



U.S. Department of Housing and Urban Development

Providence Office, Region I
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Kennedy Plaza
Providence, Rhode Island 02903-1785

JUL 29 1991

Muriel Varieur
Director of Management
PROMAC, Inc.
800 Clinton Place
Woonsocket, RI 02895

Dear Ms. Varieur:

The purpose of this correspondence is to address certain actions apparently taken with respect to occupancy in federally insured and assisted developments, in particular, Roger & Roger Apartments (Project No.: 016-35010). We understand that this development is insured pursuant to Section 221(d)(3) (Market Rate) of the National Housing Act, as amended. Additionally, the development is assisted pursuant to the Section 8 Loan Management Set-Aside Program under 24 CFR PART 886 (1989).

It has been brought to our attention that a questionable practice is being applied in rental collection/eviction policies and procedures. We understand that the following situation exists. Tenant "X" is late in paying rent for month "A". A late fee is charged in accordance with the HUD model lease (see HUD Handbook 4350.3 CHG-17 entitled Occupancy Requirements of Subsidized Multifamily Housing Programs at Chapter 4, paragraph 14a and Appendix 19a, paragraph 5). Tenant "X" pays the rent for month "A" although late. Then, rent is due for month "B". Tenant "X" pays its rent within the grace period permitted by the HUD model lease for month "B". Management, however, applies the rental payment for month "B" as follows. First, to the accrued late fees, then the remaining balance to the rent due and payable in month "B". Management declares that a rental delinquency exists for month "B" and moves to evict Tenant "X" for non-payment of rent in month "B". Further, we understand that PROMAC, Inc., has stipulated to this process as the process normally utilized in application of rental collection/eviction procedures.

The Providence Office has consulted with both the Office of Counsel, Boston Regional Office and the Operations Division, Office of Multifamily Housing Management, Headquarters, in connection with the above set of facts. HUD offers the following position in light of this set of facts.

First, since the development receives assistance pursuant to 24 CFR PART 886 (1989), it is subject to the regulation at

24 CFR PART 247.2(e) (1989). Accordingly, all decisions to terminate occupancy must be in accordance with the regulation (see 24 CFR 247.1 (1989)). Owners and managing agents are prohibited from terminating occupancy for other than good cause (see 24 CFR 247.3(a) (1989) (emphasis added)). Moreover, "...[a] tenant may rely on State or local law governing eviction procedures where such law provides the tenant procedural rights which are in addition to those provided by this subpart..." (24 CFR 247.6(c) (1989) (emphasis added)).

Second, it was not the intention of HUD in framing the model lease to permit, or cause to permit, or condone, or approve, the practice described above in the rental collection and eviction process. Accordingly, this process must be ceased immediately. Moreover, the model lease does not permit a tenant to be evicted for non-payment of late charges (see HUD Handbook 4350.3 CHG-17 at Chapter 4, paragraph 14d and Appendix 19a, paragraph 5).

Third, in the overall landlord tenant relationship, Rhode Island General Law at Title 34-18-1 controls the form of the eviction process. Contract law established in State Statute would govern the application of payment process. However, from the federal perspective, the stipulated practice of PROMAC, Inc., in the set of facts described above will not be permitted in federally assisted programs.

You must immediately modify to your rental collection and eviction policies and practices with respect to his issue. Moreover, we would not regard expenses associated with carrying-out the policy described in paragraph two of this correspondence as being reasonable operating expenses. As such, they may only be paid for from surplus cash.

This office will be monitoring compliance in this matter. Within thirty (30) days of the date of this correspondence, we expect to be in possession of modified rental collection and eviction policies relating to this issue.

Further, as this may be an action which conflicts with tenants protected civil rights under Title VIII, Civil Rights

Act of 1968 as amended (42 USC 3600-3620), we are referring this matter for investigation to our Regional Office of Fair Housing and Equal Opportunity.

Inquiries may be addressed to Michael Watson of my staff at (401) 528-5357.

Very sincerely yours,


Lionel J. Jenkins
Director, Housing Management