

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

FILED

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DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
FIRST DIVISION: MINNEAPOLIS  
CASE TYPE: EVICTION

BY \_\_\_\_\_ DEPUTY  
HENN CO. DISTRICT  
ADMINISTRATOR  
Minneapolis Public Housing Authority

Plaintiff (Landlord),

DECISION AND ORDER

v.

Court File No.: HC-051101509

Mohamed Gelle Farah,

Defendant (Tenant).

This matter came before this Court on December 8, 2005, and January 9, 2006. Plaintiff was represented by Sarina Turner, Attorney at Law. Defendant appeared and was represented by Drew P. Schaffer, Attorney at Law with the Legal Aid Society of Minneapolis.

Having heard the proceedings and the arguments of the parties, and having reviewed the file, this Court orders as follows:

**FINDINGS OF FACT**

1. Defendant rents an apartment at 1920 South 4<sup>th</sup> Avenue, Apartment 304, Minneapolis, MN 55404. Defendant's apartment is in a public housing building owned and operated by Plaintiff and subsidized by the United States Department of Housing and Urban Development. *See* Exhibit 1 (Lease).

2. Plaintiff issued a notice of termination to Defendant dated August 8, 2005, which claimed that illegal drug activity occurred at 2433 South 5<sup>th</sup> Avenue, Apartment 1008, in the City of Minneapolis, on July 13, 2005, and that Defendant was arrested along with five other persons. The notice alleged that Defendant violated provisions of the lease concerning drug-related and criminal activity.

3. Plaintiff filed this action on November 1, 2005. Plaintiff's complaint included a statement by Minneapolis Police Officer David Menter that, during the execution of the warrant, he observed Defendant and the other occupants of the apartment to be chewing a green, leafy substance he believed to be khat. Complaint at p. 3, ¶5. Plaintiff did not allege that Defendant engaged in any criminal or drug-related activity in his own apartment or building. Plaintiff only claimed that Defendant may have consumed khat at another of Plaintiff's properties and that he was arrested for an alleged narcotics violation.

4. At trial, Officer Menter testified that he and other officers executed a search warrant at 2433 South 5<sup>th</sup> Avenue, Apartment 1008, on July 12, 2005. He testified that he observed the following inside the apartment: six or seven men, khat in the living room, and a coffee grinder containing khat residue. Officer Menter testified that the tenant of Apartment 1008 was Muhamed Abdikadir Mohamed and that his suspected activities were the basis for the execution of the warrant. Officer Menter testified that he recalled Defendant because Defendant was the eldest person in the apartment at that time. The officer stated that Defendant was quiet and that Defendant did not appear to understand English.

5. Office Menter testified that he believed that everyone inside the apartment was chewing khat. The officer stated that khat is a leafy substance, similar to rhubarb. The officer also said that khat can be chewed or brewed into a tea. Officer Menter testified that, over the last two years, he has observed an increasing amount of dried khat ground like tea leaves. On cross-examination, Officer Menter testified that dried khat is similar in nature to chewing tobacco.

6. Officer Blayne Lehner testified that he participated in the execution of the search warrant at 2433 5<sup>th</sup> Avenue South, Apartment 1008, in Minneapolis. Officer Lehner stated that five or six officers worked together in executing the warrant. Officer Lehner also testified that his role was to be the custodian of items of evidentiary value collected at the scene by the other officers, including items that were eventually taken to the City's chemist. Officer Lehner testified that Defendant was searched incident to arrest and during his admission to the jail facility in Hennepin County. The officer testified that no criminal controlled substances were seized from Defendant and no item found on Defendant's person was taken to the City's chemist for testing. Officer Lehner said that Defendant was not charged with a crime following his arrest.

7. On re-direct examination, Officer Lehner said that he observed Defendant and others chewing something during the execution of the warrant. Officer Lehner stated that he saw small green leaves in the arrestees' mouths and that he believed that they were chewing khat. On re-cross examination, Officer Lehner testified that he was trained in writing police reports and that he was trained to be accurate and to record the most important information in his incident reports. The officer acknowledged that, in his two-page police report (Exhibit B), he did not record that he observed Defendant or anyone in the apartment chewing on anything. Officer Lehner testified that Defendant was arrested for constructive possession of khat.

8. Plaintiff offered a chemist's report, marked as Exhibit 5, to show that substances seized inside the residence contained cathinone, a criminal controlled substance. The Court received the exhibit as evidence that there was illegal khat inside the apartment where the search warrant was executed, but not as evidence that Defendant was using khat. Plaintiff presented no evidence that there was any illegal substance seized from Defendant. Plaintiff failed to present any evidence that Defendant was connected to any substance tested by the City's chemist beyond his mere presence at the apartment where the substances were seized.

9. Defendant introduced as Exhibits A-G supplemental police reports of the officers involved in the search of 2433 South 5<sup>th</sup> Avenue, Apartment 1008, on July 12, 2005. None of these exhibits contain any observations of Defendant chewing anything or reports of any illegal activity by Defendant. See Exhibits A-G. Plaintiff introduced the police report of Officer

Menter, containing the following observation: "Most of the AP's were constantly talking with each other and while they were talking I saw that they all had a green substance in their mouth that they continued to chew." See Exhibit 6. Exhibits A-G collectively indicate that most of the khat seized inside the apartment was seized from tenant Muhamed Adbikadir Mohamed's bedroom or from around or on his person inside the apartment.

10. Defendant testified through an interpreter. Defendant is a 62-year-old immigrant from Somalia. He does not speak English, and he has a disability for which he is treated at the Riverside Clinic. As a result of his disability, Defendant testified that he periodically loses his memory on a temporary basis and becomes confused.

11. Defendant testified that on July 12, 2005, he left his apartment to buy chewing tobacco at a store in his neighborhood. He testified that, after leaving the store, he became disoriented and that he wandered into a traffic lane in the street. Defendant testified that a young Somali man stopped his car on the street after swerving to avoid hitting Defendant. Defendant stated that the young Somali man offered Defendant a ride home, but that Defendant could not tell the younger man where he lived. Defendant testified that the young Somali man brought him to the apartment on 5<sup>th</sup> Avenue where the police later executed the search warrant. Defendant stated that the young Somali man told the occupants of the apartment to watch over Defendant until someone could take Defendant home. Defendant said that it was commonplace for members of the Somali community to help other members of the community, including strangers. Defendant also testified that members of his community frequently helped him carry out daily tasks, such as visiting the doctor, attending court, and going to the store.

12. Defendant testified that he was not aware that the tenant at 2433 South 5<sup>th</sup> Avenue, Apartment 1008, had khat in the apartment. Defendant testified that he did not know the tenant residing at the apartment. Defendant testified that he did not chew khat during the 30 minutes to an hour he was at the apartment. Defendant testified that, when the police arrived to execute the warrant, he was happy because he thought his family had called the police to find him and that the police were there to help him.

13. Defendant testified that he was chewing tobacco at the time the police executed the search warrant. He testified that he has habitually chewed tobacco for more than 40 years. He testified that he did not mix khat with his chewing tobacco. Defendant stated that he knows what khat looks like because he had seen khat in Somalia. He said that he observed plastic bags in the apartment containing a substance that he did not suspect to be khat. Defendant testified that he did not know what was in the bags and that he thought they may contain henna, a substance commonly used in Somalia to tattoo human skin with body art.

14. Officer Menter and Officer Lehner both testified that Defendant was released from jail and not charged with any crime, but that Muhamed Abdikadir Mohamed, the tenant at 2433 South 5<sup>th</sup> Avenue, Apartment 1008, was charged with a violation of Minnesota's controlled substance law for possessing a substance containing cathinone. See also Exhibit G.

## CONCLUSIONS OF LAW

1. Landlords participating in public and government subsidized housing programs must comply with the statutory and regulatory requirements of the program. *RFT & Associates v. Smith*, 419 N.W.2d 109 (Minn. App. 1988); *Housing and Redevelopment Authority of Waconia v. Chandler*, 403 N.W.2d 708, 711 (Minn. App. 1987); *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 895 (Minn. App. 1986).

2. Federal law provides for lease provisions in public housing. "Each public housing agency shall utilize leases which . . . require the public housing agency to give adequate written notice of termination of the lease . . . in the event of any drug-related or violent criminal activity or any felony conviction." 42 U.S.C. § 1437d(l)(4)(A)(ii). The lease also shall "provide that any 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 off such premises, engaged in by a public housing tenant, 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." 42 U.S.C. § 1437d(l)(6).

3. Plaintiff cited the following lease terms as relevant to this case:

13. TERMINATION OF LEASE

Management shall terminate the Lease or refuse to renew the Lease or evict Tenant Family from the unit only for serious or repeated violations of a material term of the Lease or other good cause. Serious or repeated violations of the Lease include but are not limited to:

....

- 9.) Any violent or drug related criminal activity, engaged in by the Tenant Family *on or off the premises* even in the absence of an arrest or conviction or any activity resulting in a felony conviction by the Tenant Family.
- 10.) Any criminal activity, even in the absence of an arrest or conviction, the MPHA determines may threaten any Tenant Family, guest, neighbor or MPHA's employee or vendor aid or any drug related criminal activity *on or off the premises* engaged in by a person under Tenant Family's control, guest, or live-in aid.

*See Exhibit 1 (emphasis added).*

4. Plaintiff did not claim any illegal activity at Defendant's premises. Paragraphs 13(9) and 13(10) apply because they concern activity "on or off the premises."

5. Plaintiff has the burden of proving its allegations that Defendant breached his lease with Plaintiff by a preponderance of the evidence.

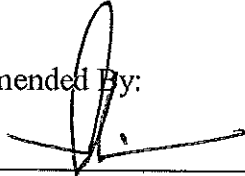
6. Plaintiff has failed to meet its burden of proof in this case. Plaintiff offered testimony from two police officers to show that Defendant had something in his mouth when the

search warrant was executed at 2433 5<sup>th</sup> Avenue South. However, Officer Menter was able to testify only that he believed what Defendant had in his mouth was khat. Defendant testified that he was chewing tobacco. There is enough doubt in the Court's mind to rule in Defendant's favor in this case. The Court is mindful of the severe consequences of losing access to subsidized housing and because of that, believes the facts in this case are not certain enough for the Court to rule in favor of Landlord and evict Defendant. The Court finds that Defendant did not commit a serious and material breach of his lease that would justify his eviction.

**ORDER**

1. Plaintiff's request for Judgment against Defendant for restitution of the premises located at 1920 South 4<sup>th</sup> Avenue, Apartment 304, Minneapolis, MN 55404 is DENIED.
2. Judgement shall be entered for Defendant.

Recommended By:

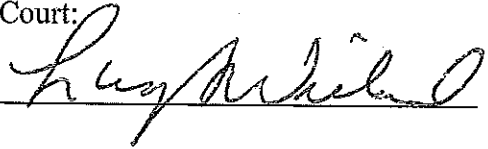


Mark Labine

Housing Court Referee

January 23, 2006

By the Court:



Judge Date