



U.S. Department of Housing and Urban Development
Boston Regional Office, Region I
Room 800 John F. Kennedy Building
Boston, Massachusetts 02203

JUN 22 1984

Jeanne Medeiros, Staff Attorney
Rhode Island Legal Services, Inc.
77 Dorrance Street
Providence, RI 02903

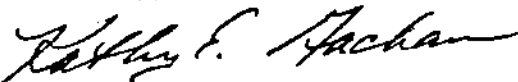
SUBJECT: Nancy Pinelli

Dear Ms. Medeiros:

In response to your letter to us on this subject dated May 11, 1984 we are enclosing a copy of a memorandum from Robert S. Kenison, Associate General Counsel for Assisted Housing and Community Development, dated June 18, 1984. That memorandum concludes that the requirement for payment of market rent by the tenant set forth in paragraph 11 of the model lease form in Appendix 19a of HUD Handbook 4350.3 "should be imposed only in those instances where there was an intentional act by the Tenant which could in turn be interpreted as good cause for eviction."

We believe that this responds to the major issue raised by your letter. Copies of this letter and the enclosed memorandum are being provided to the project owner's attorney, Mr. John DiBona. If there are any further questions on this matter, please let us know.

Sincerely,


for Marvyn H. Lerman
Regional Counsel

cc:
John DiBona, Esq.



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

JUN 18 1984

IN REPLY REFER TO:

OFFICE OF GENERAL COUNSEL

MEMORANDUM FOR: Marvin H. Lerman, Regional Counsel
Boston Regional Office, 1G

FROM: *P. H. J. Vesper*
S. Kenison, Associate General Counsel
Office of Assisted Housing and Community Development

SUBJECT: Rhode Island Legal Services, Inc.
Complaint on behalf of Nancy Pinelli

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OFFICE OF REGIONAL
COUNSEL

This is in response to your memorandum of May 23, 1984 to Joseph Gelletich, concerning the requirements of the section 8 Model Lease form set forth in Appendix 19 of HUD Handbook 4350.3 and its impact on the tenancy of Ms. Pinelli. We understand that the section 8 unit in which Ms. Pinelli lived was damaged by a fire, apparently caused by Ms. Pinelli's daughter. The Model lease at paragraph 11 provides as follows:

Damages: Whenever damage is caused by carelessness, misuse, or neglect on the part of the Tenant, his/her family or visitors, the Tenant agrees to pay:

- a. the cost of all repairs and do so within 30 days after receipt of the Landlord's demand for the repair charges; and
- b. rent for the period the unit is damaged whether or not the unit is habitable. The Tenant understands that HUD will not make assistance payments for any period in which the unit is not habitable. For any such period, the Tenant agrees to pay the HUD-approved market rent rather than the Tenant rent shown in paragraph 3 of this agreement.

Pursuant to those lease provisions, Ms. Pinelli's landlord has demanded the market rent for the unit and is threatening eviction if it is not paid.

The requirement for a tenant to pay market rate rent is derived from the fact that, pursuant to section 8(c)(4) of the U.S. Housing Act of 1937, HUD can only provide assistance for units which are decent, safe and sanitary. Since the section 8 Owner cannot collect assistance during the period that a unit is uninhabitable, it is reasonable that the Tenant should bear the economic burden for the landlord's loss, if the damage was caused by the Tenant. However, if the Owner is otherwise compensated for the damage, through insurance or some other means, that Owner is under no obligation to charge the tenant the full market rent. Furthermore, since the Owner of a section 236 project

receives assistance through interest reduction payments and has no need for the full market rent, it would be appropriate for the Owner of that type project to charge the tenant only the basic rent, rather than the full market rent.

We share your concern about the relationship between the requirement to pay market rate rent and the income eligibility and general occupancy requirements of the section 8 program. While a section 8 tenant may have the financial ability to pay market rent for the temporary period during which a damaged unit is uninhabitable, we also recognize that the requirement for a section 8 Tenant to pay market rent could cause a hardship for that Tenant and the inability of that Tenant to meet his/her obligation to the landlord could result in an eviction for non-payment of rent.

Therefore, the requirement to pay market rate rent should be imposed only in those instances where there was an intentional act by the Tenant which could in turn be interpreted as good cause for eviction. Then, if the inability of the tenant to pay increased rent does result in an eviction action, the removal of the Tenant would be on some grounds other than the impossibility to pay the market rate rent, which because of section 8 program requirements would probably not be supported by a court as good cause for eviction.

Please contact George Weidenfeller of my staff if you have any questions on the foregoing.

RHODE ISLAND LEGAL SERVICES, INC.
77 DORRANCE STREET
PROVIDENCE, RHODE ISLAND 02903

TELEPHONE (401) 274-2652

May 11, 1984

JOHN M. MOLA
EXECUTIVE DIRECTOR

Marvin Lerman
Regional Counsel
The Department of Housing
and Urban Development
JFK Federal Building
Boston, Massachusetts 02203

Re: Nancy Pinelli
Park Plaza
20 Park Street
Apartment 106
Johnston, Rhode Island 02919

Dear Mr. Lerman:

I am writing on behalf of Nancy Pinelli, who is a tenant in this section 236 project and who also receives a section 8 subsidy.

I would like to call your attention to a serious dispute which has arisen in the past few weeks and which result in the filing of a class action lawsuit against HUD and against the apartment owner unless some resolution occurs within a short time.

On April 7, 1984, there was a fire in the kitchen of Ms. Pinelli's apartment. The fire was accidentally caused by her daughter, who was cooking at the time. Apparently, the fire resulted in significant damage to the kitchen and some smoke damage in the parlor.

On April 17, 1984, Ms. Pinelli received the attached letter informing her that both her tenancy and her subsidy would be terminated as of April 16th if she had not paid the market rent for the month of April (\$479.00) by April 16th. The basic rent for Ms. Pinelli's apartment is \$338.00 per month. The tenant's share is \$93.00, and she had paid that amount by a money order dated April 1, 1984.

The manager and the owner of the project have both informed me that HUD policies allow this type of rental assessment, and cite the HUD sample lease found at Handbook 4350.3; appendix 19a, page 6 as authority for this position. The owner has further informed me that Ms. Pinelli should not expect to return to her apartment once repairs are completed as he plans to re-let to a new tenant.

I have discussed this situation with Robert Penny of the Providence service office, who has stated that the owner's response to the fire is proper and in compliance with HUD policies.

It is my opinion that the actions taken by the owner of Park Plaza and ratified or authorized by HUD present several serious problems.

The first problem is the assessment of the full market rent for whatever period of time the apartment is deemed uninhabitable. While I understand that HUD will not subsidize a housing unit which is substandard, it is my understanding that the purpose of this policy is to insure that subsidized tenants are living in adequate housing that is safe and sanitary. The purpose is not, I believe, to penalize a tenant because an accident has occurred.

Furthermore, if an apartment were deemed substandard due to a property owner's action or inaction the owner would receive notice and have opportunity to cure the defective conditions prior to the termination of the subsidy. There seems to be no basis for terminating the tenant's subsidy and holding her responsible for the market rent without some corresponding safeguards, such as notice and opportunity to be heard.

A further problem is presented by the fact that the owner purports to have terminated the tenancy here without any determination of "good cause", without notice and without judicial process. His stated intent to re-let to a new tenant upon the completion of the necessary repairs indicates that Ms. Pinelli is in danger of losing the procedural and substantive protection she is entitled to under Federal law.

An additional problem is that Ms. Pinelli is financially unable to comply with the lease provision requiring her payment of the market rent. This could potentially result in a "good cause" termination based on financial status alone.

Ms. Pinelli has lived in this apartment project for twelve years without breaching her lease or causing any problems. Assuming for the sake of argument that there was some carelessness or negligence on her part in regards to the recent fire, is it HUD's position that a single instance of carelessness on a tenant's part constitutes good cause to evict? Or is it HUD's position that a tenant's financial inability to pay market rent for a month in which she has already paid her share of the basic rent constitutes good cause?

I hope that you can be of assistance in this matter by clarifying your department's policy and by attempting to resolve this situation. I am sure that everyone involved would benefit if we could resolve this in some manner short of litigation.

Due to the fact that Ms. Pinelli has been without a home since the fire occurred, I would appreciate your prompt response. If I have not heard from you by May 2nd, I will have no alternative but to file suit.

I look forward to hearing from you soon.

Sincerely,

Jeanne Kedeiros
Staff Attorney

JJK:sm
cc: Nancy Pinelli
Nancy Pinelli
Nancy Pinelli