

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
DIVISION: HOUSING
CASE TYPE: EVICTION

Minneapolis Public Housing Authority,

Plaintiff,

v.

Vanuel Williams,

Defendant.

**FINDINGS, CONCLUSIONS
AND ORDER**

Court File No.: 27-CV-HC-09-417

FILED
09 OCT 13 AM 11:36
BY HENN CO. DISTRICT COURT ADMINISTRATOR DEPUTY

This case came on for trial before the Honorable Linda J. Gallant, Referee of District Court, on July 31, 2009, with further submissions on August 10, 2009.

Elizabeth J. Kragness, Esq., appeared for Plaintiff, with Plaintiff's agent Ali Hashim. Drew P. Schaffer, Esq., Legal Aid Society of Minneapolis, appeared for Defendant, who was present.

The Court makes the following:

FINDINGS OF FACT

1. Defendant rents Apartment #1208, 314 Hennepin Avenue South, Minneapolis, MN 55401. The apartment is public housing owned and operated by the Plaintiff. The parties' lease and tenancy are governed by the laws and regulations applicable to the federal public housing program. Ex. 1.
2. On April 9, 2009, Minneapolis police officers stopped Defendant at 1st Avenue North and 5th Street in downtown Minneapolis, three blocks from Defendant's apartment; they found that Defendant possessed 1.02 grams of marijuana, Exhibits 3, D; they

cited Defendant for “loitering with intent” to buy narcotics under the Minneapolis Code of Ordinances, § 385.50(a). Exhibits 3, A, B, C, and D.

3. On April 21, 2009, Plaintiff sent Defendant a Notice of Lease Termination alleging violations of Paragraphs 11.A, 11.B.8, and 11.B.14 of the lease, as well as “serious or repeated violations” of Paragraphs 13.8, 13.9, 13.10, 13.12, and 13.13 of the lease. Ex. 5. The Notice stated that the alleged lease violations resulted from Defendant’s possession of marijuana on April 9, 2009, and his citation for loitering with intent to buy narcotics. Ex. 5.
4. On April 28, 2009, Defendant attended an informal settlement conference as part of the federally mandated pre-eviction grievance procedure for public housing lease terminations; he stated that he would not admit to guilt of “any criminal act.” Ex 6.
5. On April 29, 2009, Ali Hashim, Building Manager, sent Defendant a letter summarizing the informal settlement conference. The letter stated that Plaintiff was going forward with the lease termination based on Plaintiff’s review with Defendant of “the Notice of Drug Free Zone” that Defendant had signed on January 16, 2009. Ex. 6. Mr. Hashim testified at trial that Plaintiff’s “Drug Free Zone” policy prohibits illegal drugs on public housing property or within 300 feet of public housing property. The summary letter does not refer to any other lease provision as a basis for the proposed lease termination.
6. On June 3, 2009, Defendant attended a formal hearing as part of the federally mandated pre-eviction grievance procedure for public housing lease terminations.
7. On June 8, 2009, Mr. Hashim notified Defendant that the formal hearing panel had upheld Plaintiff’s decision to terminate Defendant’s lease. Ex. 7. The hearing

panel's stated reasoning was "police & chemist report confirm marijuana – agreement to suspend prosecution says no same or similar." *Id.* The panel did not set forth any other policy or lease provision as a basis to uphold the lease termination.

8. Plaintiff initiated this eviction action on July 8, 2009. The Complaint alleged violations of Paragraphs 11.A, 11.B.8, and 11.B.14 of the lease, as well as "serious or repeated violations" of Paragraphs 13.8, 13.9, 13.10, and 13.13 of the lease. The Complaint also included two lease provisions, Paragraphs 11.B.9 and 11.B.15, that were not included in any previous notice or grievance finding as a basis for the lease termination. Paragraph 11.B.9 deals with laws related to buildings, and paragraph 11.B.15 requires that the tenant "not use the dwelling in connection with illegal drugs." Ex. 1.
9. Plaintiff based its allegations of nine separate lease violations on the April 9, 2009, incident, in which Defendant was observed purchasing marijuana and then found to be in possession of 1.02 grams of marijuana approximately 3 city blocks away from his apartment building.
10. Officer Michael Casey, Minneapolis Police, testified that he is trained in narcotics enforcement; his job involves working "the Downtown day beat," in which he seeks to prevent "livability crimes." On April 9, 2009, he and Officer Queen were on the roof of the City Center using binoculars to watch activities on Hennepin Avenue from 4th Street to 8th Street. His attention was drawn to a man named Lee, whose suspicious behavior made the officers believe that he "was going to be our seller for the day." Officer Casey watched Lee walk from 5th Street and Hennepin Avenue over

to Block E, between 6th Street and 7th Street on Hennepin Avenue. Lee moved to the corner of 6th Street and Hennepin Avenue where he stood for a period of time.

11. Defendant's Exhibit D includes Officer Queen's supplemental report noting his observations of April 9, 2009. Officer Queen's report confirms Officer Casey's testimony about the activities of an arrestee later identified as Torrie Lee. Ex. D. Officer Queen noted that Lee was engaging all black males who passed by him on Hennepin Avenue.
12. Officer Casey saw Defendant approach Mr. Lee; they had a "short conversation" and walked 50 feet together on 6th Street toward 1st Avenue; they made an exchange of what appeared to be cash for marijuana; they then "quickly separated".
13. Officer Queen's report corroborates Officer Casey's testimony. Officer Queen noted that Lee was standing for several minutes before Defendant approached him; that Lee and Defendant had a "short conversation"; that "shortly after" the conversation they made an exchange of cash for a small dark green item; the Defendant then "distanced himself" from Lee between Hennepin Avenue and 1st Avenue on 6th Street. Defendant then was stopped while walking between 6th Street and 5th Street.
14. Officer David J. Shotley testified that as he was walking from 4th Street toward 5th Street on 1st Avenue, he received a call from Officer Casey to stop a man fitting Defendant's description. Officer Shotley stopped Defendant near the corner of 1st Avenue and 5th Street; Defendant admitted that he was in possession of marijuana, surrendered the marijuana immediately, and was "very apologetic."
15. Officer Casey then cited Defendant for "loitering with intent" to solicit narcotics. Officer Casey testified that he cited Defendant for "loitering with intent" because it is

a misdemeanor, a more serious offense than possession of a small amount of marijuana, which is a petty misdemeanor.

16. The substance seized from Defendant tested positive for marijuana, with a weight of 1.02 grams. Defendant does not dispute this fact.
17. By plea agreement, the City of Minneapolis suspended prosecution of the “loitering with intent” offense, Ex. C; the criminal case has been continued for dismissal based on “no same or similar”. Ex. A, C, Court File No. 27-CR-09-19116.
18. Mr. Ali Hashim, who manages Defendant’s apartment building at 314 Hennepin Avenue, testified that Plaintiff’s “zero tolerance” drug policy requires the termination of Defendant’s lease based on the single fact that he was found to be in possession of marijuana, without regard to the small amount or the distance from the public housing building. Mr. Hashim testified that under Plaintiff’s “zero tolerance” drug policy, he has no discretion to allow Defendant to keep his public housing benefit. Mr. Hashim has received no other complaints about Defendant’s conduct at the building.
19. MPHA Principal Asset Operations Manager Judy Johnson has been in her current position with Plaintiff for 15 years; she believes she is “very familiar” with Plaintiff’s Statement of Policies. She read the definition of “drug-related criminal activity” from the Statement of Policies and testified that there is “zero tolerance” for “any amount” of illegal drugs by public housing tenants on or off the premises. The “zero tolerance” policy was created to deal with buildings that were “out of control.” In her view, the Police Department involvement, along with community policing and the “zero tolerance” policy, have resulted in a “night and day” difference between conditions in public housing buildings 15 years ago and the present. Ms. Johnson did

not specify which, if any, problems 15 years ago related to drug possession generally or to possession of small amounts of marijuana specifically. There is no specific documentation that the “zero tolerance” policy has caused, alone or in combination with other factors, the apparent change in MPHA buildings; the change identified by Ms. Johnson may be the result of many other factors. Ms. Johnson has never met Defendant or been in his apartment and is not aware of any complaints about his tenancy from other tenants or employees at the building.

CONCLUSIONS OF LAW

The Minneapolis “Loitering” Ordinance

1. It is a misdemeanor to loiter with the intent to solicit narcotics or any act prohibited by law. *See* Minneapolis Code of Ordinances, Title XV, Ch. 385, § 385.50(a).

Loitering means lingering, being slow or dilatory or idle.

“Loitering” assumes immobility for some period of time. The Minneapolis ordinance does not define loitering, and neither do the provisions in the Minnesota Statutes that prohibit loitering for various purposes or in various places, such as section 609.3243 (2006) (loitering for prostitution) and section 37.25 (2006) (loitering at fairgrounds). But the traditional definitions of loitering strongly imply the concept of lingering for at least some period of time: “To be dilatory; to be slow in movement; to stand around or move slowly about; to stand idly around; to lag behind; to linger or spend time idly . . . to be slow in moving, to delay . . . to saunter.” *Black’s Law Dictionary* 942 (6th ed. 1990). And the commonly relied-upon treatise recommends that district courts instruct jurors with a similar definition of loitering: “‘Loitering’ means to be slow in moving, delaying, lingering, sauntering, or lagging behind.” 10 *Minnesota Practice* CRIMJIG 12.73 (2006).

State v. Holly, 2008 WL 2965463 (Mn. Ct. App Aug. 5, 2008)

Plaintiff failed to prove by a preponderance of the evidence that Defendant violated the Minneapolis loitering-with-intent ordinance. There is no

evidence that Defendant “loitered”; no evidence of any idle, lingering, or dilatory conduct by Defendant; no evidence that Defendant was temporarily immobile. Rather, the evidence was that Defendant approached Lee, engaged in a “short conversation,” made a quick exchange while walking about 50 feet with Lee, and then “quickly separated” from Lee after the exchange. The officers’ narratives do not show that Defendant was loitering. This Court does not find that the Defendant was loitering.

Plaintiff’s “Drug Free Zone” Policy

2. A public housing agency is bound by federal regulations and by specific grievance procedures and requirements. 24 C.F.R. §§ 966.50-966.59. *Housing and Redevelopment Authority of Waconia v. Chandler*, 403 N.W.2d 708, 711 (Minn. Ct. App. 1987). Under the applicable grievance procedure, the written summary of the informal settlement conference “shall specify . . . the nature of the proposed disposition of the complaint and the specific reasons therefore.” 24 C.F.R. § 966.54. The written summary of Defendant’s informal settlement conference here specified that Plaintiff was continuing with the lease termination because Defendant was aware of Plaintiff’s “Drug Free Zone” policy. According to Plaintiff’s “Drug Free Zone” policy, public housing tenants may not possess illegal drugs on the property or within 300 feet (or one city block, if that distance is greater) of public housing property. *See* Minn. Stat. § 152.01, subd. 19. There is no evidence that Defendant violated the “Drug Free Zone” policy. The Defendant possessed marijuana three city blocks – and more than 300 feet – away from his public housing apartment building. The informal settlement conference summary offered no basis, other than violation of this policy,

for the proposed termination of Defendant's public housing benefit. Plaintiff is bound by the specific justification offered in the summary under 24 C.F.R. § 966.54.

“Drug-Related Criminal Activity”

3. A public housing authority has discretion to evict a public housing tenant for “drug-related criminal activity.” 42 U.S.C. § 1437d(l)(6); 24 C.F.R. §§ 966.4(f)(12)(i), 966.4(l)(5)(i)(B). Plaintiff argues that “drug-related criminal activity” includes all “illegal” drug-related conduct, whether criminal or not. Plaintiff argues that “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 802 of Title 21).” This Court concludes, however, that when a statute contains both specific and general language on a subject, the specific language governs. Based on principles of statutory construction, the term “drug-related criminal activity” contains two conjunctive elements: [1] “drug-related” activity, and [2] “criminal” activity. Both elements are required for a public housing authority to exercise its discretion to terminate a lease and seek eviction for “drug-related criminal activity.” Defendant concedes that marijuana is a drug, and that a marijuana-related offense is “drug-related.” But possession of a small amount of marijuana is not “criminal activity.” The possession or sale of a small amount of marijuana, 42.5 grams or less, is not criminal; it is a petty misdemeanor. Minn. Stat. § 152.027, subd. 4(a). A petty misdemeanor is not a crime. Minn. Stat. § 609.02, subds. 1, 4a; *see also* Minn. R. Crim. P. 23.06.

4. This Court does not adopt the Plaintiff's analysis that the criminal activity prohibited by the federal law includes all illegal activity, including petty misdemeanor non-criminal activity.
5. Other Courts in Hennepin County have concluded, as this Court does, that possession of a small amount of marijuana alone is not a basis to evict a public housing tenant. *See Minneapolis Public Housing Authority v. [REDACTED]*, Court File No. 27-CV-HC-1020613566 (Minn. Dist. Ct. 4th Dist. July 31, 2003) (finding no basis to evict a public housing tenant who was found in possession of a small amount of marijuana in a public housing apartment); *Minneapolis Public Housing Authority v. [REDACTED]*, Court File No. 27-CV-HC-1020710513 (Minn. Dist. Ct. 4th Dist. Aug. 2, 2002), *affirmed on review* (Minn. Dist. Ct. 4th Dist. Sep. 2, 2002) (finding no basis to evict a public housing tenant who was found in possession of a small amount of marijuana in a public housing apartment, and stating on judge review, "The statute allows eviction for 'drug-related criminal activity', in the conjunctive; not merely any drug related activity and not merely any criminal activity, both are required."); *Minneapolis Public Housing Authority v. [REDACTED]*, Court File No. 27-CV-HC-1020207506 (Minn. Dist. Ct. 4th Dist. Mar. 19, 2002) (finding no basis to evict a public housing tenant found in possession of 7.35 grams of marijuana off of public housing property); *Minneapolis Public Housing Authority v. Vann*, Court File No. 27-CV-HC-08-10954 (Minn. Dist. Ct. September 21, 2009) (finding no basis to evict for off-property possession of a small amount of marijuana). This Court particularly notes, as did the Judge in the *Vann* case, that the potential loss of a residence for an indigent person is a harsh result; that each case must be judged based on its specific

facts and circumstances; that the facts and circumstances of this particular case do not warrant the harsh result of eviction.

6. The evidence established that Defendant possessed 1.02 grams of marijuana away from public housing property. This is a petty misdemeanor, which is not “criminal” under Minnesota law. Defendant did not engage in drug-related *criminal* activity.
7. As part of every residential lease in Minnesota, the landlord and tenant covenant that “neither will unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises.” Minn. Stat. § 504B.171, subd. 1(1)(i). Landlords and tenants in Minnesota “may not waive or modify the covenant.” Minn. Stat. § 504B.171, subd. 3. As a matter of state law and policy under Minn. Stat. § 504B.171, Plaintiff has not proven a lease violation, as Defendant’s conduct did not occur on the premises or in the common area and curtilage of the premises.

Pleading and Proof of Lease Violations

8. Plaintiff failed to prove that Defendant violated Paragraph 11.B.8 of his lease. Defendant did not engage in criminal conduct to violate the “drug-related criminal activity” provision in Plaintiff’s Statement of Policies.
9. Plaintiff failed to prove that Defendant violated Paragraph 11.B.14 of his lease. Plaintiff offered no evidence that Defendant’s conduct on April 9, 2009, threatened “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.”
10. Plaintiff failed to prove that Defendant engaged in serious or repeated violations of Paragraphs 13.8, 13.9, and 13.10. There is no evidence that Defendant’s conduct on

April 9, 2009, threatened "the health, safety, or right to peaceful enjoyment of the premises of any person on the premises, Tenant Family, guest, neighbor, or MPHA's employee or vendor." Plaintiff failed to prove that Defendant engaged in "drug-related criminal activity," as Defendant's proven drug-related conduct was not criminal.

11. Because Plaintiff failed to prove that Defendant violated any of the specific provisions of the lease alleged in the Complaint, Plaintiff failed to prove that Defendant violated Paragraph 11.A or Paragraph 13.13 of the lease, both of which prohibit Defendant from failing to comply with any term or condition of his lease.

ORDER

1. Plaintiff's Complaint is dismissed with prejudice.
2. Defendant is awarded judgment for possession of the premises at 314 Hennepin Avenue, Apartment 1208, Minneapolis, MN 55401.
3. Defendant shall have judgment against Plaintiff for \$205.50 in costs and disbursements under Minn. Stat. § 549.02.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date

10/13/09

Findings and Order Recommended

The Honorable Linda J. Gallant
Referee of the Fourth Judicial District

Findings and Order Approved

Judge of District Court

Date

10/13/09

Judgment
I hereby certify that the above Order
constitutes the entry of Judgment of the Court.
Dated: 10/13/09

Court Administrator

By:

DEPUTY

JUDGMENT
= FOREGOING SHALL CONSTITUTE THE
JUDGMENT AND JUDGMENT ROLL OF THE COURT
RK S. THOMPSON, COURT ADMINISTRATOR
TERED