

STATE OF MINNESOTA

FILED

DISTRICT COURT

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FOURTH JUDICIAL DISTRICT

COUNTY OF HENNEPIN BY

DEPUTY  
HENNEPIN DISTRICT  
COURT ADMINISTRATOR

DIVISION: HOUSING

CASE TYPE: EVICTION

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Minneapolis Public Housing Authority,

Plaintiff

v.

Abdi K. Nur,

Defendant

DECISION AND ORDER

Court File No.: 27-CV-HC-11 4516

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This case came on for trial before the Honorable Linda J. Gallant, Referee of District Court, on August 9 and August 25, 2011, with further submissions on September 12, 2011.

Elizabeth K. Grossman, Esq., and Carol A. Kubic, Esq., appeared for Plaintiff.

Richard J. Cohen, Esq., appeared for the Defendant, who was present.

A Court-certified interpreter was present at all times.

#### FINDINGS OF FACT

1. Since 2002, the Defendant has been a tenant of the premises at 620 Cedar Avenue South, # 204, in Minneapolis, Minnesota. The premises are low rent, federally-subsidized, public housing, under the provisions of 42 USC 1437d.
2. Defendant signed his current lease on 2/29/08; he has been under the same lease terms since 2002. Ex.1.
3. The lease states that the MPHA may terminate the lease for "serious or repeated violations of the Lease" including a tenant's failure "to comply with all obligations, terms and conditions in this lease." Ex.1., Sec. 13.13 at p. 8.
4. Plaintiff complied with its procedural obligations. Plaintiff mailed a Notice of Termination to Defendant on 2/22/11 proposing to terminate the lease effective 3/31/11.

5. Plaintiff terminated the Defendant's lease for: a) failing to report absences from his unit that exceeded 30 days; b) failing to use the unit as his principal and sole residence; and c) failing to pay retroactive rent. Ex. 28.
6. The Defendant is 72 years old. He testified, and the Court finds, that he is a clan leader, a community leader, a religious leader, and a respected elder of his community; he preaches, teaches, and advises. People in his clan, and Somali people generally, respect and help him.
7. Mr. Nur has traveled extensively outside the United States. In 2005, he was in Djibouti for 60 days; in 2008, he was in Kenya and Zambia for 7 months; in 2009, he was in Europe for 44 days and in Saudi Arabia for 21 days; in late 2010/early 2011, he was in Australia and New Zealand for 58 days. Each of these trips was financed in significant part by persons in Mr. Nur's clan and other Somali community members, or by Mr. Nur's family members, or in part by his own savings. While traveling to other countries, Mr. Nur stays with friends, family, or other hosts rather than at hotels; his meals and other necessities are provided by his hosts.
8. The Plaintiff seeks to evict Mr. Nur based on the undisputed facts that his international trips in 2008, 2009, and 2010, exceeded 30 days, or exceeded 90 days, and demonstrate that his MPHA apartment was no longer his sole and primary residence, as required by the Lease.
9. The Plaintiff also seeks to evict the Defendant based on his receipt of in-kind income, consisting of the monies given to him or spent on his behalf for his airfare and costs during his extensive travels. The MPHA asserts that these "travel expenses should be income in kind" and Defendant should be required to pay rent equal to 30% of the value of the travel costs as calculated by the MPHA. The Defendant has refused to pay this amount, calculated by the MPHA at \$4404, based on 30% of the calculated \$14682 costs; Defendant has also refused to sign an agreement to pay the calculated retroactive rent.
10. The Defendant traveled to Kenya and Zambia in 2008 for 210 days, from March to October. The Defendant testified that the purpose of this trip was to visit friends and family. As of February 29, 2008, and continuing through January, 2009, the Defendant added his adult son to his MPHA lease. Ex. 1. On March 10, 2008, he notified the MPHA that he would be "out of town" from March 12 through June 12, 2008. Exs. 10, 14, 15. It is unclear who actually filled in the dates, exactly 90 days, on the form. On January 15, 2009, the Defendant deleted his son from the lease. Ex. 16. Defendant's trip from March, 08, to October, 09, lasted far longer than the 90 days stated on the form.
11. Defendant traveled to Europe in 2009 for 45 days, which he testified was extended due to his illness while traveling, and to Saudi Arabia for a three week pilgrimage in 2009.

12. In late 2010, Defendant traveled to Australia for 58 days, for which he signed and submitted an MPHA "out of town" form for the period 11/22/10 – 1/10/11. Ex. 18.
13. The Lease requires the tenant to notify the MPHA if tenant plans an absence of more than 30 days. Ex. 1, Sec 11, B.3, p 5. The Lease also requires that a tenant "be in compliance with the Statement of Policies, which is available upon request from the Property Manager." Ex.1., Sec 11, B.8, p .6.
14. The Plaintiff asserts that the Defendant's extended absences indicate that he was not using the MPHA premises as his principal place of residence. The Plaintiff relies in part on its Statement of Policies, which specifies that the MPHA will not approve any absence longer than 90 days. The MPHA also asserts that the Defendant's absences were so long (30 days, 45 days, and 210 days) that the length, individually and collectively, indicates that the property is no longer the Defendant's sole or primary residence.
15. The Defendant asserts that he should not be presumed to have read or understood the Statement of Policies in which the 90 days limitation is specified. The Statement of Policies has not been translated into Somali and is only available at the MPHA office. There is no evidence that the Defendant ever received the Statement of Policies.
16. The Court finds that the 90 day provision, not specified in the lease but contained in a lengthy document not readily available to tenants, to which the lease refers, cannot under the circumstances of this case be the basis for an eviction.
17. The matter does not end here, however. A person absent from his home for periods longer than 30 or 90 days may be, or may not be, giving up his home as his sole and primary residence. A trip may be for critical family reasons, for religious reasons, or for medical reasons, for example. Here, the 2008 Africa trip was for 7 months. The Plaintiff's closing argument clarified that this extensive 7 month absence was "the big issue." In the Plaintiff's view, the 7 month absence in 2008 is sufficient alone to evict the Defendant based on its clear indication that the Defendant was no longer living in his unit, and that he put his son on the lease to keep the unit.
18. The lease continued in place during Defendant's 7 month absence with his adult son identified as a co-head of household, as of 2/29/08. Ex.1. The adult son was identified as the "individual checking the apartment/mail" during Defendant's absence on the 3/10/08 form, in which Defendant stated he would be out of the country. Ex. 11. There was ample basis for the MPHA to know of the Defendant's absence and the presence of his son. The Court cannot determine, under all the circumstances of this case, that the Defendant was intending to or did give up the premises as his sole and primary residence. Rather, the evidence is that he arranged for his son to take care of the property and notified MPHA of that; MPHA effectively agreed by changing the lease. There is no evidence that the Defendant was trying to hide his absence; there is no evidence of any usage of any other place as a sole residence. The only evidence on the details of the

absence is his testimony that he was visiting family. Despite the 7 month absence, the Court does not find that the Defendant had given up the premises as his sole and primary residence, or that his absence constituted a basis to terminate the lease.

19. The later absences were each for far less than 90 days. The Defendant notified the Plaintiff of his 2010 Australia trip. He did not complete an "out-of-town" form for the 21 day Saudi Arabia trip of the 45 day Europe trip, which was extended due to illness.
20. The Defendant's travels, for periods ranging from 21 days to 210 days in 2008, are not a basis to evict the tenant here. The single long trip occurred when there had been notification to the MPHA. The Defendant was gone temporarily and did, in fact, return. While the lengthy absence properly raises suspicions, the Court cannot evict the Defendant based solely on a suspicion that he was living elsewhere as his sole and primary residence for 7 months. The other trips are reasonable and not so long as to justify eviction. The 7 month trip is not per se, on its own, a basis to evict.
21. A public housing tenant's rent is calculated based on his/her non-exempt income. Certain kinds of income are exempt from the calculation of rent. In-kind income may be exempt or non-exempt, depending on other facts. Income received as a gift, or a series of gifts, may be exempt or non-exempt. The classification of income as exempt or non-exempt is based on the circumstances of each case and upon the applicable definitions of income.
22. A gift of in-kind income is exempt income if it is "temporary, non-recurring or sporadic." Income is excluded from the rent calculation of it is "neither reliable nor periodic." Child support and maintenance payments are reliable and periodic – that is, paid at certain pre-determined periods; they are income. The regular, promised payment of a cable TV bill by a tenant's mother, for example, may be a non-exempt gift – it is reliable and periodic, or regular based on the monthly bill. A Christmas gift, on the other hand, cannot be regularly relied upon and is not periodic. Income does not include gifts which are "temporary, non-recurring or sporadic." The Plaintiff asserts that the in-kind gifts received by the Defendant for his travels constitute non-exempt income because they have been paid for each of the trips and they have occurred at least annually; that is, the annual gifts are periodic, based on the period of one year.
23. The Court finds that the gifts here consisting of the calculated cost of the Defendant's travels, have not occurred periodically; that is, while repeated, they are not repeated on a consistent time period and do not fit any scheduled or schedulable time period; they occur at different times of the year and based on different periods. There is no evidence that the gifts here are reliable; that is, there is no evidence that there is a donor (or donors) who implicitly or explicitly have indicated that he/she/they will pay for future trips. The gifts are for varying amounts, at varying times; they are neither reliable nor periodic.
24. While it may appear unfair to the Plaintiff, which is considering, as it must, the pressures of the scarcity of public housing for indigent persons and the apparent waiting lists, the

Court must determine what is legal and fair as applied to this Defendant under these facts. The Defendant has the benefit of international travel based on his status in the community and the kindness of family members and others. The Court cannot find, either retroactively or prospectively, that this benefit and this kindness has been sufficiently reliable for the Defendant to have planned in the past, or to plan in the future, to receive these benefits. There is no indication of an annual trip or a pilgrimage every certain period, for example. The in-kind gift income here is neither reliable nor periodic. Therefore, there is no basis for the Court to order the Defendant evicted for his failure and refusal to pay a retroactively increased rent based on the recalculation of his income to include the calculated cost of his travels.

ORDER

1. This case is DISMISSED with prejudice.
2. Neither party is awarded costs and fees.
3. The Clerk of Court shall mail a copy of this Order to both counsel, who shall properly serve their clients.

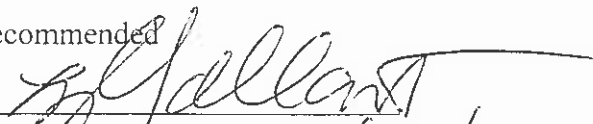
LET JUDGMENT BE ENTERED ACCORDINGLY.

Findings and Order

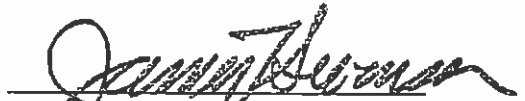
By the Court:

Recommended

Referee Linda J. Gallant

  
11/22/11

Judge

  
Judge

JUDGMENT

I hereby certify that the above Order constitutes the entry of Judgment of the Court.

Dated: 11/22/11

Court Administrator

BY: 

Deputy