

STATE OF RHODE ISLAND  
NEWPORT, SC.

SUPERIOR COURT

NEWPORT HOUSING AUTHORITY

VS.

CHRISTINE REYNOLDS

ND2002 - 0290

ORDER

The above entitled matter was heard before the Superior Court, Newport County, Justice Pfeiffer presiding, on July 26, 2002 on defendant's pretrial Motion to Dismiss. After consideration of oral presentations and memoranda of counsel, and in accordance with the bench decision rendered by this court on August 9, 2002, it is hereby Ordered, Adjudged and Decreed:

1) The material facts of this case are not in dispute - defendant was not arrested or charged with any drug related criminal activity, defendant was not home when the alleged drug activity took place, the drug activity, the sale of marijuana, was conducted by a Mr. Pedretti, defendant's boyfriend, who was not a tenant of the subject premises but on the premises babysitting defendant's children.

2) Plaintiff's Complaint averred that defendant was in violation of RIGL §34-18-24(9), which provides that " a tenant shall refrain from using any part of the premises for the manufacture, sale or delivery of a controlled substance or from

True Copy Attest

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Charles H. Hollis  
Office of Clerk of Superior Court  
Newport County  
Newport, Rhode Island

possessing on the premises with the intent to manufacture, sell or deliver".

3) The above said provision addresses drug related activity of the "tenant" . Based upon the facts of this case, which are not in dispute, defendant had no knowledge of the subject drug transaction and no intent to effectuate it. As such defendant does not fall within the rubric of §34-18-24(9) and therefor plaintiff's complaint fails to state a claim upon which relief can be granted.

4) Although federal law would permit the eviction of defendant merely because she granted access to the premises to Mr. Pedretti, see Rucker v Davis, 2002 Decision of the United States Supreme Court, Rhode Island law requires more and federal law has not preempted state law on this subject. Accordingly, Defendant's Motion to Dismiss is granted.

ENTER:

PER ORDER:

Date:

J.

Clerk

Presented by:

Robert M. Sabel  
Counsel for Defendant

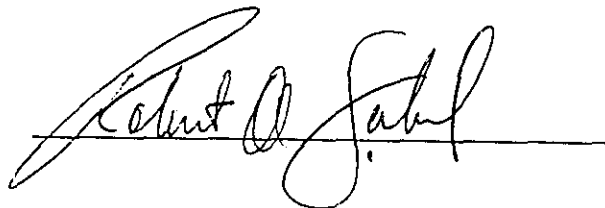
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*Charles H. Hollis*

Office of Clerk of Superior Court  
Newport County  
Newport, Rhode Island

Certification

I hereby certify that I hand delivered a copy of the above proposed Order to Craig Sampson, Esq. counsel for plaintiff on the 26th day of August, 2002.

A handwritten signature in cursive script, reading "Robert A. Fahl", is written over a horizontal line.

True Copy Attest

Charles H. Hollis

Office of Clerk of Superior Court  
Newport County  
Newport, Rhode Island

STATE OF RHODE ISLAND  
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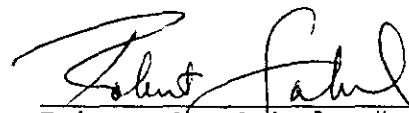
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ND2002 - 0290

DEFENDANT'S MOTION TO DISMISS

Comes now defendant and moves this court to dismiss Plaintiff's action for failure to state a claim and lack of jurisdiction. As grounds and as is more particularly stated in the accompanying memorandum, plaintiff has pursued its claim for possession under a special statutory provision not applicable to the case at bar.

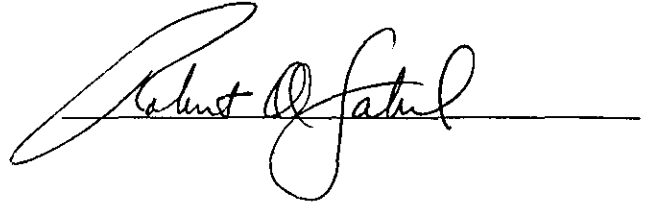
Christine Reynolds  
By her Attorney



Robert M. Sabel #1797  
Counsel for Defendant  
RI Legal Services, Inc.  
50 Washington Square  
Newport, RI 02840  
(401) 846-2264

Certification

I hereby certify that I hand delivered or caused to be mailed the above motion and accompanying memorandum first class mail, postage prepaid, to counsel for the plaintiff, on this 26<sup>th</sup> day of June, 2002.

A handwritten signature in cursive script, reading "Robert J. Fattal", is written over a horizontal line.

STATE OF RHODE ISLAND  
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ND2002 - 0290

DEFENDANT'S MEMORANDUM IN SUPPORT OF HER MOTION TO DISMISS

Undisputed Facts

There is little or no dispute between the parties regarding the facts of this case. The defendant, Christine Reynolds, resided in public housing located at 77 Evans Street, Newport, RI with her 4 minor children, ages 6 months to 6 years, pursuant to a written lease agreement between the parties. She resides in a 3 bedroom apartment owned by the Newport Housing Authority and pays rent of \$154 per month based upon her income. Her income is primarily derived from her employment as a licensed child care provider. She is current in her rent. (Note, due to a recent fire Ms. Reynolds was moved to another apartment at the Housing Authority.)

On or about December, 2000, Ms. Reynolds began a relationship with Robert Pedretti who also resided in public housing. He was listed on his mother's lease at 87 Mahan Street and presumably resided there. He did not and never has resided with Ms. Reynolds.

On or about August 10, 2001 Ms. Reynolds asked Mr. Pedretti if he would babysit her 3 children (her fourth child was not born until November) while she drove to Cumberland to pick up some children's hand-me-down clothes that a relative left for her at her father's. Mr. Pedretti agreed to look after the children while Ms. Reynolds was away. During her absence Mr. Pedretti was contacted by a man he knew who wanted to buy some marijuana. This person turned out to be working for the police as a "confidential informant" , presumably as a way to reduce or avoid criminal charges he was facing. The "CI" contacted the police and advised them he had arranged a buy. The police thereafter met with him, provided him \$50 and wired him with a listening device. The "CI" then went to 77 Evans Street and quickly concluded a drug transaction - purchasing \$40 worth of marijuana from Pedretti. According to the police report, the transaction took no more than 2 - 5 minutes.

A month and a half later, on September 22, 2001, the police arrested Mr. Pedretti for the August 10th drug transaction. It was only then that Ms. Reynolds found out what had happened.

Mr. Pedretti was arrested and charged with delivery of a controlled substance. On November 11th, 2001, Mr. Pedretti pled nolo and received a "deferred sentence" and a requirement he receive drug counseling. Apparently, this is not considered a conviction. Ms. Reynolds was never arrested or charged in relation to this incident, nor could she have been. She had no

participation in the activity, no knowledge of it and was somewhere else when it occurred. In fact, Ms. Reynolds has never been arrested or charged with drug related criminal activity at any time before or after this incident. As a result of Mr. Pedretti's actions, which Ms. Reynold's has termed a betrayal of her trust, they no longer have a relationship.

Nevertheless, the Newport Housing Authority sent her a notice dated October 12, 2001 which by its terms required her and her children to vacate the premises on or before November 2, 2001. This was the only notice she ever received from the Housing Authority in any way related to illegal activity.

Ms. Reynolds did not vacate her apartment as demanded, and this eviction action followed. In its complaint, the Housing Authority has proceeded against Ms. Reynolds on the basis that she was in violation of her obligations under RIGL 34-18-24 (9).

#### Defendant's Argument

The gravamen of this motion to dismiss is that the circumstances of this case do not support a cause of action under RIGL §34-18-24(9). This statute provides a special cause of action for eviction which bypasses the normal eviction process when there has been illegal drug activity by a "tenant". In the instant matter Plaintiff's claim rests solely on the fact that a guest engaged in illicit activity at the premises. Defendant submits that this allegation alone, without any claim of tenant participation in or knowledge of the activity, does not suffice



to make out a claim under §34-18-24(9). Plaintiff's proper course- assuming eviction is warranted, which defendant vigorously denies - is to proceed with a traditional noncompliance action for violation of the lease.

#### The Rhode Island Statutory Scheme

Under Rhode Island's Residential Landlord Tenant Act, RIGL § 34-18-1, et seq. (hereinafter the "Landlord/tenant Act"), when a landlord intends to pursue an eviction for non-compliance with the lease or the provisions of §34-18-24, the landlord must send a notice in the form required by RIGL §34-18-36(a). (Statutes attached as Exh.\_\_\_\_). This statute requires that the tenant be sent a notice of noncompliance which specifies the acts or omissions that constitute the breach, the acts necessary to remedy the breach and notification that unless the breach is remedied within 20 days the rental agreement will terminate on a specified date no earlier than 21 days from the mailing date of the notice. The statute is meant to apply in every eviction for non-compliance of the lease except in non-payment cases, which are addressed in §34-18-35, cases in which the landlord had sent a previous noncompliance notice regarding a similar matter within the past six months which are addressed at §34-18-36(e), and those cases made specifically exempt under 34-18-36(f). If plaintiff's claim falls within one of the exceptions outlined in §34-18-36(f) then the landlord is under no obligation to provide the tenant a notice of noncompliance as required by subsection

36(a), but may proceed directly to court with the filing of a Summons and Complaint. The tenant receives no notice specifying the breach, the acts necessary to remedy the breach or even 20 days to vacate.

In this case, plaintiff has asserted its claim arises under one of the exceptions set forth in § 34-18-36(f), namely the breach of her obligation set forth at §34-18-24(9), and therefore it was not required to provide Ms. Reynolds a notice which comports with the dictates of §34-18-36(a). As noted above, defendant urges that plaintiff erred in pursuing its claim under RIGL 34-18-24 (9) and that this statute is simply not applicable to the case at bar. The statute reads:

§34-18-24 - Tenant to Maintain Dwelling Unit - A tenant shall:

(9) Refrain from using any part of the premises... for the manufacture, sale or delivery of a controlled substance or from possessing on the premises... with the intent to manufacture, sell or deliver.

The language of this statutory exception is not expansive. It specifically addresses the actions of the "tenant". It is uncontested that Ms. Reynolds is the tenant of the premises at issue and she is identified as such in the lease. There is no allegation that Mr. Pedretti was a "tenant", as that term is defined by Rhode Island law, §34-18-11 (17), or by HUD. He is not identified as a tenant in the lease, and he did not reside at the subject premises.

The statute at §34-18-24 (9) only addresses the actions of

the "tenant". It states a "tenant shall refrain from using the premises for (drug related activity)". In this case the tenant, Ms. Reynolds, did not use the premises for such activity and there is no allegation that she did. She had no involvement or participation in the activity of Mr. Pedretti, and there is no allegation she had any reason whatsoever to believe that Mr. Pedretti would engage in such activity.

In examining the statute, it is important to recognize that Section 9 is one of the few exceptions to the general statutory framework regarding noncompliance terminations. As an exception it was narrowly drawn. Presumably the legislature chose its words carefully when it framed the exception as a directive specifically to the tenant - "the tenant shall refrain from using..." . This directive to the "tenant" is emphasized by the legislature's use of the word "refrain". There is no definition of "refrain" in the Landlord/tenant Act and it is not defined in Black's Law Dictionary. However, in Webster's it is defined as "to keep oneself from doing, feeling or indulging in something." (definition attached as Exhibit ). In short, the use of "refrain" directs a person to address his or her own actions or impulses as opposed to controlling the acts of others. Unless there is some strong indication otherwise, it is presumed that our legislature intended words in the statute to reflect their plain and ordinary meaning. Fruit Growers Exp.Co. v Norberg, 471 A.2d 628, 630 (RI 1984). Also see, West's Rhode Island Digest, Statutes §188, for citations too numerous to include. For the

statute to be applicable in this case, it would require an interpretation that it obligated the tenant to do considerably more than "refrain from using", but affirmatively control the actions of others, including actions that she had no reasonable expectation would occur. Such an expansive interpretation of the statute is certainly not supported by the language itself and its plain everyday meaning.

Such an interpretation is also not supported either by the policy underlying the statute or by looking at the remainder of §34-18-24. For example, in §34-18-24(6) the tenant is directed not to "deliberately or negligently destroy... the premises or knowingly permit any person to do so." (emphasis added). At Section 34-18-24(7) the tenant is directed to "conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that will not disturb...neighbors...". (emphasis added). In these sections, the legislature made plain that the tenant not only must control their own actions, but is accountable for the actions of others. In short, when the legislature intended to impose a broader responsibility on a tenant, it said so quite directly. If the legislature desired Section (9) to encompass the unforeseen acts of guests or others, it certainly could have employed language analogous to that used in Sections (6) and (7).

It also makes practical sense that the legislature did not include more expansive language in Sections (8), (9) or (10). Those sections allow a landlord to proceed straight to court

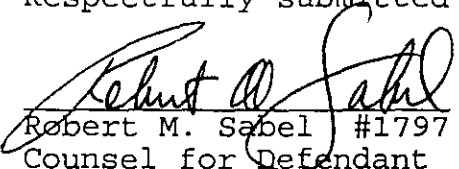
without any advance notice at all and without any opportunity to correct the alleged default. (§34-18-36(f)). Because such a harsh result is contrary to the general goal and common law doctrine of avoiding forfeitures, it certainly is logical that these exceptions to the general rule would be narrowly drawn and directed.

Defendant does not contend that her lease could not impose a broad obligation upon her to assure that any drug related criminal activity by herself or others not occur on the premises. She only argues that if the landlord is proceeding on the basis of the activity of others over which the tenant had no knowledge, then the landlord may not invoke the special statutory exception set out in 34-18-24 (9). If plaintiff wishes to terminate Ms. Reynolds' tenancy, it must establish a lease violation and proceed pursuant to §34-18-36(a). To date, it has not done so.

### Conclusion

Defendant urges this court that Plaintiff's claim for possession of the subject premises be denied and dismissed for failing to make out a cause of action under §34-18-24(9).

Respectfully submitted

  
Robert M. Sabel #1797  
Counsel for Defendant  
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(401) 846-2264

June 26<sup>th</sup>, 2002

STATE OF RHODE ISLAND  
NEWPORT, SC.

SUPERIOR COURT

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C.A.NO. ND 2002-0290

DEFENDANT'S AFFIDAVIT - STATEMENT OF FACTS

The parties agree that there is little or no factual dispute with respect to the present action. Defendant submits this affidavit in support of her Motion to Dismiss or in the alternative a Motion for Summary Judgment. Defendant, under oath, deposes and states the following facts are true and accurate to the best of her knowledge:

1) The defendant, Christine Reynolds, resided in public housing located at 77 Evans Street, Newport, RI with her 4 minor children, ages 6 months to 6 years, pursuant to a written lease agreement between the parties. She resides in a 3 bedroom apartment owned by the Newport Housing Authority and pays rent of \$154 per month based upon her income. Her income is primarily derived from her employment as a licensed child care provider. Defendant recently became employed at Dunkin Donuts. She is current in her rent. (Note, due to a fire this month Ms. Reynolds was recently moved to another unit).

2) On or about December, 2000, Ms. Reynolds began a

relationship with Robert Pedretti who also resided in public housing. He was listed on his mother's lease at 87 Mahan Street and presumably resided there. Mr. Pedretti has never resided with defendant and Plaintiff does not allege that he did so.

3) On or about August 10, 2001 Ms. Reynolds asked Mr. Pedretti if he would babysit her 3 children (her fourth child was not born until November) while she drove to Cumberland to pick up some children's hand-me-down clothes that a relative left for her at her father's. Mr. Pedretti agreed to look after the children while Ms. Reynolds was away.

4) During Ms. Reynold's absence Mr. Pedretti was contacted by a man he knew who wanted to buy some marijuana. This person was working for the police as a "confidential informant" (CI). The "CI" contacted the police and advised them he had arranged a buy. The police thereafter met with him, provided him \$50 and wired him with a listening device. He then went to 77 Evans Street and quickly concluded a drug transaction - purchasing \$40 worth of marijuana from Pedretti. The transaction took no more than 2 - 5 minutes.

5) A month and a half later, on September 22, 2001, the police arrested Mr. Pedretti for the August 10th drug transaction. Mr. Pedretti was arrested and charged with delivery of marijuana. On November 11th, 2001, Mr. Pedretti pled nolo and received a "deferred sentence" and a requirement he receive drug counseling. This is not considered a conviction.

6) Ms. Reynolds was never arrested or charged in relation

to this incident. She had no participation in the activity, no knowledge of it and was somewhere else when it occurred. Ms. Reynolds had no reason to know or suspect that Mr. Pedretti would engage in any drug related criminal activity and plaintiff does not allege that she did. Ms. Reynolds only learned of the illicit activity when Mr. Pedretti was arrested.

7) Ms. Reynolds has never been arrested or charged with drug related criminal activity at any time before or after this incident.

8) The Newport Housing Authority sent Ms. Reynolds a notice dated October 12, 2001 which by its terms required her to vacate the premises on or before November 2, 2001. This was the only notice she ever received from the Housing Authority in any way related to illegal activity.

9) Ms. Reynolds did not vacate her apartment as demanded, and this eviction action followed. In its complaint, the Housing Authority has sought possession of the premises on the basis that Ms. Reynolds violated her obligations under RIGL 34-18-24 (9).

  
Christine Reynolds

Subscribed and sworn to before me this 5<sup>th</sup> day of July, 2002.

  
Notary Public



STATE OF RHODE ISLAND  
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C.A.NO. ND2002-0290

DEFENDANT'S REPLY MEMORANDUM

In her Motion to Dismiss, defendant Reynolds argued that the plaintiff Housing Authority erred in proceeding in its action for eviction pursuant to RIGL §34-18-24(9), which she claims is not applicable given the undisputed facts of this case. Plaintiff has submitted a memorandum opposing the motion to dismiss. In its memorandum plaintiff Housing Authority does not argue that the facts of the case support a claim under RIGL §34-18-24(9), rather it argues that its complaint for eviction is made not only pursuant to §34-18-24(9) but also pursuant to "federal law".

No Claim Made Under Federal Law

Although the Housing Authority has argued in its memorandum that it " filed a complaint for eviction... pursuant to federal law", the Complaint it filed against defendant alleged no federal law claims. The Complaint, attached hereto, raises only one cause of action - that defendant breached her duties under RIGL §34-18-24(8), (9) or (10). There is no ambiguity in this claim

and certainly no suggestion that the claim is grounded in some unmentioned federal law. In fact, in the discovery process defendant propounded the following Interrogatory:

1. Please state which section of the statute (8), (9) or (10) that you claim defendant has violated. Are you seeking to evict defendant upon any other ground? If yes, please detail the other grounds you intend to pursue in this action.

Plaintiff's full response was as follows:

Answer: Plaintiff alleges that the Defendant has violated R.I.G.L. §34-18-24(9).

In light of the clarity of plaintiff's Complaint and its response to defendant's discovery (discovery attached), plaintiff cannot now argue that it is somehow proceeding pursuant to federal law. For this reason, plaintiff's claim should be reviewed solely on whether it can establish a violation of §34-18-24(9) based on the undisputed facts of this case. Defendant's Memorandum in Support of Her Motion to Dismiss addresses this issue in detail.

#### Federal Law

However, even were this court to consider federal law, plaintiff's argument must fail. The federal law addressing the termination of a tenancy in public housing for drug related criminal activity is found at 42 USC 1437d(1), which states:

Each public housing authority shall utilize leases which -  
(6) provide that...any drug related criminal activity on or

off such premises by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of the tenancy. (emphasis added, statute attached).

It is apparent that with respect to the termination of a public housing tenancy, the Congress anticipated that the termination would be through the traditional termination procedures of state law. The federal statute does not purport to create a federal cause of action but simply requires Housing Authorities to include in their leases as a ground for termination drug related criminal activity. Congress could have worded the statute in a way that simply declared the tenancy forfeited as a matter of federal law and declared any state law to the contrary preempted. However, this would have been a considerable departure from all past practice. Congress recognized the longstanding policy that the relation between the Housing Authority and their tenants is simply one of Landlord/Tenant and this relation is principally governed by the lease between the parties. Therefore, when Congress sought to express its concern regarding drug activity in public housing, it determined that such activity be made a lease violation. The Newport Housing Authority complied with this federal directive by including in its lease language that makes such activity a ground for termination. However, in this case the Housing Authority did not proceed against Ms. Reynolds for violation of her lease but instead sought to short circuit the process by proceeding under the special Rhode Statute at §34-18-24(9). As indicated

previously, this statute is simply not applicable to the case at bar. As defendant noted in her Memorandum in Support of Her Motion to Dismiss, defendant acknowledges that plaintiff may have a claim for noncompliance with the lease, but this is a claim that plaintiff has not raised.

### Preemption

In its memorandum objecting to defendant's Motion to Dismiss, plaintiff asserted that state law has been preempted by the federal law. This argument is unsupported by the statute itself, by the agency charged with its enforcement or by the case law.

The doctrine of preemption effectuates the fundamental constitutional principle that if there arises an irreconcilable conflict between a state law and a federal law, the federal law must predominate pursuant to the Supremacy Clause of the United States Constitution. This principle is recognized in Rhode Island's Residential Landlord Tenant Act at §34-18-3 which states that the Landlord/tenant Act applies in all public housing tenancies unless preempted by federal law as to subject matter or direct conflict. Section 34-18-3 does not answer the question of preemption, it only recognizes such a question may on occasion arise. However, at this stage of the litigation the question of preemption is not relevant. That is because plaintiff has proceeded in its Complaint purely on the state law claim of violation of RIGL §34-18-24(9), which defendant has argued is

inapplicable to the case at bar. Preemption may override an irreconcilable state law but it certainly does not rewrite or make applicable an otherwise inapplicable state statute. In short, what state law does plaintiff claim has been preempted?

#### Decision of the United States Supreme Court

Plaintiff has posited the argument that the recent decision of the United States Supreme Court in the case of Rucker v Davis, \_\_\_\_ U.S. \_\_\_\_, 2002, supports its claim of preemption. This suggestion is wholly incorrect. The plaintiffs in Rucker were four residents of the Oakland Housing Authority whose leases were being terminated in a state court eviction action. They brought an affirmative suit in federal court to enjoin the state court actions claiming that the language of the statute, 42 USC 1437d(1)(6), which had been placed in their public housing leases, could not mean, as HUD interpreted it, that tenants without knowledge of or responsibility for drug related activity by a family member or guest could be considered in violation of their lease. They also argued that if HUD's interpretation of the statute was correct, then the statute was unconstitutional under the Due Process Clause. Their argument was rejected by the court on the basis that the language of the statute was unambiguous and therefore not subject to further interpretation. The court also opined that this interpretation of the law did not raise constitutional problems. Importantly, the Court emphasized that its ruling in no way indicated that eviction of families

from public housing was required or mandated by the statute. In effect, the Court simply found that the lease language of the Oakland Housing Authority reflected the language of the statute and that such language neither violated federal law or the Constitution. The Court made plain that its ruling did not address any state law issues which defendants had raised in the state court eviction actions. (Opinion of the Court, p.4, fn3 - "state law claims ... are not before this Court.").

Because of the decision in the Rucker case, defendant herein will not argue that the language of her lease is illegal as a matter of federal or constitutional law. She simply argues that before she can be evicted by plaintiff in state court for a violation of her lease, plaintiff must proceed with a noncompliance action and not try to bypass that process by proceeding under §34-18-24(9). Nothing in the Rucker decision suggests the contrary.

#### The Directives of HUD

The Department of Housing and Urban Development (HUD) is the agency charged with ensuring that federal requirements with respect to the administration of public housing are implemented. It accomplishes this responsibility by issuing directives, handbooks and regulations which must be followed by local housing authorities as a condition of receiving federal funds. As set forth below, HUD has not suggested that §1437d(1)(6) preempts any state law requirements or processes for the termination of

tenancies. This is in keeping with HUD's long time recognition that landlord-tenant relations, including lease terminations, are primarily a matter of state and local law and that federal requirements are generally designed to supplement state law, not displace it. With respect to Sec.1437d(1)(6) HUD has issued a directive to all housing authorities, with the following instructions:

D) Lease Provision

Public housing lease forms must be amended promptly to provide that the following activities by any resident are grounds for termination of tenancy:

- drug-related criminal activity on or off the premises, not just on or near the premises; and
- alcohol abuse that the HA determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

In amending the lease form, HAS must provide tenants with notice and opportunity to comment, according to the provisions in 24 CFR 966.3. The modification may be either in the body of the lease or in a lease addendum.

Tenants must be required to execute the new lease/addendum no later than their next reexamination.

(HUD Notice PIH 97-27, Issued May 20, 1997, Section 5, attached.)

Nothing contained in this HUD directive is in conflict with State law - it simply requires that Housing Authority leases be amended and that tenants be required to sign the lease at the tenant's next reexamination (which occurs no less than annually). There is certainly nothing in this HUD directive that would imply that any state procedures or processes used to enforce lease

provisions have been altered, amended or are no longer operative or appropriate. HUD has certainly not indicated that its view of the federal statute evinces some special federal mandate beyond adding the statutory language to tenants' leases. On the contrary, HUD has made clear that the federal law is not intended to require a termination of the tenancy. In its regulations at 24 CFR 966.4 (1)(5) HUD states:

(5) Eviction for criminal activity- (i) PHA discretion to consider circumstances. In deciding to evict for criminal activity, the PHA shall have discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of the participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity. In appropriate cases, the PHA may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will not reside in the unit. A PHA may require a family member who has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit.

These regulations belie any suggestion that absolute dispossession of the tenant family is somehow federally mandated or even desired, such that any state law procedures must be overridden to accomplish this federal objective. In fact, after the Rucker decision was rendered, there was such an outpouring of public concern, that the Secretary of HUD, Mel Martinez, issued a letter dated April 16, 2002 to every public housing director in the nation reminding them that the statute does not require eviction for violation of lease provision. "I would urge you to be guided by compassion and common sense...consider the



seriousness of the offense and how it might impact on other family members. Eviction should be the last option explored, after all others have been exhausted." On June 6, 2002, HUD Assistant Secretary for Public Housing issued a second letter again reminding public housing directors that eviction is not required or even appropriate in many instances and Housing Authorities should balance a number of factors before deciding whether to proceed with a lease termination. These letters strongly contradict any claim that federal law mandates eviction and thereby preempts state law. In fact, the June 6th letter repeatedly refers to these matters as one of "lease enforcement" or a "violation of a lease clause". (letters attached). In short, HUD contemplates the federal statute to mean exactly what it says - the addition of a lease clause enforceable like any other through each locality's landlord tenant law. Admittedly, the housing authority retains wide discretion as to whether to proceed with the termination of a tenancy. But if it does wish to proceed, it must do so under the appropriate state statute.

#### Case Law on Preemption

The case law regarding the doctrine of preemption offers no support to plaintiff's argument that somehow federal law saves its Complaint. As the court notes in Norris vs. Lumberman's Mutual Gas. Co., 881 F.2d 1144 (1st Cir. 1989), consideration under the Supremacy Clause starts with the basic assumption that

Congress did not intend to displace state law." (Norris at 1147).

In Kargman vs. Sullivan, 552 F.2d 2 (1st Cir. 1977), the First Circuit addressed the issue of preemption of Boston's rent control ordinance with respect to HUD's administration of rents for subsidized housing. In Kargman, HUD claimed that preemption was appropriate. The First Circuit rejected HUD's preemption argument. Citing several Supreme Court decisions it noted, "where coordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes, the case for federal preemption becomes a less persuasive one." It noted that, "the federal legislation creating the network of subsidized housing laws is superimposed upon and consciously interdependent with the substructure of local law relating to housing." As such the court found that in areas of strong local concern, such as local housing law, preemption is disfavored and reconciliation is to be preferred." Kargman at 11. (Decision Attached).

In Rowe vs. Pierce, 622 F.Supp. 1030 (D.D.C. 1985), the court addressed a conflict between HUD regulations regarding disposal of foreclosed properties and local law. The court rejected HUD's interpretation that local law was preempted and noted:

First it must be recognized that landlord-tenant law is an area traditionally left to the states. In such areas, the intent to preempt must be particularly 'clear and manifest.' [cites omitted]... Moreover, the federal housing laws do not constitute a comprehensive federal regulatory scheme. Housing is an area where

Congress intended, and the Secretary permits two complimentary systems of regulations to supplement each other with local law providing the general background law and federal law intervening only where federal involvement is deemed necessary.

In light of the foregoing case law, it is difficult to determine any basis for a claim that 42 USC 1437d(1)(6) does more than what it says on its face - Housing Authorities must utilize leases which include drug related activity as a ground for termination.

#### Conclusion

Defendant urges this court that Plaintiff's Complaint be dismissed as a matter of law on the basis that its claim under §34-18-24(9) cannot be supported by the undisputed facts in this case. If it wishes to terminate defendant's tenancy, it must proceed on the basis of a lease violation under Rhode Island's noncompliance statute, RIGL §34-18-36, Eviction for Noncompliance with Rental Agreement. To date, it has not done so.

Respectfully submitted

Robert M. Sabel #1797  
Counsel for Defendant  
RI Legal Services, Inc.  
50 Washington Square  
Newport, RI 02840  
(401) 846-2264

Certification

I hereby certify that I hand delivered or caused to be mailed the above Reply Memorandum first class mail, postage prepaid, to counsel for the plaintiff, on this 23 day of JULY, 2002.

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STATE OF RHODE ISLAND  
NEWPORT, SC.

SUPERIOR COURT

NEWPORT HOUSING AUTHORITY

VS.

CHRISTINE REYNOLDS

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ND2002 - 0290

APPENDIX TO DEFENDANT'S REPLY MEMORANDUM

- A) Plaintiffs Complaint
- B) Interrogatory and Reply
- C) Federal Statute - 42 USC 1437d(1)
- D) HUD Directive - PIH 97-27
- E) HUD letters
- F) Cases - Norris v Lumberman's Mutual Gas Co.  
Kargman v Sullivan  
Rowe v Price

STATE OF RHODE ISLAND  
DISTRICT COURT

COPY

COMPLAINT FOR EVICTION  
FOR REASON OTHER THAN  
NONPAYMENT OF RENT  
R.I.G.L. 34-18-36  
R.I.G.L. 34-18-38

DIVISION SECOND	ADDRESS OF COURT EISENHOWER SQUARE, NEWPORT, R.I.	CIVIL ACTION NO.
PLAINTIFF/LANDLORD THE HOUSING AUTHORITY OF THE CITY OF NEWPORT, RHODE ISLAND	PLAINTIFF'S ATTORNEY LAW OFFICES OF JOSEPH J. NICHOLSON	
vs.	ADDRESS OF PLAINTIFF'S ATTORNEY OR PLAINTIFF 39 BELLEVUE AVENUE, NEWPORT, R.I. 02840	
DEFENDANT/TENANT CHRISTINE REYNOLDS	DEFENDANT'S ADDRESS 77 EVANS, NEWPORT, R.I.	

1. Plaintiff landlord(s) owns the rental premises listed above, in which the Defendant tenant(s) reside.

2. CHECK ONE:

☐ Defendant breached the tenant's obligations under the rental agreement or section 34-18-24as set forth in the attached copy of the notice of noncompliance which was mailed to the defendant. Defendant has not cured or remedied the breach. (Plaintiff must attach copy of required notice of noncompliance).

☐ Defendant has remained in possession of the rented premises following the period set forth in the attached notice of termination of tenancy, which was mailed to defendant. (Plaintiff must attach copy of required termination notice.)

☒ Defendant breached the tenant's obligations under §34-18-24(8), (9) or (10).

3. Plaintiff seeks judgment for possession of the premises plus judgment in the amount of

\$\_\_\_\_\_ for \_\_\_\_\_

(EXPLAIN BASIS FOR MONEY CLAIM)

Plaintiff seeks cost and fees (if applicable).

DATE FILED WITH CLERK

By

PLAINTIFF/LANDLORD OR ATTORNEY

STATE OF RHODE ISLAND  
NEWPORT, SC.

DISTRICT COURT  
SECOND DIVISION

NEWPORT HOUSING AUTHORITY

VS

CHRISTINE REYNOLDS

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C.A.NO. 01-1149

Defendant's Interrogatories Addressed to Plaintiff

The following Interrogatories are submitted to Plaintiff pursuant to Rule 33 of the District Court Rules of Civil Procedure and must be answered under oath in a timely manner. All questions are deemed continuing up to time of trial.

1. Please state which section of the statute ( (8), (9), or (10)) that you claim defendant has violated. Are you seeking to evict defendant upon any other ground? If yes, please detail the other grounds you intend to pursue in this action.

2. Please state in detail the facts that support your allegation that Defendant is in violation of the section or sections cited above.

3. Has defendant been convicted of a crime related to your allegations?

4. Has defendant been charged with a crime related to your allegations?

5. If the answer to Interrogatories #3 or #4 is yes, please state all the information you have (or provide the documentation) that supports your response.

6. Are there any witnesses that have personal knowledge of the facts that support your allegations? If yes, please provide

STATE OF RHODE ISLAND  
NEWPORT, Sc.

DISTRICT COURT  
SECOND DIVISION

THE HOUSING AUTHORITY OF THE  
CITY OF NEWPORT, RHODE ISLAND

PLAINTIFF

v.

CHRISTINE REYNOLDS

C.A. No. 01-1149

PLAINTIFF'S ANSWERS TO DEFENDANT'S INTERROGATORIES

1. Please state which section of the statute that you claim Defendant has violated, and why you are evicting the Defendant.

Answer: Plaintiff alleges that the Defendant as violated R.I.G.L. § 34-18-24(9).

2. Please state in detail the facts that support your allegation that Defendant is in violation of the section or sections cited above.

3. Has defendant been convicted of a crime related to your allegations?

Answer: Defendant has not been convicted of any crime relating to the allegations contained in the complaint.

4. Has defendant been charged with a crime related to your allegations?

Answer: Defendant has not been charged with any crime relating to the allegations contained in the complaint.

5. If the answer to Interrogatories #3 or #4 is yes, please state all the information you have (or provide the documentation) that supports your response.

Answer: No response necessary.

6. Are there any witnesses that have personal knowledge of the facts that support your allegations? If yes, please provide the names and addresses of each such person that you may or intend to call as a witness in support of your allegations.



certification submitted by the agency or corporation relating to the performance of that agency or corporation.

(B) The Secretary may withhold from assistance otherwise payable to the agency or corporation under section 1437g of this title, amounts sufficient to pay for the reasonable costs of any review under this paragraph.

(7) The Secretary shall apply the provisions of this subsection to resident management corporations in the same manner as applied to public housing agencies.

(k) Administrative grievance procedure regulations: grounds of adverse action, hearing; examination of documents, representation, evidence, decision; judicial hearing; eviction and termination procedures

The Secretary shall by regulation require each public housing agency receiving assistance under this chapter to establish and implement an administrative grievance procedure under which tenants will—

[See main volume for text of (1) to (6)]

For any grievance concerning an eviction or termination of tenancy that involves any activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency or any violent or drug-related criminal activity on or off such premises, or any activity resulting in a felony conviction, the agency may (A) establish an expedited grievance procedure as the Secretary shall provide by rule under section 553 of Title 5, or (B) exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process (which the Secretary shall establish by rule under section 553 of Title 5). Such elements of due process shall not include a requirement that the tenant be provided an opportunity to examine relevant documents within the possession of the public housing agency. The agency shall provide to the tenant a reasonable opportunity, prior to hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination.

(l) Leases; terms and conditions; maintenance; termination

Each public housing agency shall utilize leases which—

(1) have a term of 12 months and shall be automatically renewed for all purposes except for noncompliance with the requirements under section 1437j(c) of this title (relating to community service requirements); except that nothing in this subchapter [42 U.S.C.A. § 1437 et seq.] shall prevent a resident from seeking timely redress in court for failure to renew based on such noncompliance;

(2) do not contain unreasonable terms and conditions;

(3) obligate the public housing agency to maintain the project in a decent, safe, and sanitary condition;

(4) require the public housing agency to give adequate written notice of termination of the lease which shall not be less than—

(A) a reasonable period of time, but not to exceed 30 days—

(i) if the health or safety of other tenants, public housing agency employees, or persons residing in the immediate vicinity of the premises is threatened; or

(ii) in the event of any drug-related or violent criminal activity or any felony conviction;

(B) 14 days in the case of nonpayment of rent; and

(C) 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply;

(5) require that the public housing agency may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause;

(6) provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy;<sup>5</sup>

(7)<sup>6</sup> specify that notwithstanding any State law, prior to any hearing regulations directly related to

(7)<sup>6</sup> provide that any to ineligibility of illegal false or misleading information termination of tenancy shall be cause for termination

(9) provide that it shall be cause for termination of public housing tenancy if

(A) is fleeing to avoid prosecution, under the law attempt to commit a crime which the individual is charged with high misdemeanor

(2)<sup>7</sup> is violating State law.

For purposes of paragraph (1) illegal manufacture, sale, distribution, or use, of a controlled substance

[See

(c) Public housing assistance

In providing housing in the project, coordinate with any local public housing agency to make available dwelling units

[See

(p) Repealed. Pub.L. 105-33

(q) Availability of records

(1) In general

(A) Provision of information

Notwithstanding paragraph (C), the National Law Enforcement Coordinating Committee shall, upon request, provide information regarding public housing agency applicants for, or applicants screening

(B) Requests by owner

A public housing agency shall, upon request, provide information regarding project-based assistance located within the project. Upon such a request, the public housing agency shall, upon request, provide information available to the owner regarding the project, as supplied by the owner.

(C) Exception

A law enforcement agency shall, upon request, provide information under this section only to the extent that it is under the law of the State

## HEALTH AND WELFARE

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## PUBLIC HEALTH AND WELFARE

42 § 1437d

(7) <sup>6</sup> specify that with respect to any notice of eviction or termination, notwith-  
standing any State law, a public housing tenant shall be informed of the opportuni-  
ty, prior to any hearing or trial, to examine any relevant documents, records, or  
regulations directly related to the eviction or termination;

(7) <sup>6</sup> provide that any occupancy in violation of section 13661 of this title (relating  
to ineligibility of illegal drug users and alcohol abusers) or the furnishing of any  
false or misleading information pursuant to section 13662 of this title (relating to  
termination of tenancy and assistance for illegal drug users and alcohol abusers)  
shall be cause for termination of tenancy;

(9) provide that it shall be cause for immediate termination of the tenancy of a  
public housing tenant if such tenant—

(A) is fleeing to avoid prosecution, or custody or confinement after convic-  
tion, 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 which, in the case of the State of New Jersey, is a  
high misdemeanor under the laws of such State; or

(2) <sup>7</sup> is violating a condition of probation or parole imposed under Federal or  
State law.

For purposes of paragraph (5), the term "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).

[See main volume for text of (m) and (n)]

(e) Public housing assistance for foster care children

In providing housing in low-income housing projects, each public housing agency may  
coordinate with any local public agencies involved in providing for the welfare of children  
to make available dwelling units to—

[See main volume for text of (1) and (2)]

(p) Repealed. Pub.L. 105-276, Title V, § 519(b), Oct. 21, 1998, 112 Stat. 2561

(q) Availability of records

(1) In general

(A) Provision of information

Notwithstanding any other provision of law, except as provided in subpara-  
graph (C), the National Crime Information Center, police departments, and  
other law enforcement agencies shall, upon request, provide information to  
public housing agencies regarding the criminal conviction records of adult  
applicants for, or tenants of, covered housing assistance for purposes of  
applicant screening, lease enforcement, and eviction.

(B) Requests by owners of project-based section 8 housing

A public housing agency may make a request under subparagraph (A) for  
information regarding applicants for, or tenants of, housing that is provided  
project-based assistance under section 1437f of this title only if the housing is  
located within the jurisdiction of the agency and the owner of such housing has  
requested that the agency obtain such information on behalf of the owner.  
Upon such a request by the owner, the agency shall make a request under  
subparagraph (A) for the information. The agency may not make such  
information available to the owner but shall perform determinations for the  
owner regarding screening, lease enforcement, and eviction based on criteria  
supplied by the owner.

(C) Exception

A law enforcement agency described in subparagraph (A) shall provide  
information under this paragraph relating to any criminal conviction of a  
juvenile only to the extent that the release of such information is authorized  
under the law of the applicable State, tribe, or locality.

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## *Extension of Notice PIH 96-27 (HA), Occupancy Provisions of the Housing Opportunity Program Extension Act of 1996*

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*Directive Number: 97-27*

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U.S. Department of Housing and Urban Development  
PUBLIC AND INDIAN HOUSING

Special Attention of:

Notice PIH 97-27 (HA)

Issued: May 20, 1997

Expires: May 29, 1998

Secretary's Representative;  
State/Area Coordinators, Directors,  
Public Housing Divisions, All Public  
Housing and Section 8 Housing Agencies;  
Resident Management Corporations; All  
FHEO Directors, Fair Housing Enforcement  
Centers; All FHEO Directors, Program  
Operations and Compliance Centers

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Subject: Extension of Notice PIH 96-27 (HA), Occupancy  
Provisions of the Housing Opportunity Program  
Extension Act of 1996

This Notice extends Notice 96-27 (HA), same subject, which  
expires May 31, 1997, for another year until May 29, 1998.

\_\_\_\_\_/s/\_\_\_\_\_  
Kevin Emanuel Marchman, Acting  
Assistant Secretary Office of  
Public and Indian Housing

U.S. Department of Housing and Urban Development  
OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention of:

Notice PIH 96-27 (HA)

Secretary's Representatives;  
State/Area Coordinators; Directors,  
Public Housing Divisions; All Public  
Housing and Section 8 Housing  
Agencies; Resident Management  
Corporations; All FHEO Directors,  
Fair Housing Enforcement Centers;  
All FHEO Directors, Program  
Operations and Compliance Centers

Issued: May 13, 1996

Expires: May 31, 1997

Cross References:

safety, or right to peaceful enjoyment of the premises by other residents.

HAS may waive policies prohibiting admission in these circumstances if the person demonstrates to the HA's satisfaction that the person is no longer engaging in illegal use of a controlled substance or abuse of alcohol and:

- has successfully completed a supervised drug or alcohol rehabilitation program;
- has otherwise been rehabilitated successfully; or
- is participating in a supervised drug or alcohol rehabilitation program.

C) Terminating Assistance to Illegal Drug Users and Alcohol Abusers

HAS must establish standards (i.e., policies and procedures) that allow for the termination of the tenancy of any person who the HA determines is illegally using a controlled substance.

HAS may terminate the tenancy of any person if the HA determines that the person's abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

D) Lease Provision

Public housing lease forms must be amended promptly to provide that the following activities by any resident are grounds for termination of tenancy:

- drug-related criminal activity on or off the premises, not just on or near the premises; and
- alcohol abuse that the HA determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

In amending the lease form, HAS must provide tenants with notice and opportunity to comment, according to the provisions in 24 CFR 966.3. The modification may be either in the body of the lease or in a lease addendum.

6

Tenants must be required to execute the new lease/addendum no later than their next reexamination.

E) Grievance Procedures

In states where HUD has determined that a court provides the elements of due process, HAS may bypass the grievance procedures in cases involving termination of tenancy for any activity, not just a criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or employees of the HA; or any drug-related criminal activity on or off such premises, not just on or near such premises. Otherwise, grievance procedures would remain the same as they have been, per 24 CFR 966.



U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410-0001

THE SECRETARY

April 16, 2002

Dear Public Housing Directors:

On March 26, 2002, the highest court in the land ruled on a case addressing the use of illegal drugs in public housing.

Specifically, the Supreme Court of the United States upheld the household responsibility clause, which holds tenants responsible when a member of the household or a guest engages in drug-related activity. This clause is clearly explained in the lease agreements of public housing tenants and is an enforceable contract that tenants enter into voluntarily.

The enforcement of this clause is left to the discretion of each public housing agency; however, I would like to urge you, as public housing administrators, to be guided by compassion and common sense in responding to cases involving the use of illegal drugs. Consider the seriousness of the offense and how it might impact other family members.

Eviction should be the last option explored, after all others have been exhausted. As Chief Justice William Rehnquist noted in the Court's opinion, "The statute does not require the eviction of any tenant who violated the lease provision. Instead, it entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from rampant drug-related or violent crime."

By addressing activities that threaten the health, safety, or right to peaceful enjoyment of the premises by other tenants, the household responsibility clause provides public housing authorities a strong tool to use in dealing with the problem of illegal drugs. But as a tool, it should be applied responsibly. Applying it rigidly could generate more harm than good.

We look forward to working with you on a firm yet compassionate way of applying this new tool to benefit the residents of public housing.

Sincerely,

Mel Martinez



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-5000

OFFICE OF THE ASSISTANT SECRETARY  
FOR PUBLIC AND INDIAN HOUSING

June 6, 2002

Dear Public Housing Directors:

In light of several inquiries that HUD has received recently, the Secretary has asked me to share with you our views regarding the March 26, 2002, decision of the Supreme Court in *HUD v. Rucker*.

In *Rucker*, the Court unanimously affirmed the right of public housing authorities, under a statutorily-required lease clause, to evict entire public housing households whenever any member of the household, or any household guest, engages in drug-related or certain other criminal activity. The *Rucker* decision upholds HUD regulations that, since 1991, have made it clear both that the lease provision gives PHAs such authority and that PHAs are not required to evict an entire household - or, for that matter, anyone - every time a violation of the lease clause occurs.

Therefore, after *Rucker*, PHAs remain free, as they deem appropriate, to consider a wide range of factors in deciding whether, and whom, to evict as a consequence of such a lease violation. Those factors include, among many other things, the seriousness of the violation, the effect that eviction of the entire household would have on household members not involved in the criminal activity, and the willingness of the head of household to remove the wrongdoing household member from the lease as a condition for continued occupancy. The Secretary and I urge you to consider such factors and to balance them against the competing policy interests that support the eviction of the entire household.

Like Congress and the Supreme Court, HUD recognizes that PHAs are in the best position to determine what lease enforcement policy will most appropriately serve the statutory interest of protecting the welfare of the entire tenant population. I know that you will continue to act in a manner that protects that general welfare, while giving consideration - when you deem it appropriate - to the interests of individuals who share a household with the wrongdoer, but were otherwise unconnected with the wrongdoing.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael M. Liu", is written over a horizontal line.

Michael M. Liu  
Assistant Secretary