

THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

APR 4 1990

Hampden, ss

Hampden Division

No. 89-LE-3492-S

Housing Court Department

MARVIN CARR,)
Plaintiff)

v.)

FRIENDS OF THE HOMELESS, INC.,)
and MARGARET CAHILLANE,)
Defendants)

RULINGS AND ORDER ON
PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

1. The plaintiff, Marvin Carr, challenges the action of the defendants in removing him without written notice or court process from the subsidized single room occupancy unit in which he resided as a participant in a "residential services program." Mr. Carr alleges that he was a tenant of the defendants and, as such, could only be removed from the premises by a valid court order. The defendants respond that Mr. Carr was a licensee of the premises, that they orally revoked his license, and that they were thereafter entitled to use self help to remove him. After hearing on January 30, 1990, and upon consideration of the memoranda, exhibits, and other documents subsequently filed by the parties, the following rulings and order are to enter on plaintiff's motion for summary judgment:

FACTUAL BACKGROUND

2. There is no genuine issue as to the material facts underlying this motion. The premises involved include a newly

constructed four-story building known as "Worthington House," owned by the Worthington House Limited Partnership and located at 769 Worthington Street, Springfield. Through two lease agreements, the Worthington House Limited Partnership leases the property to the non-profit Friends of the Homeless, Inc. ("Friends"). One lease agreement covers the first floor of the building and a separate structure at the rear of the property. Friends in turn sub-leases the first floor to the Springfield Redevelopment Authority (SRA) for the operation of an "open-bed" emergency shelter, and the rear building to the Open Pantry of Springfield, Inc., which provides food and services to homeless people.

3. The second agreement between the Worthington House Limited Partnership and Friends, a "residential services lease," covers the second, third, and fourth floors of Worthington House. These floors contain fifty-seven single room occupancy (SRO) rental units, with shared bath and kitchen facilities and common lounge space on each floor. The defendant Margaret Cahillane is the director of this residential services program. The plaintiff, Marvin Carr, occupies one of these SRO units.

4. The Springfield Housing Authority ("SHA") is also a signatory to the above residential services lease, under which it provides financial assistance to the SRO units under regulations of the Department of Community Affairs, 760 C.M.R. 38.00 et seq. The statutory authorization for these

regulations includes G.L. c. 121B, § 43, the enabling statute for the state rental assistance program. The terms and requirements for assistance payments by the SHA to Friends are contained in an "Agreement for Financial Assistance Under the Residential Services Program."

5. Friends contracts with various public and private agencies to provide service programs to residents. The purpose of these arrangements, as set forth in the "Project Overview" of Worthington House, is to provide "high quality shelter and human services to homeless families and individuals in the greater Springfield area."

6. Worthington House is a licensed lodging house in the City of Springfield. It is not a licensed health care facility of any description.

7. On February 1, 1989, Friends and Mr. Carr executed an "Individual Service Plan Agreement." Under this Agreement, Mr. Carr, as a "Program Participant," was "assigned" to, and took occupancy of, SRO Unit 203. The Agreement was for a fixed one-year term. Under the terms of the Agreement, and in fact, Mr. Carr had the exclusive possession of his room. He had a key, which he dropped off at the front desk when he left the premises and reclaimed when he returned. No one was permitted to enter his room without his permission. He was responsible for the care and maintenance of his room (no cleaning or housekeeping services provided by the defendants). He paid a percentage of his income as a "Monthly Occupancy Charge," a

portion of the total "Monthly rent" which was subsidized by the SHA.

8. Although the Agreement requires Mr. Carr to participate in any service program offered by Friends or its affiliates, prior to Mr. Carr's removal from the premises no individual service plan had been formulated for him or "offered" to him within the meaning of the Agreement. Nevertheless, while residing at Worthington House, Mr. Carr enrolled in a vocational training program offered by the Massachusetts Career Development Institute, a private agency.

9. A conflict between Mr. Carr and his training supervisor at MCDI, however, resulted in Carr's termination from the training program on March 13, 1989. On the same day, Mr. Carr returned to Worthington House. He was advised by Ms. Cahillane that she wished to meet with him. The meeting was held the next morning. Ms. Cahillane was not present; the Program Manager of Worthington House, Lori Rodriguez, advised Mr. Carr that Ms. Cahillane had decided that he, Carr, had to leave Worthington House immediately. Mr. Carr asked for the reason for this decision and was told, in substance, that Ms. Cahillane did not believe that he was ready for the SRO program. When Mr. Carr asked what that meant, Ms. Rodriguez provided no substantive answer.

10. After consulting with his welfare caseworker, Mr. Carr asked Ms. Cahillane for a written statement of the reasons for his ouster. In response, Ms. Cahillane had Ms. Rodriguez

prepare a handwritten note addressed "to whom it may concern," stating that Mr. Carr had authorized Ms. Rodriguez to speak with others about the reasons for Carr's "dismissal from the Worthington House S.R.O program." Mr. Carr again requested a statement of the reasons for his dismissal, which both Ms. Rodriguez and Ms. Cahillane declined to provide.

11. Mr. Carr then requested permission to go to his room to retrieve his belongings. Ms. Cahillane refused permission. She instead had Worthington House employees clean out Mr. Carr's room and place his belongings on the sidewalk.

12. On March 17, 1989, the court entered a temporary restraining order restoring Mr. Carr to possession of his room. This order was continued as a preliminary injunction on April 18, 1989.

RULINGS

13. Mr. Carr makes two related arguments in support of his position that the defendants acted unlawfully in removing him from his unit. First, he claims that the defendants' conduct violated the Massachusetts "anti-lockout" statutes, which include G.L. c. 184, § 18, c. 186, § 14 and 15F, and c. 266, § 120. Second, he claims that as a tenant of a subsidized unit, he is entitled to the protection of the statutes and regulations governing such units. These arguments depend upon an analysis of Mr. Carr's status as a resident of the premises.

14. The defendants contend that Mr. Carr had a mere license to use the premises, terminable at defendants' orally

stated will. The agreement the parties aside, however, this position is foreclosed by statute. Pursuant to G.L. c. 186, § 17, "[o]ccupancy of a dwelling unit within a [licensed] rooming house or lodging house... for more than thirty consecutive days and less than three consecutive months... may only be terminated by seven days' notice in writing to the occupant by the operator of such dwelling unit." As noted above, Worthington House is a licensed lodging house. Mr. Carr had resided therein for more than thirty consecutive days at the time of his removal. By statute, he was entitled to written notice before his occupancy could be terminated.

15. G.L. c. 186, § 17 aside, the agreement of the parties created a tenancy rather than a license. Even the older reported cases limited the circumstances in which an occupant of a lodging house or similar premises could be classified as a licensee. When a lodger rented a room to which the owner had access and for the care of which the owner was responsible, the occupant was defined as a licensee because he did not have exclusive possession. Peakes v. Cobb, 197 Mass. 554 (1908); White v. Maynard, 111 Mass. 250 (1872). When, however, the occupant had exclusive possession of the room and was responsible for its care, the occupant was viewed as having a tenancy and was thus entitled to court process before eviction. Porter v. Merrill, 124 Mass. 534 (1878); Swain v. Milzner, 74 Mass. (8 Gray) 182 (1857). See also Hall, Massachusetts Law of Landlord and Tenant (4th Ed. 1949), § 3. The agreement between

the parties, summarized above, puts this case in the tenancy rather than in the license category. That agreement and the arrangement in fact between the parties bears no resemblance to the cases in which the Supreme Judicial Court has found a licensor/licensee relationship. Stratis v. McLellan Stores Co., 311 Mass. 525, 42 N.E.2d 282 (1942); Baseball Publishing Co. v. Bruton, 302 Mass. 54 (1938); Roberts v. Lynn Ice Co., 187 Mass. 402 (1905); Hall, supra, § 4.

16. This conclusion is consistent with prior decisions of the Housing Court Department. E.g., Baldassare v. Erich Lindemann Center, Boston Housing Court No. 12466 (Daher, C.J., 1981) (shared living arrangement in licensed health care facility, which was not a licensed lodging house; self-help eviction not restrained); Yonaitis v. Donham, Boston Housing Court No. 16411 (Daher, C.J., 1984) (where occupant had separate unit, court process required for dispossession despite the human services purpose of the program involved). Likewise, the present case is readily distinguishable from Ahmad v. Wellmet Project, Inc., Appeals Court No. 87-0090-CV (Kass, J., 1987), which involved a heavily staffed licensed mental health facility which Justice Kass found more analogous to an "extended care health facility than to a lodging house."

17. Together, these cases make it clear that even where the primary purpose of a program is services rather than housing, a tenancy may be created by the agreement of the parties relative to the housing portion of the program. Where

the primary purpose of the program, as in the case at bar, is to provide stable housing, albeit "transitional housing" with associated services, the case for finding a tenancy is that much stronger.

18. As to the category of tenancy created between the parties, although the operative document is entitled "Individual Service Plan Agreement," one must strain to read it as anything other than a lease. It is for a fixed one-year term, requires specified rental payments, contains (in ¶ 5) rights and responsibilities that are typically found in residential leases, gives the resident the right to notice and comment regarding rent increases, and provides for "termination" and "eviction." "The nature and substance of a written contract is to be determined by its contents and not by its title," Da Rocha v. Macomber, 330 Mass. 611, 116 N.E.2d 131 (1953), and the agreement at issue is in substance a lease. Analyzed in common law terms, then, the parties have created a tenancy for years.

19. From the above it follows that the self-help eviction used by the defendants ran afoul of G.L. c. 184, § 18, G.L. c. 186, §§ 14 and 15F, and c. 266, § 120. The plaintiff is entitled to the remedies provided by those statutes.

20. The subject unit is subsidized under the program commonly referred to as the "Chapter 707 Rental Assistance Program." St.1966, c. 707, § 2, originally codified as G.L. c. 121, §§ 26KKK et seq., and now as G.L. c. 121B, §§ 42 et seq.

See 760 C.M.R. 38.02, definition of "Rental Assistance." Tenants who reside in units subsidized under programs authorized by this statute are "tenants of a housing authority" within the meaning of G.L. c. 121B, § 32, and, except in emergency cases, their tenancies may be terminated only for good cause determined through an appropriate administrative process. See Andrukonis v. Messier, Hampden Housing Court No. 88-SP-7504-S (May, 1989). Paragraph No. 6 of the Agreement between the parties to this case reflects this requirement, providing that the Agreement may only be terminated for good cause. Although the programs involved in Andrukonis and in the present case are somewhat different in design, they are constructed upon the same statutory foundation. In sum, the conclusion compelled by the governing statutes and regulations, the program documents, the funding scheme, the agreement between the parties, and the living arrangement established under that agreement is that Mr. Carr is a "tenant by regulation." Spence v. O'Brien, 15 Mass.App.Ct. 489, 446 N.E.2d 1070 (1983). Under the current state of the law, it is not legally feasible for the landlord, however well motivated, to receive payments under the state rental assistance statutes without observing the statutory conditions that accompany those funds.

21. In making these rulings, the court is acutely aware of the practical situation with which the parties must deal. The defendants have undertaken to provide stable housing and

other quality services for persons who often have multiple needs. The courts, which often deal with the same people and problems, understand well what a difficult and demanding task this is. One of the central obstacles in this work is that people whom the program is designed to help sometimes refuse, or are unable, to cooperate with a program created for their benefit. In some cases, participants' behavior can be disruptive or even threatening to others.

22. The law must, and does, provide effective remedies where occupants' behavior puts others' health and safety at risk. Both the public housing and the lodging house statutes facilitate the eviction of dangerous or disruptive tenants. G.L. c. 121B, § 32; G.L. c. 186, § 17. Cases involving tenancies terminated under the emergency provisions of these statutes can move swiftly to summary process. Where even this "fast track" is too slow to avert a danger, courts of equity will enjoin disruptive or dangerous conduct and will use their contempt powers, including the power to remove persons from the premises, where necessary to protect the health and safety of other residents or of the public. Residents who have expressed their concerns to the court may be reassured that insofar as it is within their power the courts will not permit threatening or disruptive behavior, or alcohol or drug violations by individual residents, to undermine the program for others.

23. Like most public housing eviction cases, however, the case at bar does not fall into the emergency category.

Whatever behavior Mr. Carr is responsible for, he is not alleged to have created a health or safety risk to others, nor is he charged with violations of Worthington House alcohol or drug rules. Mr. Carr has a point in arguing that providing residents with basic due process protections before they are ousted from their homes and dismissed from a government-funded program, in addition to being a legal requirement, would seem to be an important way of teaching by example that the residents of Worthington House deserve the self-respect of which they too often have been deprived. In making these observations, no opinion is attempted as to whether the conduct with which Mr. Carr is charged would justify his termination from the program or his eviction from Worthington House were his case to be decided on the substantive merits.

24. The court has previously stated in the context of this case that the statutory requirements governing termination and eviction that it must enforce are designed for traditional rental assistance housing rather than for more recently created residential services programs. In the view of the court, the Executive Office of Communities and Development and other participating agencies have done an outstanding job of designing residential services programs that are so vital to addressing critical community needs. Given these newly designed programs, which postdate enactment of the rental assistance statutes, the legislature may deem it advisable to design procedures, consistent with due process requirements,

that directly address the needs of this new kind of residential program. The court is aware of at least one bill introduced on this question, S. 535, "An act clarifying removal procedures for occupants of certain residential programs." While this is a legislative decision to make, the court would encourage the parties to pursue a legislative compromise that would balance the sometimes competing interests of program management and individual resident rights. Unless and until the law is changed, it is of course the responsibility of the courts to enforce the law as it exists.

ORDER

25. For the above reasons, the following rulings are to enter:

26. Plaintiff's motion for summary judgment is allowed.

27. The court rules and declares that the plaintiff's occupancy may only be terminated according to procedures pursuant to G.L. c. 121B, § 32. These include advance written notice of the grounds for termination, an appropriate administrative determination of whether termination is justified (except where not required by statute), and a court hearing.

28. A ruling is to enter for the plaintiff for damages in the amount of \$1,206.00 pursuant to G.L. c. 186, § 14.

29. Within 20 days of the date below, the plaintiff may file and serve his claim for statutory costs and attorney's fees along with supporting affidavits. Within 20 days

thereafter the defendants may file and serve an opposition thereto. Unless the court orders a hearing, it will make a ruling on attorney's fees and costs on the papers, add the amount thereof to the above damages, and judgment will then enter in the aggregate amount. If the plaintiff's request for fees and costs is not opposed, or if the parties file a stipulation as to fees and costs, the Clerk's office is to calculate and enter the judgment without further Court action.

So entered this 3rd day of April, 1990.

William H. Abrashkin
William H. Abrashkin
First Justice

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