

COPY

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

File No. CX-02-4044

FILED
Court Administrator

JUN 17 2002

Maryland Park Apartments,

Plaintiff,

By _____ Deputy

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**



Defendant.

The above-entitled matter came on for hearing before the Honorable Lawrence D. Cohen on May 28, 2002. Plaintiff, a limited partnership, appeared by its attorney, Douglas J. Carney of the Law firm of Hanbery, Neumeyer and Carney, P.A. 3725 Multifoods Tower, Minneapolis, MN 55402. Defendant Victoria Robinson appeared in person and was represented by attorney, Daniel S. Le, Southern Minnesota Regional Legal Services, Suite 300 Minnesota Building, 46 East 4th Street, St. Paul, MN 55101. The Court heard sworn testimony as well as the oral arguments of the parties. Based on those oral arguments, evidence adduced at trial, written submissions and all the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. Defendant occupies unit #13, Maryland Park, at 1619 Maryland Ave., St. Paul, MN, under a written lease, which is federally subsidized under a HUD project-based Section 8 subsidy.
2. Defendant leased the premises commencing, September 1, 2001 for a period of one year and month to month thereafter.
3. Sharing the apartment with defendant are her two minor children ages 5 and 11 years old.
4. Defendant pays \$88 rent per month under the subsidized lease. The subsidized portion fluctuates depending upon Defendant's monthly income.
5. The lease agreement of the parties incorporates federal regulations that

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govern termination of said agreement under clause 23. Specifically:

"...The landlord may terminate this Agreement only for:

(1) The Tenant's material noncompliance with the terms of this agreement..

(3) Criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by a tenant, any members of the tenant's household or guest or other person under the tenant's control..."

6. The lease agreement contains a Crime Free Lease Addendum that states among other things, "Resident, any members of the resident's household, a guest or other person under the resident's control, shall not engage in criminal activity, including drug-related criminal activity on or near said premises. 'Drug-related criminal activity' means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use of a controlled substance (as defined in Section 102 of the Controlled Substance Act [21 U.S.C. 802].
7. Maryland Apartments is not operated by the Saint Paul Public Housing Agency but is owned and operated under separate regulations enacted by HUD.
8. On February 19, 2002, at about 9:30 in the morning, William Stigler, came to Defendant's home. William Stigler was a "boyfriend" of [REDACTED]. She had known him since the end of October 2001.
9. Shortly after arriving, Mr. Stigler "passed out" on the floor. Defendant called '911' for medical assistance. Defendant also went to the office for help, as she was too distressed to talk to the '911' operator.
10. Plaintiff's maintenance workers Jim Keuster and Mike Bergeron, went to Defendant's unit in response to her call for help. Both Keuster and Bergerson testified that Defendant make statements about Mr. Stigler's use of controlled substances.
11. Paramedics arrived on the scene to attend to William Stigler at about 10:02a.m. None of the four paramedics testified to having a conversation with Defendant or hearing Defendant make direct statements about William Stigler's use of controlled substances.
12. The total time spent by the paramedics at the premises was approximately fourteen minutes.
13. Based on the evidence received, no police were either called or present before, during or after the incident herein.

14. Defendant never ever saw William Stigler use drugs and in fact she would have no relationship with any man who would use drugs. Defendant did not know, nor based on the evidence, should she have known that William Stigler was a drug user. Neither defendant nor her children have violated any criminal laws nor did they have any knowledge of any violation of the law.
15. No evidence was presented indicating the presence or consumption of any illegal substances in or about the leased premises.
16. The paramedics suspected that William Stigler was suffering from a reaction to drugs and administered him a shot intended to restore his vital signs to normal. William Stigler became conscious and indicated that he had in fact been on a drug high.
17. On or about February 20, 2002, Plaintiff issued a termination notice to Defendant and the parties met on that same day to discuss the proposed termination for incidents occurring on February 19, 2002.
18. Sandra Lewis, property manager gave Defendant no other choice other than to move by the specified date of the termination notice. Ms. Lewis then extended the tenancy through April 30, 2002 based upon a mutual termination notice that the parties signed.
19. The lease agreement of the parties and applicable federal regulations make no provision for mutual terminations for this type of subsidized tenancy.
20. Defendant rescinded her agreement to mutually terminate her tenancy on or about April 16, 2002 and informed Plaintiff of her intent to stay.
21. Defendant then paid her portion of the May 2002 rent which was sent by Ramsey County directly to Plaintiff, accepted by Plaintiff and not returned prior to trial.

CONCLUSIONS OF LAW

1. State and local law under the applicable HUD rules and regulations expressly govern eviction actions brought to enforce decisions to terminate tenancies by owners/operators of federally subsidized properties against residents.
2. Minnesota Statute §504B (1999) governs all residential eviction actions in the state of Minnesota.
3. Minnesota Statute §504B.171, subd. 2, requires of a tenant either actual knowledge or a reason to know that criminal related drug activity has taken place on or near the premises in question before they can be evicted. This provision is

incorporated into all leases.

4. Plaintiffs have failed to establish by the preponderance of the evidence that criminal or criminal-related drug activity took place at or near Defendant's residence on February 19, 2002.

5. Plaintiff's have failed to establish by the preponderance of the evidence that Defendant knew or had a reason to know that Mr. Stigler had engaged or was engaging in any criminal activity. [REDACTED] is not in violation of the terms of her lease herein.

6. Federal law and regulations stated in Rucker v. HUD, 535 U.S. _____ (2002) involves a public housing agency's *discretion* in deciding to terminate a resident's tenancy for criminal related drug activity by a fellow tenant, guest, or other person under tenant's control irrespective of whether tenant had knowledge or a reason to know about the underlying criminal drug related activity.

7. Federal law and regulations do not preempt governing state eviction laws directly nor are they frustrated by the applicable Minnesota eviction laws.

8. In addition Plaintiff knowingly accepted rent for a period after the time of alleged breaches waiving their right to re-take possession of premises in question. Kenny v. Seu Si Lun, 101 N.W. 253, 257-259 (Minn. 1907).

ORDER

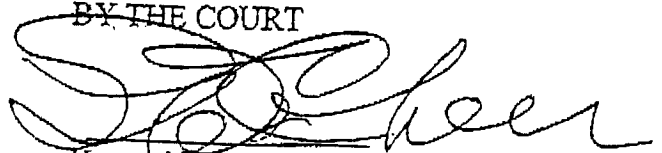
1. Defendant is entitled to resume her federally subsidized tenancy with all the rights, privileges and duties under the terms of the written lease.

2. This matter is dismissed with prejudice and expunged from Defendant's rental credit history as provided by Minn.Stat. §484.014, subd. 2 (1999).

3. Plaintiff is not entitled to costs or attorneys fees.

6/17/2002

BY THE COURT



Honorable Lawrence D. Cohen
Judge of District Court