leak damaged the flooring in Defendant's apartment to the extent that it required significant repair.

10. On October 29, 2008, Plaintiff served Defendant with a notice of lease termination, citing the sections of the parties' lease (a) that prohibited smoking in or near the premises and (b) that required Defendant to dispose of all ashes, garbage, rubbish, and other waste in a sanitary and safe manner.

11. Defendant made a timely request for an administrative grievance pursuant to Plaintiff's grievance policy, and a formal hearing was held pursuant to that policy on December 4, 2008, at which time Defendant submitted a written request that Plaintiff make a "reasonable accommodation" to her mental illness.

12. The accommodation requested by Defendant was that Plaintiff delay or rescind the eviction process to allow Defendant to modify her behavior related to smoking with the help of her counselor at Community Health and Counseling and thereby comply with her lease.

13. On December 22, 2008, Plaintiff denied both Defendant's grievance and

Defendant's request for accommodation, reasoning that tobacco smoking was not a physical or mental disability within the meaning of the Maine Human Rights Act and that the request did not address the damage to the unit or the behavior that caused the damage.¹

14. On December 29, 2008, Defendant clarified her request for a reasonable accommodation, explaining that her disability was schizophrenia, which sometimes caused her to engage in behaviors that were not rational, and that her requested accommodation was that Plaintiff work with her and her treatment team to resolve any problems from her previous smoking behavior, including both the smoking itself and the damage to the unit, and allow her to pay for any damages to the unit.

15. After an administrative hearing on March 4, 2009, Plaintiff agreed as a reasonable accommodation to Defendant that Plaintiff would communicate with Defendant through her case manager regarding changes in the terms of her tenancy, but denied Defendant's request to stop or postpone the eviction; Defendant has since requested that all communications between herself and Plaintiff occur through her case manager.

16. Due to her schizophrenia, Defendant suffers from disorganized and delusional thinking and from anxiety; as a result, prior to October 29, 2009 she did not understand that she had agreed not to smoke in or near her apartment, believed that it was safe to smoke in the bathroom, and believed that ashes are sterilized.

17. Defendant has a treatment team at Community Health and Counseling Services consisting of a psychiatrist, a psychiatric nurse, and a case manager.

¹ The Notice of Lease Termination did not cite damage as grounds for eviction, but rather the behavior (disposal of ashes) that caused the damage. Furthermore, Defendant has offered to pay for the damage.

18. Defendant's treatment consists of medication, counseling, and assistance with activities of daily living.

19. Defendant has been compliant with her treatment.

20. Defendant's treatment team has been successful in altering Defendant's behavior when Defendant's behavior causes problems with daily living, including her smoking behavior, and the treatment team believes that with appropriate support and treatment in the future and with prompt communication from Plaintiff regarding any perceived or anticipated problems resulting from those behaviors, she can comply with her lease obligations.

Conclusions of Law

1. As the agency managing federally-assisted public housing, Plaintiff is subject to the Maine Human Rights Act at 5 M.R.S.A. Chapter 337 and the federal Fair Housing Act at 42 U.S.C. §§3601 et. seq.

2. Defendant suffers from schizophrenia, which is a qualifying disability or handicap under the Maine Human Rights Act at 5 M.R.S.A. § 4553-A and federal law at 42 U.S.C. § 3602.

3. Defendant breached her lease both by smoking in her apartment and by the improper disposal of ashes and cigarette butts in her bathroom sink and toilet.

4. Plaintiff knew that Defendant had a disability.

5. Accommodation of Defendant's disability is necessary to afford Defendant an equal opportunity to use and enjoy her housing with Plaintiff.

6. The accommodations Defendant requested are reasonable; specifically that Plaintiff not proceed with eviction and instead allow Defendant's treatment team to work with her to modify behaviors that could result in lease violations, that she be allowed to pay for the

damage caused, and that Plaintiff communicate with her through her case manager.

7. The accommodations Defendant requested do not impose undue financial or administrative burdens on Plaintiff or require a fundamental alteration in the nature of Plaintiff's public housing program.

8. The accommodations Defendant requested will eliminate or acceptably minimize any behaviors that might breach the lease.

9. Because Plaintiff has not provided the reasonable accommodation necessary to afford the Defendant an equal opportunity to use and enjoy her housing with Plaintiff and hence has not discharged its responsibilities to Defendant under state and federal law, it is not entitled to relief in this action; therefore, judgment is rendered for the Defendant.

Dated: _____

8/5/09



JUDGE, MAINE DISTRICT COURT