



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

JUN 18 1984

IN REPLY REFER TO:

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

FROM: *Paul J. Vasan*  
Paul S. Kenison, Associate General Counsel  
Office of Assisted Housing and Community Development

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

RECEIVED  
DHU  
REGION I  
JUN 21 8 56 AM '84  
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.