

STATE OF MINNESOTA

DISTRICT COURT

HENNEPIN COUNTY

JUN 11 2002 3:25

FOURTH JUDICIAL DISTRICT  
FIRST DIVISION-MINNEAPOLIS

**MINNEAPOLIS PUBLIC HOUSING  
AUTHORITY,**

**Plaintiff,**

**Vs.**

**DECISION & ORDER  
H.C. # 1020213524**

[REDACTED]

**Defendant.**

The above entitled matter came on for hearing before the undersigned, Referee of Housing Court, on the 14<sup>th</sup> day of March, 2002.

The Plaintiff was present and was represented by counsel, Ken Parsons, Esq. The Defendant was present and was represented by counsel, Franklin Reed, Esq. and Eric Williamson, Esq.

Now, therefore, the Court makes the following:

**FINDINGS OF FACT**

1. That the Plaintiff is the owner of the premises situated at 1212 Ninth Street South, Minneapolis, Minnesota.
2. That the Defendant resides at and rents Unit # 508 at the premises from the Plaintiff according to a written lease (See: Ex. # 1).
3. That the Plaintiff has notified the Defendant in writing as to its address and the organization authorized to manage the premises.
4. That the Defendant first moved in to occupy the premises in March 1995.
5. That the Defendant currently occupies the premises.
6. That the written lease reads, in part, that:

\* \* \*

**Section 11 TENANT FAMILY'S OBLIGATIONS**

A. Tenant family shall:

\* \* \*

14. Not engage in and assure that a person under Tenant family's control, Tenant Family's guests and members of the household will not engage in any activity which Management determines may threaten the health, safety, or right to peaceful enjoyment of the premises by any Tenant Family, guest, neighbor, MPHA employee, MPHA's vendor or other person. Such activity even in

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the absence of arrest or conviction shall be grounds for termination.

\* \* \*

Section 13 TERMINATION OF LEASE

Management shall terminate the Lease or refuse to renew the Lease or evict the Tenant Family from the unit only for serious or repeated violated 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...activity engaged in by the Tenant Family *on or off the premises* even in the absence of 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, that MPHA determines may threaten any Tenant Family, guest, neighbor or MPHA's employee or vendor aide...*on or off the premises* engaged in by a person under Tenant's Family control, guest, or live-in aide.

\* \* \*

(Italics added)

- 7. That on May 30, 2001, the Defendant entered a retail store, Sam Goody, at the City Center, Minneapolis, Minnesota. At that time, he was observed removing merchandise, a compact disc player, without paying for it. A citizen's arrest occurred and a citation was issued. This occurred off the premises.
- 8. That on July 25, 2001, the Defendant entered the Marshall Fields Department store in Downtown Minneapolis, Minnesota. He was observed on a camera removing merchandise from the store without paying for it. He was stopped outside the store and it was discovered that he had concealed jewelry in a bag. He was hand-cuffed and charged. This occurred off the premises.
- 9. That on September 7, 2001 the Defendant entered a retail premises at 1113 Franklin Avenue South, Minneapolis, Minnesota. He was asked if he needed any help by the owner. The Defendant replied: "I don't need no f\_\_ing help!). The owner then observed that the Defendant attempted to steal merchandise without paying for it. The owner confronted the Defendant. The Defendant struck the owner. The owner attempted to subdue and restrain the Defendant until the police arrived. In the meanwhile, a scuffle ensued and the owner sustained considerable property damage to his inventory in the range of \$1,500.00 to

\$2,000.00. The Defendant's conduct and behavior was violent and criminal. This occurred off the premises.

10. That on January 30, 2002 the Plaintiff sent to the Defendant a **NOTICE OF TERMINATION OF YOUR PUBLIC HOUSING LEASE** (See: Ex. #2) citing violations of Section 11 A&B (14) and Section 13 (8), (9) and (10) of the written lease (See: Ex. 1, *supra*). This occurred off the premises and not near the premises.

### CONCLUSIONS OF LAW

1. A lease is a form of contract. *See generally* Arthur Linton, Corbin, *Corbin on Contracts* Sec. 686, (1960 Supp.1999).
2. The lease in the instant action is a written instrument. The object of construing written instruments is to ascertain and enforce the parties' intention as expressed in the language used. *Leppla v. Mackey*, 31 Minn. 75, 16 N.W. 470 (1883); *Snyder's Drug Stores v. Sheehy*, (Minn.1978) 266 N.W.2d 882. The parties practical construction of the instrument controls in case of doubt. And, the contract must be construed as a whole and in light of the surrounding circumstances.
3. When a lease empowers a landlord to evict for certain actions, then the trial court shall determine de novo whether the facts alleged in the complaint are true and whether those facts, under the terms of the lease, support termination of the lease and eviction. *See: Minneapolis Public Housing Authority v. Mai Lor*, 591 N.W.2d 700 (1999).
4. The Plaintiff is a public housing authority. It is authorized by the Housing and Urban Development (HUD) to enter into lease agreements. HUD requires that any lease entered into between the public housing authority and a tenant contain at a minimum the provisions contained at 24 CFR 966.4. Specifically, 24 CFR 996.4(f)12 reads, in part, that "...the tenant...shall not engage in (A) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or (B)Any drug-related criminal activity on or near such premises." In construing

these terms, the court must determine the parties' intent as to the situs of the prohibitive activity to result in an eviction. Part (A) is silent on the situs of the activity. However, Part (B) expressly limits the situs of the prohibitive activity to *on or near* the premises. Therefore, the court reasons that the parties were free to enter into a lease that employed the term *on or off* the premises to describe the situs of the prohibited activity. Moreover, Part A employs the term *any* in defining the criminal activity. *Any* means without limit (*New World Dictionary*) and an indefinite number (*Black's Law Dictionary*, 4<sup>th</sup> Ed.). Therefore if Part B specifically limited the geographical area of the prohibited area by employing specific language, then Part A permits the *on or off* term since this is consistent with the terms without limit or indefinite.

5. That the court construes 24 CFR 1996.4 as a mandate to the local housing authority to include a minimum of terms and conditions in a lease. There is no prohibition in the federal law that the local public housing authority cannot otherwise bargain for or negotiate additional terms and conditions not otherwise inconsistent with federal law. The only restriction on a local housing authority's drafting of leases is that leases may not contain unreasonable terms and conditions. See: 42 U.S.C. Sec. 1437d(1)(5). Here, the Plaintiff chose to include a term to define the situs of the criminal activity. It chose the term *on or off* the premises. Not *on or near*. The court construes the *on or near* term as necessary to establish a sufficient nexus between the prohibitive conduct and the resulting harm to public housing neighbors and staff. On the other hand, a mere showing of *off the premises* does not require a showing of a specific harm or injury (See: *Boston Housing Authority v. Bryant*, 44 Mass.App.Ct. 776, 693 N.E.2d 1060(1998). The term *on or off* is not unreasonable.
6. That it is the burden of the Plaintiff to prove by a preponderance of the evidence that the Defendant breached the terms and conditions of the written lease by engaging in serious and repeated violation of the Lease, to-wit: violent and criminal activity, in violation of paragraph 13 (9) of the written lease. Since the activity is criminal activity, the Plaintiff was not required to provide the Defendant with a grievance procedure as otherwise provided for in the written

lease. And, since the activity is violent and criminal, the Defendant may be evicted even if the activity occurred off the premises. Defendant relies on *Boston Housing Authority*. However, this case involved credit card fraud and since this was deemed non violent the tenant could not be evicted. This is distinguishable from the record before the court. Although the Defendant has a history of misdemeanor theft, the last incident on September 7, 2001 was violent thereby allowing the Plaintiff to elect to terminate the lease. And, *Powell v. Pittsburgh Housing Authority*, 760 A.2d 473 (2000) is distinguished. *Powell's* lease used the term *on or near*, not *on or off*. Therefore, a specific showing of a nexus between the prohibited activity and the effect on neighbor tenants was required to terminate the lease. This is not required in the instant action. And, *In re Wallace Gilmore*, Bank. No. 00-27276-JFK, United States Bankruptcy Court, W.D. Pennsylvania, is not applicable since state law and the lease at issue do not allow for curing a non-monetary (rent) breach of lease.

7. That *violent* activity is defined as "any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage. See: Fed. Reg., Vol.66, No., 101, May 24, 2001, Sec. 5.1000. The court concludes that the Defendant's conduct on September 7, 2002 was violent and criminal.
8. That the Plaintiff proved by a preponderance of the evidence that the Defendant engaged in violent and criminal behavior that constitutes serious or repeated violations of the lease, that the Plaintiff has determined that this activity may threaten the health, safety, or right to peaceful enjoyment of the premises, and that the Plaintiff has elected to terminate the lease.
9. That the lease drafted by the Plaintiff is not an unconscionable contract. The aggrieved party to an unconscionable contract must show that (a) there was no meaningful choice but to deal with the other party and accept the contract as offered, and (b) the terms of the contract were unreasonably favorable to the other party. See: *RJM Sales v. Banfi Products*, 546 F.Supp. 1368 (D.Minn.1982). Although the Defendant had to deal with the only public housing authority in the

area, there is no showing that the *on or off* term was unreasonable. Firstly, the Plaintiff derives no pecuniary benefit from this term. Secondly, it is already used to determine whether a prospective housing authority tenant should be accepted as a tenant. Thirdly, the Plaintiff has established a good reason for this term: to protect other tenants of public housing. Fourthly, that it is just as reasonable as the term *on or near* that is already employed in a different context.

**ORDER**

1. That judgment shall be entered for the Plaintiff for possession of the premises.
2. That the Court Administrator shall issue a writ of recovery. That issuance of the writ of the writ of recovery by the Court Administrator is stayed to June 17, 2002.
3. That Plaintiff is the prevailing party.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

**Dated: June 11, 2002**

**Recommended by:**

  
Referee, Housing Court

By the Court:



Judge, District Court