COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
SUMMARY PROCESS
NO. **04-/0/2/0/1/3/**

GEORGE LAMBERT and
JUDITH LAMBERT,

Plaintiffs

VS.

JACQUELINE MALONEY,

Defendant

ORDER

After hearing, and for the reasons set forth in the defendant's Supplemental Memorandum (Legal Analysis #1 only, p. 3 – 6), the defendant's **Motion to Dismiss** is **ALLOWED**. The notice to quit, that did not allege cause or "other good cause" as the grounds for termination, was insufficient as a matter of law to terminate the defendant's Section 8 tenancy.

Accordingly, it is **ORDERED** that the plaintiffs' complaint be and hereby is Dismissed without prejudice.

JEFFREY M. WINIK
FIRST JUSTICE

August 12, 2004

cc: **George Lambert**
Judith Lambert
Lynette Siragusa, Esq.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
SUMMARY PROCESS
~~2001/2002/2003/~~2004
NO. / 0 / 2 / 0 / 1 / 3 /

GEORGE and JUDITH LAMBERT
Plaintiff(s)

VS.

JACQUELINE MALONEY
Defendant(s)

NOTICE OF JUDGMENT ENTERED

This action came on for hearing before the Court, WINIK, J., presiding, and the issues having been duly heard and findings having been duly rendered, it is **ORDERED and ADJUDGED** under **Rule 10** of the **Uniform Rules of Summary Process**, judgment enter DISMISSING THIS ACTION, WITHOUT PREJUDICE. ~~for the Plaintiff(s)/Defendant(s) for possession and damages in the amount of $ plus costs.~~

Accordingly, judgment enters at **10:00 a.m.** this 13th day of August **2004.**

ROBERT L. LEWIS
CLERK MAGISTRATE

Eff. 2/12/81

Summary Process Form 3

Commonwealth of Massachusetts
Trial Court

SUFFOLK, ss.

Housing Court Department
City of Boston Division
Summary Process Action
Docket No.04-SP-02013

GEORGE LAMBERT and JUDITH LAMBERT, Plaintiffs,

v.

JACQUELINE MALONEY,
Defendant

Supplemental Memorandum for Defendant's Motion to Dismiss Or, In the Alternative, for Summary Judgment

The defendant hereby supplements her motion to dismiss or, in the alternative, for summary judgment on the issue of possession. In support of this motion, the defendant states the following:

1. The underlying tenancy is subsidized under the Section 8 voucher program, pursuant to a Section 8 model lease provided to the parties by the Metropolitan Boston Housing Partnership (MBHP), a HUD tenancy addendum, and a Section 8 Housing Assistance Payments (HAP) Contract between the plaintiffs and MBHP. Copies of these documents are attached as Exhibits A, B, and C, respectively.

2. According Paragraph 6 of the model lease, the original lease term ran from December 5, 2002 and continues through December 31, 2003 unless there is an earlier termination pursuant to the terms and conditions of the lease and the HUD tenancy addendum. The lease provides that it will automatically self-extend under the same terms and conditions as the initial lease and continue in full force and effect from month to month unless and until otherwise terminated by owner or tenant action in accordance with Section 10 of the lease, with a mutual agreement for termination, or as terminated by MBHP due to termination of the HAP Contract.

3. According to Paragraph 10B(1) of the model lease, during the initial lease term or any extension term, the owner may terminate only for the grounds specified in the tenancy addendum. The owner must give the Tenant at least 14 days notice for nonpayment of rent and at least 30 days notice for termination based on other grounds. The notice must specify the grounds for termination.

4. According to Paragraph 10B(2) of the model lease, the owner may elect not to extend the lease at the end of the initial term or any extension thereof by giving the tenant written notice of the election not to extend, and need not have or specify any grounds for such election. Such notice must

be given at least 30 days or a rental period in advance of the last day of the lease term, whichever is greater.

5. Paragraph 12 of the model lease incorporates the HUD Tenancy Addendum by reference, and provides that if there is any conflict between the lease and the terms of the tenancy addendum, the provisions of the tenancy addendum shall prevail.

6. Paragraph 8.b of the Tenancy Addendum provides that during the term of the lease (the initial term or any extension term), the owner may only terminate the tenancy because of serious or repeated violation of the lease, violation of federal, state or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises, criminal activity or alcohol abuse as provided in Paragraph 8.c of the Tenancy Addendum, or other good cause as provided in Paragraph 8.d. Paragraph 8.d(1) states that during the initial lease term, "other good cause" must be something that the family did or failed to do. Paragraph 8.d(2) states that "other good cause" during the initial term or any extension term may include disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises. Paragraph 8.d.(3) states that after the initial lease term, other good cause may include the tenant's failure to accept an offer of a new lease or revision, the owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit, or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent). Paragraph 8.f of the Tenancy Addendum provides that the owner must give the tenant a notice that specifies the grounds for termination of tenancy, and must provide a copy of this notice to MBHP at the same time that it is given to the tenant.

7. In the present case, on November 3, 2003, MBHP sent notice to the plaintiffs that the property was determined to be in substandard condition, that a reinspection was slated for later in the month, and that MBHP would suspend subsidy payments under the HAP Contract if repairs were not completed by the time of reinspection. A copy of this notice is attached as Exhibit D.

8. By a notice dated November 24, 2003, MBHP notified the defendant that her portion of the rent would be set at $407/month, effective January 1, 2004, and MBHP would pay $893/month as her subsidy effective at that same time. A copy of this notice is attached as Exhibit E.

9. The plaintiffs gave a notice to the defendant, dated November 30, 2003, indicating that it was not their intent to continue with the tenancy after the lease expired on December 31, 2003, and citing Paragraph 10.B.2 of the lease. A copy of this notice is attached as Exhibit F.

10. The plaintiffs gave a 14-day notice to the defendant, dated December 10, 2003, alleging that the defendant was in arrears on her rent in the amount of $565.55. This notice provided that if the tenant had not received a notice to quit for nonpayment of rent in the prior 12 months, the defendant had the right to prevent termination by paying or tendering the rent within 10 days of receipt of the notice. A copy of this notice is attached as Exhibit G.

11. In March, 2004, the plaintiffs filed a prior summary process action against the defendant.

See Lambert v. Maloney, Boston Housing Court Docket No. 04-CV-00254. The defendant filed an answer and counterclaims against the plaintiffs, alleging, *inter alia*, that the tenancy had not been properly terminated. On April 22, 2004, counsel for the plaintiffs filed a stipulation of voluntary dismissal of the plaintiffs' action without prejudice. The defendant's counterclaims were then transferred to the civil docket. See Boston Housing Court Docket No. 04-CV-00254.

11. The plaintiffs are relying in this action on a 30-day notice to quit, dated April 30, 2004, purportedly terminating the defendant's tenancy "at the end of the next rental period beginning after your receipt of this notice or thirty (30) days, whichever is longer". The notice stated that the termination was pursuant to Paragraph 10(B)(2) of the model lease. This notice did not allege any ground for termination. A copy of this notice to quit is attached as Exhibit H. The plaintiffs have indicated that this notice was served by constable and by mail on May 1, 2004, and that this is the notice they are relying upon in this action. See Plaintiffs' Response to Defendant's Interrogatory #13, a copy of which is attached hereto as Exhibit I.

12. In early June, 2004, the plaintiffs commenced this summary process action. The summons alleged, as grounds for the action, "a 30-day notice to quit terminated your tenancy and has expired"; the summons also included an account annexed for rent owed in the amount of $2,442.00 ($407/month for the months of January, 2004 through June, 2004).

Legal Analysis

1. While Federal Law No Longer Requires "Good Cause" to Terminate a Section 8 Voucher Lease at the End of a Fixed Lease Term, "Good Cause" Is Still Required During an Indefinite Renewal Period.

Up until 1996, federal law mandated that whenever a landlord wished to end a tenancy subsidized under the Section 8 tenant-based rental assistance program, s/he would have to state "good cause" for the termination. See 42 U.S.C. § 1437f(d)(1)(B)(ii) (1995):

> "Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that – ...the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause."

HUD has long interpreted the "good cause" requirement, coupled with the statutory requirement of a year's lease, to mean that, during the first year of the lease, the owner could only evict for "fault" on the part of the tenant (the tenant's action or failure to act); after the first year, the tenant could be evicted for "other good cause", including a business or economic reason or a personal reason (such as the desire to remove the unit from the market or to use it for personal or family purposes). See 24 C.F.R. § 882.215(c)(3) (1987), as revised by 51 Fed. Reg. 16,296 (May 2, 1986) and

corrected 52 Fed. Reg. 9,477 (Mar. 25, 1987).[1]

In 1996, Congress temporarily suspended what was known as the "endless lease" aspect of the Section 8 tenant-based program, and revised the above provision to add the phrase "during the term of the lease". See Public Law 104-134, § 101(e), 110 Stat. 1321-281 (Apr. 26, 1996). This provision initially only changed the statute for fiscal year 1996, but it was subsequently amended to extend the suspension through fiscal years 1997 and 1998. See Public Law 104-204, Title II, § 201(e), 110 Stat. 2983 (Sept. 26, 1996) and Public Law 105-65, Title II, § 201(b), Oct. 27, 1997, 111 Stat. 1364. The impact of this change was to eliminate a requirement that, at the end of a lease, an owner needed to state "good cause" for the termination as a matter of federal law.

HUD issued guidance on suspension of the "endless lease" provision in May, 1996. See PIH Notice 96-23 (HA). (A copy of this notice is attached as Exhibit J.) HUD noted:

> "In accordance with the law, current and future tenant-based leases may be terminated without cause at the end of the initial term and at the end of any term extension."

HUD also noted that under its existing regulations, 24 C.F.R. § 982.309, the initial term of a Section 8 lease must be for at least one year and the lease must provide for automatic renewal after the initial term, "either for successive definite terms (e.g., month-to-month or year-to-year) or for an automatic indefinite extension of the lease term." HUD construed the revised statute to mean that an owner could terminate a tenancy without cause at the end of the initial lease term or at the end of a successive definite term. If, on the other hand, the lease provided for automatic indefinite extension, then the owner could only terminate the tenancy after the initial term for good cause. An owner could, however, ask that the tenant enter into a revised lease which had a definite successive term; if the tenant refused to enter into such a new lease, this could be "other good cause" for eviction.

In 1998, Congress made the change in the Section 8 statute permanent. The current statute for the Section 8 voucher program provides as follows:

> "Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit –
>
> (A) shall provide that the lease between the tenant and the owner shall be for a term of not less than 1 year, except that the public housing agency may approve a shorter term for an initial lease between the tenant and the dwelling unit owner if the public housing agency determines that such shorter term would improve housing opportunities for the tenant and if such shorter term is considered to be a prevailing local market practice;

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[1]For a period between 1988 and 1996, Congress also required that if the owner was evicting for an economic or business reason after the first year of the lease, that a 90-day notice was required, and that such a notice must also be given to HUD. See 42 U.S.C. § 1437f(c)(9) (1992). This provision was suspended in 1996 and subsequently repealed in 1998.

(B) shall provide that the dwelling unit owner shall offer leases to tenants assisted under this subsection that –

(i) are in a standard form used in the locality by the dwelling unit owner; and

(ii) contain terms and conditions that –

(I) are consistent with State and local law; and

(II) apply generally to tenants in the property who are not assisted under this section;

(C) shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause;

(D) shall provide 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, or any violent or drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy;

(E) shall provide that any termination of tenancy under this subsection shall be preceded by the provision of written notice by the owner to the tenant specifying the grounds for that action, and any relief shall be consistent with applicable State and local law; and

(F) may include any addenda required by the Secretary to set forth the provisions of this subsection."

42 U.S.C. 1437f(o)(7).[2]

Current Section 8 regulations track the statute. Thus, the owner and tenant are required to execute a written lease. 24 C.F.R. § 982.309(b)(1). If the owner uses a standard lease, the lease must be in the standard form, plus the HUD-prescribed tenancy addendum. If the owner does not use a standard lease form for unassisted tenants, the owner may use another form of lease, such as a PHA model lease. 24 C.F.R. § 982.309(b)(2). The lease must contain the term of the lease (the

[2]See Public Law 105-276, § 545(a), 112 Stat. 2469 (Oct. 21, 1998). Similar language on good cause and written notice of the grounds for the action is found at 42 U.S.C. § 1437f(d)(1)(B)(ii) and (iv). See Public Law 105-276, § 549(a)(2)(A) (Oct. 21, 1998). The statute was revised in two places because Congress at the same time was undertaking a comprehensive overhaul of the Section 8 tenant-based program, replacing Section 8 certificates with vouchers.

initial term and any provision for renewal). 24 C.F.R. § 982.309(d)(3).[3] The HAP contract for includes a tenancy addendum that sets forth tenancy requirements for the program in accordance with 24 C.F.R. §§ 982.309 and 982.310. 24 C.F.R. § 982.309(f)(1)(i). The tenant has the right to enforce the addendum against the owner, and the terms of the tenancy addendum prevail over any other provisions of the lease. 24 C.F.R. § 982.309(f)(2). No changes in lease provisions governing the term of the lease are permitted unless the PHA has approved a new tenancy and has executed a new HAP contract with the owner. 24 C.F.R. § 982.309(g)(2)(ii).

Owner termination of tenancy provisions are contained at 24 C.F.R. § 982.310. As provided in subsection (a), "during the term of the lease", the owner may only terminate for cause; as was prior practice, "other good cause" is only a basis for termination after, but not during, the initial term of the lease. See 24 C.F.R. § 982.310(d)(2). The notice of the grounds for termination must be provided "during the term of the lease". 24 C.F.R. § 982.310(e)(1)(i).

The Boston Housing Court has had to construe what these federal laws require in several Section 8 cases. In Unaegbu v. Baez, Boston Housing Court No. 96-SP-03547 (Winik, J., July 18, 1996), an owner did not state cause for the termination of tenancy. The court found that the federal statute, combined with PIH Notice 96-23 (HA), still required "good cause" for termination where the lease continued indefinitely after its initial term, and therefore dismissed the eviction. In Viaud v. Wright, Boston Housing Court No. 99-SP-01337 (Daher, C.J., May 17, 1999), an MBHP Section 8 lease was involved. The court found that under the lease involved there, the lease extended indefinitely after the initial one-year term, and therefore did not have a fixed term of renewal. The owner's failure to state "good cause" in the notice again led to dismissal. Recently, the court ruled in a similar manner, again with a BHA Section 8 lease that was not terminated at the end of a fixed initial term or a fixed renewal term and where there was no notice specifying good cause for the termination. See Drayton v. Johnson, 04-SP-01249 (Pierce, J., June 10, 2004).

In the present case, the lease automatically self-extended month-to-month after December 31, 2004, and there was no definite fixed term for the extension or renewal (as there would have been, for example, had the parties entered into an extension of the lease for an additional year, or for a fixed period of months).[4] In such a case, since the term of extension after the initial term was

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[3]Unlike the 1996 PIH notice (which indicated that the renewal term could be month-to-month or year-to-year), the regulation adopted after the 1998 statutory changes does not specific what kind of renewal term is permissible. Presumably this is a matter of state/local law.

[4]Plaintiff may argue that the issuance of the November 30, 2003 notice to quit was a termination of the lease at the end of the initial term, and therefore no good cause needed to be stated under federal law. Had the plaintiff proceeded with an eviction at that time on that notice to quit, and the notice to quit otherwise was valid, this would be true. However, there is reason to suspect that the notice to quit did not comport with the lease and/or federal law, as no copy appears to have seasonably been given to MBHP. Moreover, there was reinstatement of the tenancy thereafter by issuance of a 14-day notice to quit and acceptance of rent. As is stated in

not definite, the owner was required to state "other good cause" to proceed with eviction; where, as here, this did not occur, the plaintiff is not entitled to proceed with this action.

2. State Law Imposes a "Good Cause" Requirement for Termination of an Assisted Tenancy.

Assisted tenancies in Massachusetts have generally been referred to as "tenancies by regulation"–i.e., even if the documents of the tenancy take a particular form, more may be required simply by virtue of the fact that a governmentally regulated tenancy is involved. See Spence v. O'Brien, 15 Mass. App. Ct. 489, 446 N.E.2d 1070 (1983). Therefore, the court must analyze whether, as a matter of federal and/or state law, the nature of the subsidy program would impose tenancy obligations independent of those contained in the lease.

There may be cases where the Section 8 voucher statute does not impose an obligation to state "good cause" for non-renewal of a lease at the end of an initial or a renewal term, but the owner is nonetheless obligated to provide such a notice. This may occur where the lack of good cause is inconsistent with another federal statutory scheme – see Carter v. Maryland Management Co., 377 Md. 596, 835 A.2d 158 (Md. Ct. App. 2003) (where development receives federal tax credits, "good cause" requirements apply during period of extended use restrictions) – or where state law itself imposes such requirements. See Gallman v. Pierce, 639 F.Supp. 472 (N.D.Cal. 1986); Cardaropoli v. Clinton, Hampden Housing Court No. SP-1676-S87 (Abrashkin, J., Feb. 9, 1987) (Section 8 tenancy follows parallel requirements of Chapter 707 program regarding specificity of notice to quit, citing Gallman v. Pierce; when allegations for eviction were not specific enough, eviction must be dismissed); Fourteen Pelham Street Trust v. Flannery, Worcester Housing Court No. 90-SP-1565 (Martin, J., Nov. 5, 1990).[5] In Massachusetts, this is the case–there is a state statutory basis for the owner's notice to state "good cause".

State law provides an enabling law for housing agencies to participate in state or federal rental assistance programs. See G.L. c. 121B, §§ 42-44A. It is clear from various phrases in this statute that it applies to both state rental assistance and any federal rental assistance that may be available. See G.L. c. 121B, §§ 43A ("under any federal or state rent subsidy program") and 44 ("provided, however, that in the case of any project financially assisted by the federal government, preference shall be given in the selection of the tenants in whatever manner is required by federal

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plaintiff's response to defendant's Interrogatory #13, the plaintiff is not relying on the November 30, 2003 notice to quit as the basis for this action, but rather the April 30, 2004 notice to quit.

[5]The issue here is separate from the question of whether a Section 8 tenant might have an affirmative defense to eviction due to a claim of discrimination under G.L. c. 151B, § 4(10). In such a case, to rebut the claim of discrimination, the owner would have to show that s/he had a legitimate business justification – i.e., "good cause" – to proceed in the same way against the tenant despite the tenant's Section 8 status. But where this is alleged as a defense, it is not part of the owner's prima facie case to establish "good cause".

legislation or regulation" and "funds ... which may become available therefor from the federal government..."). This enabling law provides that "the requirements with respect to rentals and tenant selection for low-rent housing projects shall apply to units leased by a housing authority under the rental assistance program". Id.

The Housing Court has previously held that the rental assistance statute carries with it the "just cause" provisions of the public housing statute, i.e., that assisted tenancies not be terminated without cause and without reasons therefor given to such tenants in writing prior to the filing of any summary process action. See G.L. c. 121B, § 32, as discussed in Andrukonis v. Messier, Hampden Housing Court No. 88-SP-7504-S (Abrashkin, J., May 31, 1989); Carr v. Friends of the Homeless, Inc., Hampden Housing Court No. 89-LE-3492-S (Abrashkin, J., Apr. 3, 1990); First Trade Union Savings Bank v. Pereira, Northeast Housing Court No. 95-SP-00713 (Kerman, J., Aug. 31, 1995) (project-based MRVP tenancy, citing Andrukonis).

Several of these cases were based on the structure of the state Chapter 707 program prior to 1992. In 1992, the Legislature did away with the Chapter 707 rental assistance program, and replaced it with the Mass. Rental Voucher Program. For the project-based MRVP program, as noted above, the Housing Court has held (and the Department of Housing and Community Development has agreed– see DHCD Memo dated August 21, 1995, a copy of which is attached hereto as Exhibit K) that any termination of tenancy necessarily involves termination of a government benefit, and therefore "good cause" must be shown as a matter of due process. For the tenant-based MRVP program, on the other hand, there is the recognition that while the owner must use a written lease and a DHCD lease addendum, such leases have a one-year term, and the owner can refuse to renew the lease at the end of the one-year term, without any showing of "cause" (subject, of course, to the tenant's assertion of an affirmative defense under G.L. c. 151B, § 4(10) that the non-renewal is discriminatory). See DHCD Memo MRVP 2001-03, dated May 4, 2001, a copy of which is attached hereto as Exhibit L. For any termination of a tenant-based MRVP tenancy during the lease term, however, the owner must show "good cause", and the notice must state what the "good cause" is. See Morales v. Hall, Boston Housing Court No. 00-SP-02575 (Winik, J., July 11, 2000).

Construing the "good cause" requirement of G.L. c. 121B, § 32, coupled with the current structure of the Section 8 and MRVP tenant-based programs, yields a result that, at the end of any fixed one-year term (initial or renewal), an owner could proceed with eviction without stating "good cause" (subject to any tenant affirmative defense which might trigger the owner having to demonstrate "good cause" to rebut presumptions of discrimination or retaliation). However, any termination which is in the middle of a year's term carries with it a "good cause" requirement. Where, as here, the owner did not allege such "good cause", the eviction must be dismissed.

3. The MBHP Form Lease in This Case Must Be Construed as an Indefinite Term Renewal, Carrying With It the Obligation to State "Good Cause" for Termination; Otherwise, It Is Impossible to Distinguish Between When "Other Good Cause" Must be Shown and When No Cause Need be Shown.

While it is clear that federal law authorizes a termination of a Section 8 lease without cause

at the end of the initial lease term, or at the end of a fixed term for renewal, and requires that the lease state what the term is for any renewal, it does not provide what the renewal term is. Instead, this issue appears to be left to state or local law or practice: i.e., the renewal provision must be consistent with industry practice and state law, and not place Section 8 tenants be in a worse position than unassisted tenants with leases. See 24 C.F.R. § 982.309.

Under Massachusetts law, a lease must give a tenant possession for a fixed period of time or a period capable of definite ascertainment; a document which does not do this does not create a lease, but only a tenancy at will. Farris v. Hershfield, 325 Mass. 176, 89 N.E.2d 636 (1950). The term of the lease need not be for a number of years, or even one year; it can be for a number of months, or for a season. Kelly v. Waite, 53 Mass. (12 Metc.) 300, 302 (1847) (lease for a season); Casey v. King, 98 Mass. 503 (1868) (lease for three months). It, however, is more than one month; otherwise, it is merely a written tenancy at will.

Massachusetts also distinguishes between lease renewal and lease extension: lease renewal contemplates a new lease being executed, without change in the terms and provision except as to the rental rate and covenant of renewal, while lease extension imports merely a continuance of the old agreement. See Shannon v. Jacobson, 262 Mass. 463, 465-466 (1928). The fact that a lease uses the word "renewal" instead of "extended" does not matter–where it is clear from the lease that continuation happens automatically, it is an extension. See Anderson v. Lissandri, 19 Mass. App. Ct. 191, 195, 472 N.E.2d 1365, 1367 (1985). Moreover, ordinarily extension is for the same term as the original lease term. See Cunningham v. Pattee, 99 Mass. 248, 250, 252 (1868); Scirpo v. McMillan, 355 Mass. 657, 247 N.E.2d 368 (1969).

A lease with a provision for one year's term, followed by month-to-month extension terminable upon 60 days' notice has been found to meet the definition of a lease providing possession for a period capable of definite ascertainment. See Elm Farm Foods Co. v. Cifrino, 328 Mass. 549, 105 N.E.2d 366 (1952). However, this does not mean that the month-by-month provision is a "fixed term" for renewal, but merely that the document meets the definition of a lease. Indeed, for it to be a "renewal", it would have to be the same term as the original lease; otherwise, it is merely an extension. Since HUD regulations use the term "renewal", presumably the Massachusetts distinction between renewal and extension would come into play.

If the language in the MBHP lease is construed to permit termination at any time after the first year of the lease with a "30-day" notice without any showing of good cause, it is impossible to distinguish between the situations where an owner would have to show "other good cause" for termination and "no cause"–in essence, rendering the "other good cause" provision of the regulations and the HAP contract and tenancy addendum meaningless. This cannot be what is intended by federal law.[6] A Section 8 tenant stuck with such a lease would be in a much worse

[6]Defendant believes that HUD's use of the term "renewal" in 24 C.F.R. § 982.309(d)(3) coupled with Massachusetts distinctions between "renewal" and "extension", mean that the renewal must be for the same term as the initial lease–i.e., in most instances, one year. The court

position that an unassisted tenant with a lease: such a tenant would, under regular industry practice, ordinarily get an extension period equivalent to the original lease, and would not be subject to displacement during that year's period absent any breach of the lease. The Section 8 tenant, however, would be subject to displacement at any time after the first year for no reason whatsoever.[7] Federal law makes clear that the Section 8 tenant should not be placed in a worse position than an unassisted tenant with a lease. See 42 U.S.C. § 1437f(o)(7)(B); 24 C.F.R. § 982.309.

4. This Action Was Prematurely Commenced, and This Is a Separate Grounds for Dismissal.

Leaving aside the question of whether the notice to quit dated April 30, 2004 needed to state "good cause" as a matter of state and federal law, it is clear from the facts in this case that this summary process action was prematurely commenced. The notice was received on May 1, 2004, and the notice says that it is effective to terminate the tenancy "at the end of the next rental period beginning after your receipt of this notice or thirty (30) days, whichever is longer". The next rental period beginning after the defendant's receipt of the notice to quit would have been the rental period beginning on June 1, 2004 and ending on June 30, 2004, since the rental period from May 1, 2004 would have already begun by the time the notice was received. Based on the plain language of the notice to quit, it was not sufficient to terminate the tenancy until June 30, 2004. Since this action was commenced in early June, 2004–prior to the end of June–it is premature, and this action must be dismissed. See Decker v. McManus, 101 Mass. 63 (1869); Ratner v. Hogan, 251 Mass. 163 (1925); Denuccio v. Caponigro, 259 Mass. 365 (1927); Ward v. Lawson, Boston Housing Court No. 00-SP-01561 (Chaplin, J., May 18, 2000); Lydon v. Curran, Boston Housing Court No. 99-SP-04821 (Daher, C.J., Dec. 14, 1999); Everett v. Baskin, Boston Housing Court No. 98-SP-04094 (Winik, J., Aug. 28, 1998); Byda v. Taylor, Boston Housing Court No. 97-SP-00916 (Winik, J., March 13, 1997); McGonagle v. Lyons, Boston Housing Court No. 94-SP-03205 (Daher, C.J., Sept. 26, 1994).

Conclusion

For the foregoing reasons, then, defendant asks that the Court grant her motion to dismiss this action, and/or for summary judgment on the issue of possession.

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may not agree with this approach, and find the HUD term "renewal" to include extensions of the lease for a definitely stated fixed term after the initial term for periods of less than a year. For example, the tenant might ask that the owner extend the lease for two months to permit her sufficient time to relocate, and the parties enter into an agreement that says that the term of the lease, which initially expired on December 31, 2003, would be extended to February 29, 2004. However, that isn't the case here–instead, the lease "self-extended automatically" after December 31, 2003.

[7]There obviously may be consideration for a Section 8 tenant to be displaced for "other good cause" for reasons other than tenant fault during an extension period. The owner may have agreed to the extension (or not taken action to terminate the lease at the end of its initial term) precisely in reliance on the fact that s/he could evict for "other good cause".

JACQUELINE MALONEY,
Defendant, By her attorney,

_____

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Boston, MA 02114
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Certificate of Service

I certify that on July __, 2004, I caused a copy of the foregoing (without attachments) to be faxed to Maria Theophilis, Esq., Gordon, Mond & Ott, P.C., One Batterymarch Park, Suite 310, Quincy, MA 02169, with a second copy, with attachments, to be provided to counsel in hand in court on Wednesday, July 14, 2004.

Date: July __, 2004 _____