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STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

HOUSING COURT DIVISION

MINNEAPOLIS PUBLIC HOUSING AUTHORITY,
Plaintiff,

vs

JAMES E. HENRY,
Defendant.

Court file no. UD 970122503

MINNEAPOLIS PUBLIC HOUSING AUTHORITY,
Plaintiff,

vs

ANELL HENRY,
Defendant.

Court file no. UD 970122502

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-entitled unlawful detainer actions came on for trial before the undersigned Referee on February 21, 1997. Plaintiff was represented by Kenneth Parsons, Esq. Both Defendants appeared and were represented by Juan Rodriquez, Esq.

Based upon all proceedings, records and files herein, the Court makes the following:

FINDINGS OF FACT

1. James Henry and Anell Henry are husband and wife. They are 68 and 62 years old, respectively, and live in two adjacent one-bedroom apartments managed by Plaintiff. Mr. Henry lives in apartment 1005 and Mrs. Henry in apartment 1006, 3121 Pillsbury Avenue South, Minneapolis,

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Minnesota 55408. Mr. Henry is a disabled person with diabetes, heart disease and arthritis.

2. On January 2, 1997, Minneapolis police officers searched Mrs. Henry's apartment (1006) pursuant to warrant and recovered the following: a glass crack pipe in a backpack on the couch, a beer can "made into a marijuana pipe" behind the couch, a "metal crack pipe" on top of the refrigerator, a "crack wrapper" on the kitchen table and a "poker" in the bedroom under the bed. Mr. Henry was the only person at 1006 at the time and gave consent to the officers to do a warrantless search of his apartment (1005) where officers recovered: a razor blade, metal rod and a "crack wrapper."

3. The lab report on items taken from Mrs. Henry's apartment (1006) indicates a trace of cocaine on the beer can, metal pipe, glass pipe and wire rod. The report on Mr. Henry's apartment (1005) indicates "not analyzed" on the razor blade and metal rod, and a trace of cocaine on a "piece of plastic."

4. Mr. Henry stated he allowed officers to search his apartment because he had nothing to hide. He denied using, manufacturing or selling drugs. He admitted he used the razor blade to shave his corns but did not know about the metal rod (a piece of coat hanger) or the plastic found in his apartment.

5. Both Defendants denied knowledge of the pipes and items found in Mrs. Henry's apartment. Mr. Henry testified the backpack in which the glass pipe was found belonged to a young man who sometimes ran errands for him. Both acknowledged that a niece has stayed with them and visited.

CONCLUSIONS OF LAW

1. Plaintiff's entire case rests upon the seizure of paraphernalia from Mrs. Henry's unit and a piece of plastic with a trace of cocaine from Mr. Henry's unit. No testimony has been introduced about Defendants'

behavior, about the behavior of others coming or going, about the context within which this evidence becomes significant beyond itself. A critical assessment of the lease provisions and laws cited by Plaintiff demonstrates the importance of more information.

2. There is clearly insufficient evidence to conclude Defendants have used or allowed others to use the units to manufacture, sell, give away, barter, deliver, exchange, or distribute an illegal drug in violation of lease paragraph 8.B.9. as alleged by Plaintiff.

3. There is insufficient evidence that Defendants have engaged in "drug-related criminal activity" under lease paragraph 10.A.3. as that term is defined in applicable federal regulations, towit: the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance. 24 CFR § 966.4(f)(12)(ii).

4. Assuming, arguendo, that Defendants actually possessed drug paraphernalia with the intent to use it, they would be in violation of Minn. Stats. § 152.092 and guilty of a petty misdemeanor. A petty misdemeanor is an activity prohibited by statute, but does not constitute a "crime." Minn. Stats. § 609.02, Subd. 4a. By definition then, the possession of paraphernalia is not a "criminal activity" as that term is used in lease paragraphs 8.B.10. and 10.A.3. In the instant case, moreover, the element of intent was not established.

5. Under Minn. Stats. §504.181, Subd. 1(1), Defendants have covenanted to "not unlawfully allow controlled substances in those premises." It is concluded, however, that it is likely persons other than Defendants possessed or allowed the traces in the premises and Defendants did not know or have reason to know this. Consideration is given to their age, Mr. Henry's infirmity, the minute amount of cocaine involved, the location of some of the paraphernalia, and the lack of evidence to the contrary.

6. Apparently, a wallet not belonging to Mrs. Henry was found in her apartment. No further information was introduced about this wallet or how it is significant. Little testimony was introduced; it is not the subject of an introduced inventory of items seized.

7. Based upon the above conclusions, Defendants are entitled to judgment.

NOW, THEREFORE, IT IS ORDERED that judgment be entered for Defendants for possession, costs and disbursements.

RECOMMENDED BY

March 12, 1997

REFEREE

BY THE COURT

3-12-97

JUDGE

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

Minneapolis Public Housing Authority,	)	
	)	
Plaintiff,	)	**ORDER**
	)	
vs.	)	
	)	UD 1970122503
James Henry and Anell Henry,	)	UD 1970122502
	)	
Defendants.	)	

The above-entitled matter came on for hearing before the Honorable Tanya M. Bransford, Judge of District Court, Fourth Judicial District, on April 10, 1997, upon Plaintiff's request for review. Plaintiff was represented by Kenneth Parsons, Esq., 1001 Washington Avenue North, Minneapolis, MN 55401. Defendant was represented by Juan Rodriguez, Esq., 430 First Avenue North, Suite 300, Minneapolis, MN 55401.

Upon the presentation of counsel, and all files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. The Referee's findings of fact, conclusions of law, and orders are affirmed.

2. Attached memorandum is incorporated by reference.

BY THE COURT:

Dated: May 23, 1997

Tanya M. Bransford
District Court Judge
Fourth Judicial District

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

Minneapolis Public Housing Authority, Plaintiff, vs. James Henry and Anell Henry, Defendants.	)	**MEMORANDUM** UD 1970122503 UD 1970122502

STATEMENT OF FACTS

The Minneapolis Public Housing Authority ("MPHA") filed unlawful detainer complaints against Defendants James and Anell Henry, pursuant to a termination of Defendants leases with MPHA. MPHA owns and operates nearly 6700 units of federally assisted housing in the City of Minneapolis, including the units occupied by the defendants. James and Anell Henry are husband and wife. They are 68 and 62 years old, respectively, and live in two adjacent one-bedroom apartments because of Mr. Henry's deteriorating health from diabetes, heart disease and arthritis. The termination of both leases resulted from alleged violations of lease provisions 8.B.9, 8.B.10, 10.A.3, Minn. Stat. § 504.181 and 24 C.F.R. § 966.4, all of which essentially prohibit drug-related criminal activity.

On January 2, 1997, the Minneapolis Police Department executed a search warrant at Anell Henry's unit (#1006) and recovered the following: a glass crack pipe in a backpack on the couch, a beer can "made into a marijuana pipe" behind the couch, a

"metal crack pipe" on top of the refrigerator, a "crack wrapper" on the kitchen table and a "poker" in the bedroom under the bed. James Henry was the only person in apartment #1006 at the time and gave consent to the officers to do a warrantless search of his apartment (#1005) where the officers recovered: a razor blade, metal rod and a "crack wrapper." The lab report on items taken from #1006 indicates a trace of cocaine on the glass pipe, beer can, metal pipe and poker. The report on #1005 indicates "not analyzed" on the razor blade and metal rod, and a trace of cocaine was found on the crack wrapper.

On January 9, 1997 Defendants were each sent a notice of termination of their public housing leases by the MPHA effective January 15, 1997. After Defendants failed to voluntarily vacate their units, MPHA filed an unlawful detainer action. The unlawful detainer action came on for trial before Referee Wesley C. Iijima on February 21, 1997. Referee Iijima entered judgment for the Defendants; holding, *inter alia*, that there was clearly insufficient evidence that Defendants engaged in drug-related criminal activity. Findings of Fact, Conclusions of Law, and Order, Minneapolis Public Housing Authority v. James E. Henry, Court File No. UD 1970122503 and Minneapolis Public Housing Authority v. Anell Henry, Court File No. UD 1970122502. Plaintiff subsequently filed a petition for review.

ANALYSIS

The standard of review on appeal from a civil judgment is whether the evidence sustains the finding and whether the findings support the conclusions. Minneapolis Public Housing Authority v. Greene, 463 N.W.2d 558, 560 (Minn. App. 1990) *quoting* Minnesota Power & Light Co. v. Carlton County, 145 N.W.2d 68, 70 n.1 (1966). The reviewing court will not set aside findings of fact unless clearly erroneous, and gives due

regard to opportunity of the trial court to judge credibility of witnesses. Davidson v. Webb, 535 N.W.2d 822 (Minn. App. 1995) *citing* Minn. R. Civ. P. 52.01.

Plaintiff contends that the trial court should have found that Defendants violated Minn. Stat. § 504.181 by being in possession of any amount of a controlled substance, or by knowingly allowing guests to be in possession of same within their unit. Plaintiff further contends that as a matter of law the trial court, based on the testimony and evidence presented at trial, could have found that Defendants knew or had reason to know persons were using illegal drugs within their units.

Defendants allegedly violated Minn. Stat. § 504.181, subd.1, which establishes a covenant in every lease that:

> (1) the lessee or licensee will not unlawfully allow controlled substances in those premises; and
> (2) the common area and curtilage will not be used by the lessee or licensee or other acting under the lessee's or licensee's control to manufacture, sell, give away, barter, deliver, exchange, distribute, purchase, or possess a controlled substance in violation of any criminal provision of chapter 152.
> . . . .[1]

The statute clearly provides a defense such that "[t]he covenant is not violated when a person other than the lessee or licensee possesses or allows controlled substances in the premises, common area, or curtilage, *unless the lessee or licensee knew or had reason to know of that activity.* Minn. Stat. § 504.181, subd.1(2) (emphasis added). Plaintiff must demonstrate that the Defendants knew or should have known that illegal activity was occurring on the premises before they can be evicted.

[1] Section 8.B.9 of Defendants lease is representative of Minn. Stat. § 504.181, subd.1(2).

The trial court held that there was clearly insufficient evidence to conclude Defendants have used or allowed others to use their units to manufacture, sell, give away, barter, deliver, exchange, or distribute an illegal drug in violation of their lease. Further, the court deemed it likely that persons other than Defendants possessed or allowed the traces in the premises and Defendants did not have reason to know this. Consideration was given to their age, Mr. Henry's infirmity, the minuscule amount of cocaine involved, the location of some of the paraphernalia, and the lack of evidence to the contrary.

The transcript is replete with testimony from Defendants indicating an absence of knowledge relating to criminal activity or drug use. Defendants testified that: (a) the paraphernalia did not belong to them; (b) they did not use the paraphernalia; (c) they did not see or authorize anyone to use the paraphernalia in their dwellings; and (d) they have never been convicted for the sale or possession of drugs. Both denied manufacturing, selling, or using drugs. Mr. Henry stated that he allowed officers to search his apartment because he had nothing to hide. Mr. Henry testified that the backpack wherein the glass pipe was found belonged to a young man who sometimes ran errands for him. The Defendants acknowledged that family members have frequently stayed with them and visited.

The court correctly held that the Defendants did not violate Minn. Stat. § 504.181 and therefore their lease provision. Plaintiff failed to adduce sufficient evidence to conclude otherwise. Additionally, it is not the responsibility of the reviewing court to ascertain whether the trial court *could* have found that Defendants knew or had reason to know persons were using illegal drugs within their units. The trial court had a substantial

basis for its conclusions given the opportunity to review the facts and assess the credibility of the Defendants.

Plaintiff argues that as a matter of law the trial court erred when it found that no "drug related criminal activity" took place in the Defendants units applicable to federal regulations. The trial court held that there was insufficient evidence that Defendants engaged in "drug-related criminal activity" under lease provision 10.A.3, as that term is defined in the applicable federal regulations.

Section 10.A.3 of Defendants lease provides that a lease may be terminated for:

> [a]ny criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants . . . or drug-related criminal activity on or near the premises engaged in by a [t]enant, a member of the [t]enant's household, a guest of another person under [t]enant's control while the [t]enant is a tenant in public housing.

This provision essentially mirrors the language contained in 24 C.F.R. § 966.4(f)(12)(i) and section 8.B.10 of the lease. The term "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 Substances Act (21 U.S.C. 802). 24 C.F.R. § 966.4(f)(12)(ii).

Plaintiff failed to introduce any testimony as to whether the Defendants or their guests were illegally manufacturing, selling, distributing, or using controlled substances. In fact, Defendants themselves testified that they have never used, manufactured, or sold drugs in their apartment. (Tr. at 45, 57). No testimony was introduced about Defendants' criminal behavior or drug use, about the behavior of others coming or going from the residence, or about the context within which the evidence becomes significant beyond itself. The recovery of paraphernalia, without more, fails to show that the Defendants

engaged in drug-related criminal activity. More information is necessary to constitute proof of a violation of the lease.

Assuming *arguendo* that Defendants possessed drug paraphernalia with the intent to sell or use it, they would be in violation of Minn. Stat. § 152.092 and guilty of a petty misdemeanor. A petty misdemeanor is prohibited by statute, but does not constitute a "crime" since no imprisonment may be imposed. See Minn. Stat. § 609.02, subd. 4(a). Thus, the possession of drug paraphernalia is not "criminal activity" as that term is defined in the lease provisions and federal law. In the instant case, moreover, the element of intent to manufacture, sell, distribute, or use drugs was not established.

The trial court correctly held that there was insufficient evidence that the Defendants have engaged in "drug-related criminal activity" as defined in the lease provisions and federal law.

Finally, Plaintiff argues that as a matter of law any breach of covenant imposed by Minn. Stat. § 504.181 voids right to possession of residential premises. Since this Court has already decided there was no breach of covenant under the statute, this issue need not be addressed.

CONCLUSION

The Referee made factual findings supported by the evidence and correctly interpreted the applicable laws and lease provisions. The specific portions of the Referee's findings and orders which Plaintiff disputes in its Notice of Review are amply supported by the evidence. For the aforementioned reasons, the judgment is affirmed.

T.M.B.