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Evelyn Gunn

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**BEFORE THE TENNESSEE  
HOUSING DEVELOPMENT AGENCY**

**IN THE MATTER OF:**

**Evelyn Gunn**

**DOCKET NO: 32.00-113263J**

**ORDER**

This contested administrative case was heard in Madison, Tennessee, on October 25, 2011, before Rob Wilson, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Housing Development Agency (“THDA” or “the Agency”). Mr. Bruce Balcom, General Counsel for THDA, represented the Petitioner. Evelyn Gunn, the Respondent, was present and proceeded on her own behalf.

The subject of the proceeding was the proposed termination of the Respondent’s rental assistance through the Housing Choice Voucher Program (Section 8) for the alleged criminal acts of Respondent. After consideration of the record, it is ordered that the Respondent’s Section 8 rental assistance should **not** be terminated, and THDA’s proposed termination is DENIED. This decision is based upon the following findings of facts and conclusions of law.

**FINDINGS OF FACT**

1. The Respondent has been receiving Section 8 rental assistance. On or about April 18, 2011, Respondent had an altercation with a neighbor. In order to protect

herself Respondent pointed a handgun at her neighbor. Respondent was charged with aggravated assault with a deadly weapon. The charge was eventually reduced to possession of a weapon without a permit.

2. Respondent stated that she was not the aggressor in the incident and claimed that she only had the gun for self defense.

3. By letter dated July 12, 2010, Julie Burnette, a hearing and complaints officer with THDA, notified Respondent that she was upholding the decision to terminate her assistance because Respondent had committed criminal or dug activity on the premises.

4. Respondent appealed the termination.

### **CONCLUSIONS OF LAW**

1. The Section 8, Tenant Based Assistance, Housing Choice Voucher Program provides that “during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises..., shall be cause for termination of tenancy.... 42 U.S.C.§1437(d)(1)(B)(iii).

2. Code of Federal Regulations, 24 CFR 982.551(l) states, in relevant part, that a participant in Section 8, “may not engage in...violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.”

3. Pursuant to 24 CFR 982.553(b) THDA (the PHA in the instant case) has promulgated standards in its Administrative Plan, Chapter 10, page 6, for termination due to criminal behavior:

HUD regulations allow PHAs local discretion in establishing additional grounds for termination when the PHA determines that any household member is currently engaged in certain criminal activities. Termination of assistance will result if THDA receives information during the normal process of recertifying eligibility that shows there is a record of drug-related criminal activity, severe alcohol abuse, violent criminal activity or other criminal activity that is a threat to the health and safety of the neighborhood. The family will be terminated if any adult household member has a criminal record that meets one of the following conditions:

1. Any household member has been convicted\* of a felony drug-related, alcohol related, violent criminal activity or other criminal activity in the past twelve (12) months;
2. Any household member has been convicted\* of two (2) or more misdemeanor drug-related, alcohol-related, violent criminal or other criminal acts in the past twelve (12) months;
3. Any household member has three (3) or more convictions\* for a misdemeanor or felony drug-related, alcohol-related, violent criminal activity or other criminal activity, one of which is less than three (3) years (36 months) old;
4. Any household member has one or more convictions\* for a felony sex offense in the past ten (10) years or any conviction\* (felony or misdemeanor) of a sex offense involving a minor;
5. Any household member has been arrested two (2) or more times during the past six (6) months or three (3) or more times during the past twelve (12) months

(felony or misdemeanor), for a drug-related, alcohol-related, violent criminal activity or other criminal activity; or

6. Any household member, guest or other person under the tenant's control is arrested for or convicted of a drug-related or violent criminal activity that allegedly occurred in the assisted unit at any time during the family's program participation (when the criminal activity is a serious lease violation).

\*A criminal conviction occurs when on the date of final judgment (felony or misdemeanor offenses) a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere is entered and does not include a final judgment that has been expunged by pardon, reversed, set aside or otherwise rendered nugatory. A judgment of pre-trial diversion will be treated as a judgment that is rendered nugatory. Families that include a member with a criminal disposition of post-trial diversion following a criminal conviction are not eligible to receive assistance until the terms of diversion are met; record expunged; or the family becomes eligible otherwise.

4. THDA's Administrative Plan lists six specific criteria for termination due to criminal activities, none of which are met by Ms. Gunn. Specifically, criteria #1 requires a felony conviction. Ms. Gunn only received a misdemeanor conviction. Criteria #2 requires two misdemeanor convictions in twelve months. Ms. Gunn only has one misdemeanor conviction. Criteria #3 requires three misdemeanor convictions within three years, which is not applicable in this matter. Criteria #4 pertains to sex offenses and is not applicable in this matter, and criteria #5 is also not applicable because it involves multiple offenses over a period of time and Ms. Gunn has no prior criminal record. The last criteria, #6, requires that a person "be arrested or convicted of a drug-related or violent criminal activity that allegedly occurred in the assisted unit..." As is evidenced

by the Hendersonville Police Department Incident Report, this activity did not occur in the assisted unit:

We returned to Evelyn's location and advised her that due to the fact the [*sic*] she did pull a gun on Telitha and she **was not inside her residence** and she did not have a valid permit...

Ms. Gunn only pled guilty and was convicted of possession of a weapon without a permit, which, by itself, is not a violent crime. Furthermore, the plea documentation indicates that Ms. Gunn's plea is eligible for T.C.A. §40-35-313 diversion, which according to THDA's Administrative Plan, is treated as a judgment that is rendered nugatory. Termination of Ms. Gunn's rental assistance is not appropriate in this matter.

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For the foregoing reasons, the decision of the Tennessee Housing Development Agency to terminate Ms. Gunn's Housing Voucher is REVERSED.

This Order entered and effective this 3rd day of November, 2011.

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Rob Wilson  
Administrative Judge