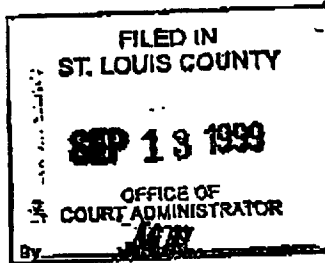


STATE OF MINNESOTA



DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

Court File No. C7-99-601573

Housing and Redevelopment Authority
of Duluth, Inc.,

Plaintiff,

vs.

Rosalynd Adams,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER FOR JUDGMENT,
AND JUDGMENT ..**

The above-captioned matter came before the Honorable Heather L. Sweetland, Judge of District Court, St. Louis County Courthouse, County of St. Louis, State of Minnesota, on September 7, 1999.

APPEARANCES

Attorney Robert Barnes, 1000 Alworth Building, Duluth, Minnesota 55802 appeared on behalf of the Plaintiff.

Attorney David W. Adams, 302 Ordean Building, Duluth, Minnesota 55802 appeared on behalf of the Defendant.

The Court having reviewed the file, having considered affidavits and submissions of the parties, reviewed pertinent legal authorities, and deeming itself advised in the premises now makes the following:

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FINDINGS OF FACT

1. Plaintiff entered into a lease with Defendant for a residential dwelling located at 22 East 12th Street, Duluth, Minnesota. The lease was dated and signed on January 5, 1999.

2. The lease contained the following provisions:

16. LEASE TERMINATION BY LANDLORD: Any termination of this lease shall be carried out in accordance with U.S. Department of Housing and Urban Development regulations, State and local law, and the terms of this Lease.

The HRA shall not terminate or refuse to renew the Lease other than for serious or repeated violation of material terms of the Lease, such as, but not limited to, the following:

l. the Tenant, any member of the Tenant's household, or a guest or other person under the Tenant's control shall not engage in criminal activity, including drug-related criminal activity while the Tenant is a Tenant in public housing, and such criminal activity shall be cause for termination of tenancy. The term drug-related criminal activity means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

p. any drug related criminal activity by the tenant, or a member of the tenant's family, or a guest on or off the premises, not just on or near the premises rented.

3. Defendant was arrested in connection with an incident that occurred on April 19, 1999. Defendant was charged with various offenses, including petty misdemeanor charges for possession of drug paraphernalia and possession of a small amount of marijuana.

4. The petty misdemeanor drug charges against Defendant were dismissed.

Defendant plead guilty to an amended charge of Duluth City Code violation of Assault, in connection with the April 19, 1999 incident.

5. By a letter dated May 25, 1999, Plaintiff notified Defendant it was terminating her lease for lease violations based upon the April 19, 1999 incident. Plaintiff filed an Unlawful Detainer Complaint against Defendant on August 10, 1999.

Based upon the above Findings of Fact, the court makes the following:

CONCLUSIONS OF LAW

1. Defendant has not engaged in criminal activity in violation of the January 5, 1999 lease for the premises at 22 East 12th Street, Duluth, Minnesota.
2. Defendant has not engaged in drug related criminal activity in violation of the January 5, 1999 lease for the premises at 22 East 12th Street, Duluth, Minnesota.
3. Plaintiff's Unlawful Detainer Complaint against Defendant is dismissed.
4. The attached Memorandum is incorporated herein by reference.

Dated this 13 day of September, 1999.


 Heather L. Sweetland
 Judge of District Court

The above Conclusions of Law hereby constitute the Judgment of the Court.

Dated: September 13, 1999

GLORIA F. POTHAST
COURT ADMINISTRATOR

By: 
Deputy

MEMORANDUM

An unlawful detainer action is a summary proceeding to quickly determine present possessory rights. Eagan East Ltd. Partnership v. Powers Investigations, Inc., 544 N.W. 2d 621, 622 (Minn. App. 1996). Generally, the only issue for trial is whether the facts alleged in the complaint are true. Mac-Du Properties v. LaBresh, 392 N.W. 2d 315, 317 (Minn. App. 1986). A landlord's right of action for unlawful detainer is complete upon a tenant's violation of a lease condition. Minneapolis Community Development Agency v. Smallwood, 379 N.W. 2d 554 556 (Minn. App. 1985).

In the instant case, determining whether the facts alleged in the Complaint are true and whether Defendant violated a lease condition, requires that the Court determine whether Defendant engaged in "criminal activity" or "drug-related criminal activity" in connection with the April 19, 1999 incident in which Defendant was arrested.

Under Minnesota law, "crime" means conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine. Minn. Stat. 609.02, Subd. 1. Municipal ordinances are not criminal statutes and violations thereof are not crimes. State v. End, 45 N.W. 2d 378, 380 (1950). Violation of the Duluth city code is not a crime but is simply an ordinance violation. In the Matter of the Welfare of D.D.B., Child, C9-98-2090 (Minn. App. 1999).

Defendant was convicted of an ordinance violation as a result of the April 19, 1999 incident. Defendant was not convicted of a "crime", as Minnesota statutory and case law defines the word crime. The Court therefore finds the April 19, 1999 incident does not constitute criminal activity in violation of lease provision 16(l).

Defendant was also charged with possession of a small amount of marijuana in violation of Minn. Stat. 152.027, Subd. 4., as well as possession of drug paraphernalia, in violation of Minn. Stat. 152.092. Both offenses are classified as petty misdemeanors. Sections 16(l) and 16(p) of the lease prohibit a tenant from engaging in drug-related criminal activity.

Defendant was not criminally convicted of either charge. These charges, therefore, cannot constitute drug-related criminal activity in violation of her lease.

Even if Defendant had been convicted of the petty misdemeanor charges, these convictions could not be the basis for termination of her lease. "Petty misdemeanor" means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than \$200 dollars may be imposed. Minn. Stat. 609.02, Subd. 4a. Defendant's two drug-related charges stemming from the April 19 incident were for crimes which are classified as petty misdemeanors. Petty misdemeanors are not crimes under Minnesota law. Conviction for an offense that is a petty misdemeanor cannot constitute drug-related criminal activity in violation of 16(l) and (p) of the January 5, 1999 lease.

Finally, the termination clause of the lease states: "The HRA shall not terminate or refuse to renew the lease other than for serious or repeated violation of material terms of the Lease..." The incident that led to Defendant's arrest took place about one mile away from Harborview Homes. Defendant was convicted of a Duluth ordinance violation as a result of the incident. Defendant's single incident of April 19, 1999 does not legally constitute criminal activity or drug-related criminal activity. This single

incident does not constitute serious or repeated violations of the terms of the lease. Plaintiff may not terminate Defendant's lease based upon this single incident and Defendant's subsequent ordinance violation conviction.

CONCLUSION

Plaintiff's Unlawful Detainer Complaint against Defendant is dismissed.

Dated this ____ day of September, 1999

HLS