

8/19/96

51,581
E

IN THE FIFTH JUDICIAL DISTRICT COURT FOR
WASHINGTON COUNTY, STATE OF UTAH

ST. GEORGE VILLA ASSOCIATES,
dba ST. GEORGE VILLA APARTMENTS,
Plaintiff,

vs.

SHEILA BARNHURST,
Defendant.

MEMORANDUM DECISION

Civil No. 960500683 EV
Judge G. Rand Beacham

DEC 11 1995

NATIONAL ASSOCIATION OF
FOR LEGAL SERVICES, INC.

This matter came before the Court for trial on July 23, 1996. Plaintiff was represented at trial by Jeffery J. McKenna. Defendant was present and represented by Bruce Plenk. Thirteen witnesses were called to testify and the Court received thirteen exhibits into evidence. After argument on legal issues, the Court ordered that memoranda on two legal issues be filed by August 12. Having received such memoranda, the Court now makes this Memorandum Decision.

Without intending to set forth a complete set of findings of fact, the Court notes that the following facts have been established by the evidence:

1. Plaintiff owns and operates a federally-subsidized apartment project known as St. George Villa Apartments.
2. Defendant is a widow who has rented Apartment 20 in the project for about nine years; defendant and her late husband rented the apartment until his death in 1995. Defendant

pays \$95 per month toward her rent and the balance is paid by the United States Department of Housing and Urban Development.

3. Defendant's current lease for the apartment was admitted as Exhibit 1. It is the latest of a series of periodic renewals of defendant's original lease, and was signed by defendant and her late husband a few months before his death. The lease incorporates "House Rules," although no such rules are attached to the latest lease in spite of lease provisions to that effect. A copy of a set of House Rules was admitted into evidence as Exhibit 1-A; that exhibit also included a copy of a one-page "Lease Addendum for Drug-Free Housing" apparently signed by defendant and her husband in 1990.

4. Defendant is mentally ill, and has a dual diagnosis of chronic bipolar disorder and major depression, severe and recurring, with psychotic tendencies. Defendant regularly receives group therapy and counseling at or through the Southwest Center. Several medications have been prescribed for defendant, and all are necessary to her health. Defendant requires some supervision of her access to those medications, in order to prevent her from misusing them. Defendant is severely disabled by her illness, and has an impaired ability to perceive problems and potential corrections for the problems.

5. Plaintiff's managers and other tenants of the project testified about incidents which they attribute to defendant's acts and omissions as a tenant. Those incidents can be divided into two categories:

(a) Most of the incidents are those which did not directly involve defendant, but instead involved persons (referred to at trial as defendant's "guests") who were thought to

be going to or coming from defendant's apartment. Such incidents include (i) a man who spoke obscenities to a tenant in a laundry room, (ii) persons who left beer bottles in shrubs or elsewhere in the common areas of the project, (iii) persons using vulgar language in the parking lot and common areas, (iv) a man who visited defendant with his wife and, after leaving defendant's apartment, assaulted his wife and caused her to run to another apartment for help, (v) a man on a common walkway who shook his fist at and made a threat to a tenant, (vi) poorly dressed persons who walked through the playground, and (vii) an incident in which defendant's son assaulted a tenant with his car. Defendant was not present for any of these incidents, and there was no evidence that she anticipated, was aware of, participated in, or approved of any of these incidents. Furthermore, there was little, if any, evidence that any of these persons had even been invited to the project by defendant; defendant testified with respect to several of these incidents that "they just came over to visit me."

(b) Other incidents or complaints which did involve defendant, or during which defendant was present, include:

(i) Defendant's alleged failure to clean the carpet, which has not been replaced in the nine years of defendant's occupancy; defendant testified that she had in fact cleaned the carpet.

(ii) Defendant's allowing family or friends to stay with her in the apartment more than 24 hours without management approval, although much of the testimony on this point was conclusory and based on speculation, and only plaintiff's former manager had personal knowledge of any situation in which defendant had an unauthorized guest.

Furthermore, plaintiff's former manager admitted that defendant "occasionally" had obtained permission to have guests, and defendant testified that she did obtain approval for her daughter and son-in-law to stay with her after her husband died.

(iii) One next-door tenant reported smelling marijuana smoke from defendant's apartment, but the foundation for that witness's opinion about the source of any odor was not persuasive and defendant testified that she had never had marijuana at the apartment.

(iv) Several witnesses complained of loud talking and party noises coming from defendant's apartment and disturbing other tenants.

(v) One next-door tenant testified that defendant had threatened to throw water on the tenant's barbecue while it was being used.

6. Several of the witnesses, including those called to testify against defendant, recognized defendant's limited ability to control the behavior of her "guests." Plaintiff's former manager testified that defendant "wasn't strong enough" to control her guests' use of tobacco or alcohol during their visits to defendant's apartment. Plaintiff's former manager also acknowledged that the problems with defendant's guests worsened after her husband's death; it is a fair inference that defendant's husband had been able to help defendant deal more appropriately with misconduct by their visitors. Another tenant expressed the opinion that defendant's guests were able to take advantage of her.

7. More significant was the testimony of defendant's psychiatric nurse, Linda Taylor, who has dealt with defendant on a professional basis for over six years. Ms. Taylor gave the opinion that, due to her mental illnesses, defendant lacks the ability to judge or perceive some

problems or to determine potential solution; in other words, defendant is not fully able to recognize when some persons should be excluded from her apartment and she lacks the judgment to determine what should be done to exclude them. Ms. Taylor gave the opinion that defendant is severely disabled by her illness and has poor judgment about dealing with "good guys" versus "bad guys."

8. Plaintiff has given defendant several written notices and warnings about the incidents and complaints. The earliest document introduced into evidence is a January 29, 1993 "LAST WARNING" (Exhibit 7) to which manager Deborah Moon obtained the signatures of defendant and her husband, and which recites that "this is the last warning that they will get concerning unauthorized people in their apt. [sic]. . . . If they break this agreement the [sic] arre[sic] fully aware that they will be evicted. No more warnings will be issued." Plaintiff did not attempt to enforce this "agreement", however. Plaintiff proceeded to create other written "Lease Violation Notice" reports and warnings; those introduced into evidence began about two weeks before defendant's husband died. On February 28, 1996, plaintiff had defendant served with a four-page "NOTICE OF LEASE TERMINATION" (Exhibit 5) which was to terminate defendant's lease April 1, 1996, and includes a list of "GROUNDS FOR TERMINATION." Thereafter, plaintiff's counsel gave defendant a two-page "Notice of Lease Agreement Violation and Termination of Tenancy For 'OTHER GOOD CAUSE'" (Exhibit 6), which summarizes "the violations constituting 'good cause'" in a list not materially different from the earlier list. On June 7, 1996, plaintiff filed this action for defendant's eviction.

ANALYSIS

The Court must first determine what constitutes the agreement between the parties. The Lease itself (Exhibit 1) is easily identified. While the Lease does not specify that it is a continuation or renewal of prior leases, other evidence demonstrates that to have been the case. The Lease incorporates "House Rules" and the Court will consider Exhibit 1-A, to which defendant did not object, to be the applicable House Rules. The 1990 Lease Addendum included in Exhibit 1-A was not adequately identified as being incorporated in the 1995 Lease and will not be considered by the Court.

Defendant would have the Court limit plaintiff's complaints of lease violations to those occurring after the execution of the most recent lease. That argument disingenuously suggests that a tenant's slate is wiped clean every time the landlord chooses to exercise optimism about a "problem tenant" by renewing the lease instead of booting the tenant out. Such a rule of law would be adverse to the interests of landlord and tenant alike. The Court considers all complaints of lease violations occurring at any time during defendant's occupancy of the apartment to be relevant, though that relevance diminishes with time and intervening circumstances.

The next issue is whether plaintiff has established lease violations by defendant. Plaintiff relies heavily upon paragraph 15 of the House Rules, which provides

All guest/visitors [sic] staying longer than 24 hrs. [sic] are to be approved by the manager. Tenant must obtain a permission slip from the manager. Tenants are responsible [sic] for the actions of their guests.

Plaintiff's reliance upon this House Rule is excessive. Plaintiff would hold defendant responsible

for the actions of persons who arrived at defendant's apartment unannounced and uninvited. Plaintiff would further hold defendant responsible for those persons' actions at any location within the project, regardless of whether defendant was aware of those actions, or even aware of the presence of those persons at the project. Plaintiff's argument, in essence, is that a tenant is an insurer or guarantor of the conduct of any person who, in passing through the project, visits a tenant. Taken to a logical extreme, plaintiff would hold defendant responsible for the actions of a US Postal Service, UPS or Federal Express employee who delivered something to defendant's apartment. Plaintiff would have the Court interpret this House Rule as a valid imposition of strict vicarious liability upon a tenant, regardless of the circumstances. Plaintiff's interpretation of this House Rule is unreasonable and unrealistic. A more reasonable interpretation, which is adopted by the Court, is that the House Rule makes a tenant responsible for the actions of persons who visit the project at the tenant's invitation, to the extent that the tenant is aware of, and able to control, those persons' actions.

With this concept in mind, it is clear that many of plaintiff's complaints about defendant's "guests" are simply not sufficiently connected to defendant. Furthermore, the carpet-cleaning and marijuana complaints are not established to any acceptable degree of proof, and the barbecue incident is too insubstantial to serve as a basis for eviction. The incidents which are sufficiently connected to defendant and sufficiently material to be considered are (i) those involving persons staying with defendant without management approval (some such incidents apparently occurred, although the evidence is not particularly specific) and (ii) those involving conversation or party noises from defendant's apartment.

Plaintiff's first termination notice (Exhibit 5) is not relevant because it was not relied upon as a basis for plaintiff's complaint in this action. Plaintiff's complaint is based on the second termination notice (Exhibit 6) which, though overbroad, includes the two relevant and material complaints about defendant's visitors among those which the notice asserts as "other good cause" to terminate defendant's tenancy under paragraphs 23 (b)(4) and (c) of the Lease. Plaintiff's argument, however, is based upon a different portion of the Lease, i.e., that the conduct of defendant's visitors involves "substantial violations of the lease" or "repeated minor violations of the lease" so as to constitute "material noncompliance" under paragraph 23 (b) (1). The relevant fact alleged and argued by plaintiff are clearly within the "material violations" language of the Lease, so they would not constitute "other good cause" to terminate the Lease. Consequently, plaintiff's termination notice is technically defective, and this alone may be sufficient basis for the Court to dismiss plaintiff's complaint.

In addition, however, the Court is persuaded that plaintiff has failed to make a reasonable accommodation for defendant's disability. Plaintiff argues simply that defendant has rejected offers of assistance, so that further accommodation is not necessary. This argument ignores the actual condition by which defendant is disabled. Telling defendant, a mentally disabled person, that she can receive help with her daily living, is much like telling a blind person that an event starts at sundown or telling a person who uses a wheelchair that the stairs are available. The information is accurate, but useless to the disabled person. Furthermore, House Rules which purport to require a mentally disabled person to control persons whom her disability prevents her from controlling are no more realistic or reasonable than rules which would require a person

in a wheelchair to use the stairs.

Defendant clearly lacks the capacity to evaluate what help she needs; the complaints about defendant are about her inaction in circumstances in which she lacks the ability to take the necessary action. The relevant complaints about defendant's visitors are manifestations of defendant's disability. Defendant needs a reasonable accommodation in the form of assistance in excluding and/or controlling the persons who visit her, some of whom clearly take advantage of her. In other words, plaintiff needs to be provided with better supervision and security. If a landlord can be required provide a ramp to accommodate a person who uses a wheelchair, perhaps a landlord should be required to make a reasonable accommodation which is specifically tailored to meet the needs of a mentally disabled person. Plaintiff accepts the benefits which come from participation in federally-subsidized housing, and should accept the burdens of making reasonable accommodation for defendant's disability.

CONCLUSION

Plaintiff's complaint should be dismissed. Each party should bear its own costs and fees associated with this action. Defendant's counsel is hereby directed to prepare appropriate Findings of Fact, Conclusions of Law and a Judgment, to be submitted to the Court pursuant to CJA Rule 4-504.

DATED this 19th day of August, 1996.



G. Rand Beacham
District Court Judge