

**FILED**

STATE OF MINNESOTA

NOV 20 1998

DISTRICT COURT

HENNEPIN COUNTY

HENNEPIN COUNTY DISTRICT COURT

FOURTH JUDICIAL DISTRICT  
FIRST DIVISION-MINNEAPOLIS

MINNEAPOLIS PUBLIC HOUSING  
AUTHORITY,

Plaintiff/Landlord,

Vs.

**DECISION & ORDER**  
U.D. #1981016519

SE HER & DA VUE,

Defendant/Tenants.

The above-entitled matter came on for hearing before the undersigned, Referee of Housing Court, on the 17<sup>th</sup> day November, 1998, on that Unlawful Detainer Complaint filed by the plaintiff and the Answer and denial interposed by the Defendants.

The plaintiff, Minneapolis Public Housing Authority (hereinafter MPHA) was present and represented by counsel, Ken Parsons, Esq. The defendants, Se Her and Da Vue, were present and represented by counsel, Richard Wayman, Esq.

That the defendants moved *in limine* to dismiss the action on the basis that the plaintiff failed to provide a pre-trial grievance procedure. The motion was denied (See: Decision & Order dated November 16, 1998).

Now, therefore, based on the pleadings, sworn testimony, exhibits and oral arguments of the parties, the court hereby makes its:

**FINDINGS OF FACT**

1. That the defendants, Se Her and Da Vue, reside at 1194 Fourth Avenue N., Minneapolis, MN 55405. They have been tenants for eight years under the Federal Public Housing Program as administered by the plaintiff (See: Ex. #1, Residential Lease).
2. That the MPHA is the legal owner of the premises.
3. That the written lease provides, in part, that:

**8. OBLIGATIONS OF TENANT'S MEMBERS OF HOUSEHOLD, GUESTS AND OTHER PERSONS UNDER TENANT'S CONTROL**

The Tenant agrees to comply with the following rules. The Tenant is also responsible for causing members of the household, guests or another person under Tenant's control to comply with the following rules.

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DATE BY

App. 349

B. The tenant shall not:

8) Create (by act or omission) or permit to exist any condition on the premises which results in a risk to the personal health or safety of any person or damage to property.

10) Engage in, or allow members of the household, guests, or another person under Tenant's control to engage in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the public housing premises by other residents and neighbors, or employees of the Management.

10. TERMINATION OF LEASE.

A. Management shall not terminate, refuse to renew the Lease or evict Tenant from the dwelling unit except for serious or repeated violations of material terms of the Lease or other good cause. Serious violations include but are not limited to:

4) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other tenants and public housing employees...

4. That the plaintiff alleges at paragraph V. of the Unlawful Detainer Complaint that:

That the Defendants have failed to keep members of their household from disturbing the quiet enjoyment of neighbors and others in the community while engaging in acts of violence and intimidation and threatening behaviors towards members of the community. Members of Defendant's household have continued to engage in disruptive behaviors towards neighbors despite warnings from management and complaints from neighbors. Members of Defendant's household also are engaged in alleged gang related activity that has resulted in a drive-by shooting incident where one individual was wounded.

5. That plaintiff advised defendants that their lease would terminate effective August 31, 1998, their right to request a grievance hearing and examine MPHA's documents.

However, the defendants remain in possession of the premises.

6. That on July 1, 1998, a drive-by shooting took place near the defendants' residence at 1194-4<sup>th</sup> Avenue N., Minneapolis, MN. A bullet ricocheted off a wall and struck Matthew Vue, son of the defendants. No one testified who personally witnessed the shooting. No charges have been filed for the shooting. No arrests have been made. Police investigated the incident. Firstly, they searched the defendants' apartment for guns. They found none. Secondly, they questioned Se Her and Lee Vue, son of the parents. Se Her and Lee Vue willingly cooperated in offering information to the police. At no time were they represented by counsel during the investigation. The police relate that See Her said that she suspected that "...it was probably gang

related..." (See: Sworn Testimony of Brenda Furr; Police Report, Ex. #12) and that her son may have been a target of the shooting. However, her sworn testimony at trial denies making such a statement. Moreover, there was no sworn testimony that Lee Vue was present during the shooting. He testified that at that time he was away from the premises. There was no other competent testimony placing Lee Vue in the vicinity of the drive-by shooting. Lee Vue was neither arrested nor charged in relation to the drive-by shooting. On the other hand, there was testimony describing gang-related graffiti on the walls on or near the defendants' residence. The gang-related graffiti made reference to the symbol "OMB". This is an acronym for Original Hmong Boys, a local gang. There has been no other shooting or similar incident since that time.

7. That the defendants' neighbor, Sadyo Hassan, herself a public housing tenant, filed a complaint with the MPHA concerning the behavior and conduct of the defendants' children while on the public housing premises. There has been fighting between the children of Sadyo Hassan and the defendants' children. This has resulted in scratches, bruises, etc. There is no convincing evidence at this time who instigated the fights, who encouraged it, or, for that matter, why it was started other than as a result of puerile name-calling, bravado, etc. On the other hand, there is no convincing evidence that such behavior is widespread, affects other residents, or is so serious to the extent that a person's immediate health and welfare are at risk. Normally, the fights end by withdrawal or retreat with an older sibling or parent without any other evidence of untoward morale on the rest of the neighbors.
8. That Sadyo Hassan further complained to the MPHA about eggs thrown on her door and broken windows. Although she did not personally witness the egg throwing and window damage incidents, she accuses the defendants' children for the same. There was no other corroborating evidence to support this accusation.
9. That Sadyo Hassan claims that the defendants' seven year old son is the author of the obscene materials that were shoved into her mailbox (See: Ex. #7). Moreover, on or about July 27, 1998, threatening notes were sent to Ms. Hassan (See: Ex. #3). The notes were computer generated. She denied that her children were the authors of this material since the family does not own a computer. However, the family does

own a computer and a printer. There was no other corroborating evidence to show that the seven year old is capable of this publication.

### CONCLUSIONS OF LAW

1. That in order for the plaintiff to terminate the defendants' lease, the plaintiff must prove by a preponderance of the evidence the existence of prohibitive conduct that arises to serious or repeated violations of material terms of the lease or other good cause. Serious violations include criminal activity that threaten the health, safety or right to peaceful enjoyment of the premises by other tenants (See: Ex #1, paragraph 10. A. 2). The complaint does not state criminal activity (See: paragraph V., Complaint), but it does recite conduct that if proved true would amount to criminal activity. In the first instance, no member of the defendants' family has been arrested nor charged with criminal activity. The drive by-shooting. This was a singular incident. Plaintiff asserts that Lee Vue was the intended target. However, it occurred during the day light and there was no competent evidence that put Lee Vue near the vicinity of the shooting. In fact, the shooting actually hit the neighbor apartment of Cha Ger Xiong before ricocheting onto Matthew Vue. On the other hand, there was competent evidence that at one time Lee Vue was associated with gang activity. However, he is now under probation to the Hennepin County Juvenile Court. His probation officer testified that he is not aware of any present gang association or activity, and, if he was, this may amount to a probation violation. His probation has not been revoked. There was no other competent evidence to indicate that Lee Vue's actions, conduct or behavior gave rise to or otherwise enabled the drive-by shooting incident on July 1, 1998.
2. Disburances with Hassan household. Plaintiff must prove by a preponderance of the evidence that defendants' and/or their children disturbed the quiet enjoyment of the neighbors. At best, the disturbances between the children of the two households is significant, but not material to terminate the lease. There is no convincing evidence, in the first instance, that defendants' children instigated the incidents. Secondly, there is no showing of any physical harm other than scratches, etc. Altercations were resolved by withdrawal, retreat or intervention by an older sibling or parent. Thirdly,

the conduct must be repeated. At best, plaintiff evinced occasions of such conduct. This is not deemed a pattern or repetition to constitute termination of a lease at this time.

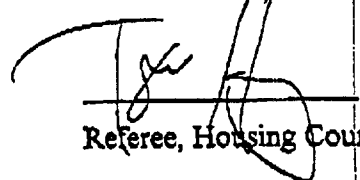
3. Papers in the mailbox. The plaintiff proved that on two separate occasions papers were placed in the Hassan mailbox. The papers were intended to intimidate and cause anger. However, there was disputed testimony as to who placed them in the mailbox. Secondly, there was disputed evidence of authorship. In part, plaintiff alleges that defendants' seven year old son drafted some of the papers. At any rate, other than the two occasions described, there is no convincing showing of repeated violations in this area.

**ORDER**

1. That the Complaint is dismissed with prejudice.
2. That each party is responsible for their own costs and disbursements.

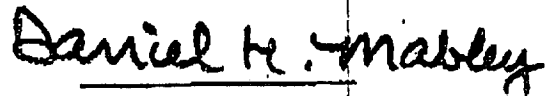
Dated: November 20, 1998

Recommended by:



Referee, Housing Court

By the Court:



Judge, District Court