

FILED

STATE OF MINNESOTA

DISTRICT COURT

03 JUL 31 AM 8:53

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

BY [REDACTED] CLERK

Court File No.: 1030613566

Minneapolis Public Housing Authority,

Plaintiff,

vs.

FINDINGS OF FACT AND ORDER

[REDACTED]

Defendant.

The above-entitled matter came duly on for trial before the Honorable David M. Duffy on July 15, 2003. Sarina L. Turner, Esq. and Carol A. Kubic, Esq., appeared for and on behalf of Plaintiff. Bradley C. Thorsen, Esq., appeared for and on behalf of Defendant, who appeared personally.

Based upon the evidence adduced, the argument of counsel, and all of the files, records, and proceedings herein, **THE COURT FINDS:**

1. Plaintiff administers the Federal Public Housing Program in the City of Minneapolis. Defendant is a tenant under the Program, residing at 2433 Fifth Avenue South, Apartment 602, Minneapolis, MN 55404.
2. The lease agreement between the parties was placed in evidence. Plaintiff alleges that Defendant has breached certain provisions of this agreement and seeks to evict him on the basis of these breaches.
3. Plaintiff has alleged that incidents involving Defendant which occurred on March 3, 2003 and on April 22, 2003 are "serious and repeated violations of a material term of the lease."
4. On or about April 28, 2003, Donuette Smith, property manager for Defendant's residence signed a "NOTICE OF TERMINATION OF YOUR PUBLIC HOUSING TENANCY" and sent Defendant a copy by certified mail and another copy by regular mail.

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5. The Notice states that Defendant has violated his lease by conduct which violates the guest policy and quotes the lease:

7. GUEST POLICY

- A. The Tenant has the right to reasonable accommodation of their guests, subject to the terms of this Lease.
- B. Tenant shall cause each guest to comply with the terms of this Lease. A guest's failure to comply with the terms of this Lease shall be grounds for the trespass of the guest and Lease termination.

6. More specifically, the Notice states that Defendant has violated his lease by conduct which violates the tenant's family's obligations and quotes the lease:

11. TENANT FAMILY'S OBLIGATIONS

- A. Tenant shall assure the Tenant Family, other persons under the Tenant Family's control, live-in aide and Tenants Family's guests comply with all the obligations, terms and conditions of the Lease, including but not limited to:
- 1) Not disturb the other residents or neighbors. Shall cause household members or guests to act in a manner which will not disturb other residents and neighbor's peaceful enjoyment of the premises and which will keep the premises and the neighborhood in a decent, safe and sanitary manner.
 - 2) Not create or permit (by an act or omission) any condition or situation on the premises resulting in a serious risk to the health or safety of any person or damage to property.
 - 3) Not engage in and assure that a person under Tenant Family's control, Tenant Family's gusts and members of the household will not engage in any activity which Management determines may threaten the health, safety, or right of peaceful enjoyment of the premises by any Tenant Family, guest, neighbor, MPHA employee, MPHA's vendor or other person. Such activity even in the absence of an arrest or conviction shall be grounds for termination.
 - 4) Not damage, destroy, deface, mar, alter or remove any part of the unit or premises or affix anything to the outside or inside of the unit or premises. This includes but is not limited to no painting.

wallpaper, corkboard, mirror tile, shelves, contact paper. This does not include the hanging of reasonable wall hangings inside the unit.

The notice of termination sent to Defendant sets forth the above quoted provisions of the lease and catalogs incidents or conduct on fourteen separate days between February 24, 2003 and April 22, 2003, wherein Plaintiff alleges that Defendant's conduct required the attention of management. At trial, Plaintiff alleged that two of these incidents were grounds for termination under the lease.

7. Although the notice of revocation does not set forth ¶13 of the lease (Exhibit 3), it appears the Plaintiff relies upon this provision in that it provides:

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 and 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:

- 1) Tenant's failure to timely provide written, accurate, current, objective and verifiable information or to timely provide signed forms to permit MPHHA to obtain such information.
- 2) Tenant's misrepresentation of any material information at any time relevant to the determination or re-determination of the Tenant's rent, eligibility or unit size.
- 3) Tenant's non-payment of rent, sales or other service charges. (See Appendix C to the Statement of Policies).
- 4) The filing of two valid Eviction Actions for the non-payment of rent in four consecutive months or three valid Eviction Actions for the non-payment of rent in 12 consecutive months.
- 5) Making unauthorized alterations to the unit or premises.
- 6) **Serious, major or repeated disturbances to other tenants or neighbors.**
- 7) Negligent or intentional conduct that results in serious, major or repeated damage to the unit or premises included but not limited to fires or floods.
- 8) Any activity including criminal activity engaged in by the Tenant Family, even in the absence of an arrest or conviction, that MPHHA determines may threaten 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.
- 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, that MPHA determines may threaten any Tenant Family, guest, neighbor or MPHA's employee or vendor aide 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 aide.
 - 11) Tenant Family's alcohol abuse even in the absence of an arrest or conviction that MPHA determines may interfere with the health, safety and right to peaceful enjoyment of the premises of any person on the premises, Tenant Family, guest, neighbor or MPHA's employee or vendor.
 - 12) Weapons or illegal drugs seized in a unit by a law enforcement officer.
 - 13) Failure of the Tenant Family, other person under the Tenant Family's control, Tenant Family's guest or live-in aide to comply with all obligations, terms and conditions of this lease.
 - 14) When a member of the Tenant Family is violating a condition of probation or parole imposed by federal or state law.
 - 15) When a member of the Tenant family is fleeing to avoid prosecution or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or in the case of the State of New Jersey, is a high misdemeanor under the laws of the State.
 - 16) When a member of the Tenant Family or Tenant Family's guest wrongfully takes any money or property from another Tenant, a guest, MPHA or a Tenant organization regardless of whether the money or property is returned and regardless of an arrest or conviction.

The emphasis, *supra*, has been supplied by the court.

8. One of these incidents, relied on by Plaintiff as grounds for eviction, took place on April 22, 2003. Officer Daniel Diedrich of the Minneapolis Police Department is assigned to the public housing unit where Defendant is a tenant. He testified that on April 22, he and Donnette Smith, the property manager went to Defendant's door. They were there for a "knock and talk." Ms. Smith believed that a friend of Defendant's that had previously been "trespassed" was in Defendant's unit.
9. Defendant allegedly consented to the entry of the Officer and Ms. Smith to his residential unit. The officer testified that he explained to Defendant that they were there to check if the "trespassed" individual was present. He said that while he was in the apartment he saw a cloud of smoke and saw a green leafy substance "in plain view" in the bottom of a garbage bag.
10. Officer Diedrich brought the green leafy substance to police chemists for testing. Tests established that the material was plant stems and that they contained tetrahydrocannabinol. The weight was .03 gram.
11. The Officer's testimony did not disclose whether the individual that he and Ms. Smith were seeking was, in fact, in Defendant's apartment. The Officer did not describe Defendant's premises or provide any explanation for de minimus amounts of plant material in the bottom of a bag being "in plain view." There was no explanation for why the Officer reported a green leafy substance and the chemist reported plant stems. Regardless of whether a very small amount of marijuana was recovered, the Officer's testimony did not establish that he had properly come to know about and to possess the substance.
12. The amount of drugs at issue here was conceded to be insufficient to establish criminal activity. Ms. Smith testified that the MPHA has a "zero tolerance drug policy." She took the position that regardless of whether or not the amount of drug obtained from Defendant's garbage constituted a crime it was a violation for which the lease could be terminated. Paragraph 13, subdivision 10 only enumerates drug related criminal activity as a basis for termination of the lease.
13. Ms. Smith took the position that Defendant had signed a pledge concerning drugs that was separate from the lease agreement. No document was adduced to establish that this was so.
14. The second incident alleged as a basis for eviction took place on March 3, 2003, and was testified to by Ms. Smith. Ms. Smith testified that she learned of an altercation on the premises—not in Defendant's unit, but in a public area. Ms. Smith testified that she had learned of this event from a police

- report and an incident report. Neither of the authors of these reports were called to testify.
15. Much confusing and inconclusive testimony was adduced concerning Ms. Smith's secondhand knowledge of the altercation. This evidence failed to connect Defendant [or a person under his control] to the event. The evidence suggested that a tenant—not the Defendant—was involved in this altercation.
 16. In the Complaint in this matter, the Plaintiff alleged that "Defendant was advised that because the termination was based upon criminal activity, he was not entitled to use the MPHA's grievance policy." At trial, Plaintiff took the position that Defendant had waived his right to use the grievance process.
 17. At the conclusion of testimony, Defendant moved for dismissal of this matter and for an expungement.

CONCLUSIONS OF LAW:

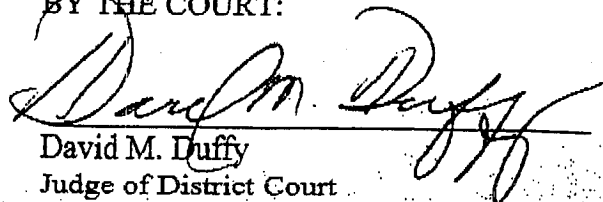
1. Pursuant to Minn. Stat. § 484.014 Subd. 2: "The court may order expungement of an eviction case court file only upon motion of a defendant and decision by the court, if the court finds that plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record." Because this case has created a public record of allegations that were not substantiated, it is clearly in the interest of justice that this matter be expunged.

IT IS ORDERED:

1. Plaintiff's demand for restitution of the premises is denied.
2. Defendant's motion for expungement is granted.

Dated: July 30, 2003

BY THE COURT:


David M. Duffy
Judge of District Court