

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

10/17/70
DISTRICT COURT
NEW HAVEN, CONNECTICUT

RONALD JONES, *
*
Plaintiff, *
*
v. * CIVIL ACTION NO. N 75-68
*
HOUSING AUTHORITY OF THE *
CITY OF NEW HAVEN, *
*
Defendant. *

FIRST AMENDED COMPLAINT

PRELIMINARY STATEMENT

This is an action for declaratory and injunctive relief and damages brought pursuant to 42 U.S.C. §1983 by a resident of an apartment owned by the Housing Authority of the City of New Haven (NHAA) against the NHHA. In its decision-making process which resulted in the overruling of a grievance panel's award of damages to the plaintiff, the NHHA and its officials and employees have deprived the plaintiff of rights guaranteed to him under the due process clause of the Fourteenth Amendment of the U.S. Constitution; the U.S. Housing Act of 1937, as amended, 42 U.S.C. §§1401 et seq., and regulations issued thereunder; and the provisions of the lease agreement between the plaintiff and NHHA.



10 CHR 286 (#18749)

The constitutional and statutory rights of the plaintiff were violated because the decision-making process used by the defendant to overrule the grievance panel was essentially arbitrary, in that it was not based on a review of the transcript or the tape recording of the panel's proceedings and denied the plaintiff and his counsel an opportunity to appear before the Commissioners. The sole presentation the NHHA allowed at the time it overturned the award was argument and evidence from the Housing Authority Executive Director, who had not been present at the original hearing and whose presentation consisted only of hearsay evidence.

In addition, the defendant violated the requirements of the Lease and Grievance Procedure incorporated in the lease between the plaintiff and the defendant and the requirements of the circular issued by the Department of Housing and Urban Development (hereinafter HUD) regarding the lease and grievance procedure.

Finally, the plaintiff claims that the damages he suffered were caused by the negligence of the defendant and its agents and also resulted from breach of its lease with the plaintiff.

JURISDICTION

Jurisdiction is conferred on this court by 28 U.S.C. §§1343 (3) and (4), with respect to injunctive relief and damages;

and by 28 U.S.C. §§2201 and 2202 with respect to declaratory relief.

PARTIES

1. Plaintiff Ronald Jones is a citizen of the United States and of the State of Connecticut, and is a resident of the City of New Haven.

2. Defendant Housing Authority of the City of New Haven is a corporation, organized pursuant to Conn. Gen. Stat. §8-40, authorized by statute to provide housing for low-income persons, which owns and operates housing units in the City of New Haven.

STATEMENT OF CLAIM

1. The plaintiff Jones has been a tenant in an apartment owned and managed by NHHA at 250 Ashmun Street, Apt. 32, New Haven, Connecticut, at all times relevant to this action. The plaintiff's tenancy is pursuant to a standard NHHA form lease known as a "Housing Authority of the City of New Haven Dwelling Lease" (hereinafter Lease). A copy of this Lease is attached as the plaintiff's Exhibit A and is hereby incorporated by reference as if fully pleaded.

2. On July 4, 1974, a water pipe in the apartment above the plaintiff's developed a severe leak which sprayed his room with water and waste products. Despite immediate requests for assistance from both the Joneses and the tenant in whose apartment the pipe broke, NHHA repairmen failed to promptly aid either family, although prompt assistance could have prevented all or part of the damage. The spraying and flooding

which resulted from the unchecked leak ruined most of the plaintiff's custom-made clothes.

3. On or about July 19, 1974, the plaintiff filed a request for a grievance procedure hearing with NHHA. (A copy of this request is attached as Plaintiff's Exhibit B and is hereby incorporated by reference). The basis of the plaintiff's grievance was that the Housing Authority's failure to comply with its lease covenant to maintain decent, safe, and sanitary conditions, and promptly to make all necessary repairs (Lease, §9 (B)) caused the damage to his personal property.

4. On October 2, 1974, the plaintiff and his witnesses appeared before a duly-constituted grievance hearing panel composed of Constance Fleming, NHHA Tenant Representative Council; William "Pete" Gray, a public member of the panel; and Joseph Ciesluk, a project manager for NHHA.

5. The plaintiff and the defendant were represented by counsel at the hearing. An employee of the Housing Authority tape-recorded the proceedings.

6. At no time prior to the decision of the hearing panel did the defendant rely on the asserted inapplicability of the grievance procedure as a ground for denying the relief sought by the plaintiff.

7. On October 10, 1974, the hearing panel issued its decision awarding \$1400.00 in damages to the plaintiff. (A copy of this decision is attached as Plaintiff's Exhibit C and is hereby incorporated by reference.)

8. By letter of October 24, 1974, the plaintiff, through his counsel, Mr. Garrison, notified counsel for NHHA that if an appeal of the hearing panel's decision was taken to the Board of Commissioners, the plaintiff requested the opportunity to be heard before the Commissioners at the appeal. (A copy of this notification is attached as Plaintiff's Exhibit D and is hereby incorporated by reference).

9. By letter of October 30, 1974, the defendant's Executive Director, Edward White, Jr., informed the plaintiff that he would recommend that the Commissioners overrule the hearing panel's decision, that neither the plaintiff nor his representative could be present before the Board of Commissioners and that "it is expected that the Board will overrule the decision of the hearing panel." (A copy of this letter is attached as Plaintiff's Exhibit E and is hereby incorporated by reference.)

10. By letter of November 4, 1974, the plaintiff's counsel reiterated the request for an opportunity to be heard before the Commissioners at the appeal and explained that it would be impossible for the Board to review the hearing panel's decision without a full transcript of the evidence presented at the hearing. (A copy of this letter is attached as Plaintiff's Exhibit F and is hereby incorporated by reference).

11. The only record of the hearing presented to the Commissioners was a memorandum prepared by defendant's Executive Director, Edward White, Jr., which incorporated only

hearsay evidence, and urged that the hearing panel's decision be overruled. (A copy of the memorandum is attached as Plaintiff's Exhibit G and is hereby incorporated by reference.)

12. At their meeting of November 13, 1974, the Board adopted a resolution overruling the hearing panel's decision. Neither the plaintiff nor his representative was permitted to appear before the Board; nor was a transcript of the hearing made available by NHHA for study by the Commissioners. Upon information and belief, defendant's Executive Director, Edward White, Jr., attended the meeting, urged the Commissioners to pass a resolution overruling the panel's award. (A copy of the Resolution is attached as Plaintiff's Exhibit H and is hereby incorporated by reference).

13. The process by which the defendant overruled the decision of the hearing panel in favor of the plaintiff deprived him of property without due process of law in violation of the Fourteenth Amendment to the U.S. Constitution.

SECOND COUNT

1-12. Paragraphs 1-12 of the First Count are hereby incorporated by reference as paragraphs 1-12 of the Second Count as if fully pleaded.

13. Circular RHM 7465.9, "Grievance Procedures in Low-Rent Public Housing Projects" (hereinafter Circular 7465.9), promulgated by HUD in 1971, requires that all local housing authorities provide grievance procedures embodying, at the

minimum, all standards set out in the Circular.. (A copy of the Circular is attached as Plaintiff's Exhibit I and is hereby incorporated by reference the same as if fully pleaded.)

14. On July 12, 1971, the Commissioners adopted the model grievance procedure set out in Circular RHM 7465.9 and a lease incorporating the grievance procedure. (A copy of the resolution is attached as Plaintiff's Exhibit J and is hereby incorporated by reference the same as if fully pleaded.)

15. Section 3 (g) of Circular RHM 7465.9 requires that the hearing panel's

decision shall be binding on the LHA [local housing authority] unless the LHA shall determine and notify the complainant in writing within thirty days of such decision that the hearing panel has acted arbitrarily or exceeded its authority.

16. The procedure by which the Commissioners overruled the panel's award to the plaintiff did not satisfy the requirements of Circular RHM 7465.9 or the lease and grievance procedure adopted by the Commissioners, and incorporated by reference in the plaintiff's lease.

THIRD COUNT

1-12. Paragraphs 1-12 of the First Count are hereby incorporated by reference as paragraphs 1-12 of the Third Count as if fully pleaded.

13-15. Paragraphs 13-15 of the Second Count are hereby incorporated by reference as paragraphs 13-15 of the Third Count as if fully pleaded.

16. The decision of the hearing panel was not arbitrary since adequate evidence was presented to support a finding that the NHHA's failure to make the necessary repairs was negligent and to justify the damages awarded.

17. The grievance procedure is intended to be invoked if a tenant "disputes...any LHA action or failure to act in accordance with the lease requirements...which adversely affect the tenant's rights, duties, welfare or status." Circular RHM 7465.9, §3 (a).

18. Section 9 (h) of the plaintiff's lease provides that:

Management shall maintain the buildings, including dwelling units,...in a decent, safe and sanitary condition...Management shall make all necessary repairs alterations and improvements to the dwelling unit with reasonable promptness at its own cost and expense.

19. The basis of the plaintiff's grievance was that the NHHA adversely affected his welfare by failing to comply with its lease obligation to make repairs promptly.

20. HUD Circular RHM 7465.9 does not exclude from the lease and grievance procedure claims for money damages.

21. The dispute raised by the plaintiff is within the scope of the authority of the hearing panel under Circular RHM 7465.9.

22. Therefore, the defendant's overruling of the hearing panel's decision was illegal and an abuse of discretion.

FOURTH COUNT

1. Paragraph 1 of the First Count is hereby incorporated by reference as paragraph 1 of the Fourth Count as if fully pleaded.

2-3. Paragraphs 13 and 14 of the Second Count are hereby incorporated by reference as paragraphs 2 and 3 of the Fourth Count as if fully pleaded.

4-5. Paragraphs 17 and 20 of the Third Count are hereby incorporated by reference as paragraphs 4 and 5 of the Fourth Count as if fully pleaded.

6. On June 18, 1975, the NHHA mailed to all tenants a notice stating that tenants may not use the lease and grievance procedure to seek recovery from the NHHA for damage to personal property. (A copy of the Notice is attached hereto as Plaintiff's Exhibit K and is hereby incorporated by reference as if fully pleaded.)

7. The publication of the notice violates the plaintiff's rights under Circular RHM 7465.9 and under his lease with the NHHA.

FIFTH COUNT

1. Paragraph 1 of the First Count is hereby incorporated by reference as paragraph 1 of the Fifth Count as if fully pleaded.

2. During the period immediately prior to July, 1974, the NHHA negligently failed to maintain the water pipes and the toilet in Apartment 22, the apartment directly above the plaintiff's apartment.

3. On July 4, 1974, as a result of this failure to maintain a water pipe in Apartment 22 developed a severe leak which sprayed the plaintiff's room with water and waste products.

Although the plaintiff requested assistance immediately, repairmen employed by NHHA negligently failed to make repairs or to clean up the damage caused by the leak.

4. The plaintiff suffered the loss of all of his custom-made clothes worth \$1400.00 which were ruined by the spraying and flooding from the unchecked leak.

SIXTH COUNT

1-2. Paragraphs 1 and 2 of Count I are hereby incorporated by reference as paragraphs 1 and 2 of the Sixth Count as if fully pleaded.

3. The lease entered into by the plaintiff and defendant provides that the NHHA shall maintain the dwelling units "in a decent, safe and sanitary condition," and shall make "all necessary repairs, alterations and improvements to the dwelling unit with reasonable promptness." Lease, Section 9 (b).

4. The defendant's breach of his lease obligation to maintain and repair the plaintiff's dwelling unit caused the destruction of plaintiff's custom-made clothes which were worth \$1400.00.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for:

1. Damages of \$1400.00;
2. A declaratory judgment that the decision-making process used by the defendants, which resulted in the reversal

of the grievance panel's decision without providing the plaintiff a meaningful opportunity to be heard, was invalid because it deprived him of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States;

3. A Declaratory judgment that Circular RHM 7465.9 requires that NHHA give a complainant due process rights to be heard before a hearing panel's decision may be overruled;

4. A declaratory judgment that Circular RHM 7465.9 requires that review of a panel decision be confined to the record and that the reviewing Board may not substitute its judgment for the panel's concerning the weight of the evidence on questions of fact or credibility of witnesses;

5. A declaratory judgment that the decision to overrule the panel's award to the plaintiff was illegal and an abuse of discretion;

6. A declaratory judgment that the panel's decision is binding on the NHHA;

7. A declaratory judgment that the Notice to Tenants issued on June 18, 1975, is illegal and void;

8. A permanent injunction restraining the defendant from failing or refusing to pay the plaintiff the damages awarded to him by the hearing panel;

9. A permanent injunction restraining the defendant from failing or refusing to permit tenants to invoke the lease and

and grievance procedure to collect damages from the NHHA and from failing or refusing to give notice to all tenants rescinding the Notice issued on June 18, 1975;

10. Attorney's fees and court costs; and

11. Such other relief as the Court may deem just and equitable.

Dated at New Haven, Conn the 25th day of May, 1976.

THE PLAINTIFF

By:

BRUCE A. MORRISON, HIS ATTORNEY
184 Dixwell Avenue
New Haven, Connecticut
772-1873

CERTIFICATION

This is to certify that on the 25th day of May, 1976, a copy of the foregoing was mailed, postage prepaid, to Ronald J. Fracasse, Esq., P. O. Box 1613, New Haven, Conn., 06506.

BRUCE A. MORRISON

EXHIBITS

Exhibit A-J attached to the original Complaint are hereby incorporated as Exhibit A-J of this Complaint. Exhibit K is attached.

Housing Authority of the City of New Haven
230 Ashmun Street
New Haven, Connecticut 06511
(203) 777-7631

DATE 6/12/75

NOTICE TO ALL TENANTS

As you know, the Housing Authority has provided a grievance procedure for tenants. Once in a while a tenant has found that personal property belonging to him has been damaged and wanted the Housing Authority to pay him for that damage and asked for a hearing under the grievance procedure for that reason. This notice is to advise you that the grievance procedure is not the way to try to collect from the Authority for damage to personal property. If you feel that personal property belonging to you has been damaged and that the Housing Authority should pay you for that damage, then you should consult a lawyer. Any claim of this kind against the Authority should be made in a court of law; of course the Housing Authority preserves the right to fully defend itself in accordance with law against any claim.

THE HOUSING AUTHORITY OF THE
CITY OF NEW HAVEN

Joe R. [Signature]

emc