

STATE OF MINNESOTA

OCT 28 2009

SECOND JUDICIAL DISTRICT COURT

COUNTY OF RAMSEY

By *JA* Deputy

Case Type: Eviction Action

Public Housing Agency of the
City of St. Paul,

Plaintiff,

File No. 62-HG-CV-09-1448

v.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

Richard Edwards,

Defendant.

The above-entitled matter came on for court trial before the undersigned, Jo Anne M. Yanish, Referee of Ramsey County District Court, on June 23, July 21, and September 15, 2009 and by written submission.

Laura Pietan, Esq. appeared for and on behalf of the plaintiff. Paul Birnberg, Esq. appeared for and on behalf of the defendant.

Based upon the evidence adduced, the arguments presented, and all the files, records, and proceedings, the Court makes the following:

FINDINGS OF FACT:

1. At all material times, the defendant, Richard Edwards, was a low-income tenant residing in public housing at Apt. 812, 261 University Avenue East, St. Paul, MN. His tenancy began October 7, 2008. At all material times, his landlord was Plaintiff.

2. At the start of his tenancy, Mr. Edwards signed a lease with Plaintiff. A copy of the lease was admitted as Exhibit 5.

3. After signing the lease, Plaintiff's agent Blia Jurewitsch, gave a copy of the lease to Mr. Edwards.

4. In pertinent part, paragraph 7.B.5 of the lease reads as follows:

7. OBLIGATIONS OF TENANTS, MEMBERS OF HOUSEHOLD AND GUESTS

B. The Tenant shall not:

5. Engage in, or allow members of the household, guest or another person under Tenant's control to engage in any criminal activity, including drug-related criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the public housing premises by other tenants or employees of the Management.

5. In pertinent part, paragraph 7.B.10 of the lease reads as follows:

7. OBLIGATIONS OF TENANTS, MEMBERS OF HOUSEHOLD AND GUESTS

B. The Tenant shall not:

10. Engage in, or allow members of the household, guest or another person under Tenant's control to engage in any activity, including criminal activity, which impairs the physical or social environment of the premises, the neighborhood, or the development.

6. In pertinent part, paragraph 9.A of the lease reads as follows:

9. TERMINATION OF THE LEASE

A. Management will not terminate or refuse to renew the Lease and will not evict Tenant from the dwelling unit except for serious or repeated violation of material terms of the Lease or other good cause. Serious violation of the Lease includes but is not limited to: ...

4. Any activity, not just criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants and public housing employees, or drug-related and/or criminal activity on or off the premises, not just on or near the premises, or alcohol abuse that Management decides interferes with the health, safety, or right to peaceful enjoyment of the premises by other tenants or neighbors, when such activity has been engaged in by a Tenant, a member of the Tenant's household, a guest or another person under Tenants' control while the tenant is a Tenant in public housing.

7. Paragraph 14 of the lease reads as follows:

14. ADMISSION AND OCCUPANCY POLICIES

The Admission and Occupancy Policies referred to in this Lease is the Admission and Occupancy Policies as approved and as amended by the PHA's Board of Commissioners and is made a part of this Lease by reference. A copy of the Admission and Occupancy Policies and amendments is posted in the Management Office and may be examined at any time during business hours.

8. Mr. Edwards was not given a copy of Admissions and Occupancy Policies.

9. There was no evidence that Mr. Edwards was told of any of the information in the Admissions and Occupancy Policies.

10. The Admissions and Occupancy Policies was not introduced into evidence.

11. One paragraph of the Admissions and Occupancy Policies was introduced by reading out loud as part of the testimony of Ms. Jurewitsch. That paragraph reads as follows:

Appendix A-4:21. Drug-related Criminal Activity: 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 such term is defined in Section 102 of the Controlled [sic]

12. On February 26, 2009, Mr. Edwards visited Melissa Ehrnreiter at her then home located at 42 Mt. Airy, St. Paul, MN. This is also St. Paul Public Housing, but a different complex and managed by a different assistant manager.

13. That morning, the police came to investigate Ms. Ehrnreiter regarding possible unauthorized persons living in her unit. In the course of the investigation, the police discovered and seized two packets of dried plant material from Mr. Edward's pocket(s). He possessed the packets.

14. Mr. Edwards had purchased these two packets believing them to be *Cannabis*. He had planned to use them but never got to do so.

15. This intention to use the *Cannabis* himself was the only evidence introduced

regarding Mr. Edwards' reason for possessing the *Cannabis*. There was no evidence of a sale, an intent to sell, an intent to distribute the *Cannabis* to any third party, or any plan for the *Cannabis* other than for Mr. Edwards' personal use.

15. There was no evidence of Mr. Edwards' possession of the *Cannabis* in his own apartment, in the common areas of his building, or the curtilage of his apartment or apartment building.

16. The two packets were transported to the St. Paul crime lab, where they were tested by Kari Kline, a technician with botanical and chemical training and an employee of the lab. Her tests determined that the plant material was dried leaves and was the genus *Cannabis*. The weight of the *Cannabis* in the packets was 0.89 grams and 0.82 grams, respectively.

17. The police informed Ms. Jurewitsch of the seizure. She drafted a termination letter, which was attached to the complaint, and served it on Mr. Edwards.

18. Ms. Jurewitsch testified that Mr. Edwards' eviction was based on his possession of marijuana, an act which is illegal under Minnesota law. Both Officer Conney and Ms. Kline also testified that this possession was illegal under Minnesota law.

19. Ms. Jurewitsch testified that some public housing tenants and some public housing staff feel threatened by the actions of drug dealers. The Court acknowledges that drug activity is a serious problem for residents and management of the PHA. However, no evidence was introduced that any tenants were aware of Mr. Edwards' possession of the small amount of marijuana, felt threatened by Mr. Edwards, or were ever threatened by him. Nor was any evidence introduced that he engaged in drug dealing or even interacted with another tenant or employee of Plaintiff regarding any drugs.

20. Plaintiff has a “zero tolerance” policy regarding drug possession. This means that it will terminate the lease of any tenant unlawfully possessing a controlled substance, regardless of the amount or the location.

CONCLUSIONS OF LAW

1. Defendant possessed leaves of Cannabis, “marijuana” under Minnesota law. *See* Minn. Stat. § 152.01, subd. 9.

2. This was a violation of Minn. Stat. § 152.027, subd. 4 (possession of a small amount of marijuana, to wit 42.5 grams or less of marijuana).

3. Violation of Minn. Stat. § 152.027, subd. 4 is a petty misdemeanor. A petty misdemeanor is not a crime. Minn. Stat. § 609.02, subs. 1 & 4a.

4. Plaintiff failed to prove that Defendant committed any crime or engaged in drug-related criminal activity. Plaintiff did not prove that Defendant breached paragraph 7.B.5 or paragraph 7.B.10 of the lease.

5. Defendant was charged with a petty offense regarding the possession of the marijuana. Subsequently, the petty offense was dismissed.

6. Plaintiff litigated to conclusion and lost a very similar case at trial, Public Housing Agency for the City of St. Paul v. King, Ramsey Cty File No. HG-CV-08-4518 (Jan. 22, 2009, order by Judge Monahan). The termination notice in King was very similar to the notice in this case. The Court held, in pertinent part, as follows:

“Plaintiff has the burden of proving by a preponderance of the evidence that Defendant breached her lease with Plaintiff. Plaintiff offered no evidence on that central question other than the evidence that a small amount of marijuana was found by the police and that Plaintiff has

a zero tolerance policy. Plaintiff presented no evidence regarding criminal conduct however defined, disturbance, or impairment of the physical or social environment, health, safety or enjoyment.” Id. At 5.

7. In King, the defendant may or may not have possessed a small amount of marijuana in her home. Assuming without deciding that she had possessed the marijuana in her home, the court found that she had not breached paragraph 7.B of the lease and held that she had not committed a crime. Based on this, the court dismissed the complaint with prejudice without having to reach the other issues raised.

8. Plaintiff also terminated Defendant’s tenancy on the basis of violation of paragraph 9 of the lease. In pertinent part of paragraph 9 is the phrase, “*drug-related and/or criminal activity on or off the premises, not just on or near the premises*”. This phrase is poorly written because of the use of the ambiguous “and/or”. The best reading of the phrase is “either drug-related criminal activity or criminal activity on or off the premises, not just on or near the premises” The issue would be whether Defendant committed either such act.

9. Defendant did not commit criminal activity. See Conclusion of Law #4, *supra*.

10. Plaintiff essentially alleges that Defendant committed “drug-related criminal activity” on or off (off) the premises. The incident did occur on or off the premises since it occurred off the premises. On its face, the phrase “drug-related criminal activity” means activity that is criminal and that is drug-related. Depending on which drugs are meant to be included, Defendant may or may not have engaged in drug-related activity. He did not engage in criminal activity. On its face, he did not engage in “drug-related criminal activity”.

11. The lease itself does not define “drug-related criminal activity”. It does refer to

Admission and Occupancy Policies but the Admission and Occupancy Policies were not introduced into evidence. Part of the Admission and Occupancy Policies was read into evidence as follows:

Appendix A-4:21. Drug-related Criminal Activity: The term “drug-related criminal activity” means the illegal manufacture, sale, distribution, use of possession with intent to manufacture, sell, distribute, or use of a controlled substance (as such term is defined in Section 102 of the Controlled. [sic]

This is an incomplete definition that defines “drug-related criminal activity” as illegal manufacture, sale, distribution, use of possession with intent to manufacture, sell, distribute, or use of certain chemicals on an unidentified list. Therefore, it leaves the reader in the same position as without the incomplete definition and does not help establish that Defendant engaged “drug-related criminal activity”.

12. Minn. Stat. § 504B.115 provides that where the tenant did not get a copy of the lease, no provision of the lease may be enforced unless either [1] the action was for “nonpayment of rent, disturbing the peace, malicious destruction of property, or a violation of section 504B.171” or [2] the landlord shows that the tenant had actual knowledge of the term.

13. This case is not for non payment, disturbing the peace, destruction of property, or Minn. Stat. § 504B.171. Mr. Edwards was not given a copy of the Admission and Occupancy Policies and there was no proof that he knew either the definition of “drug-related criminal activity” in the Admission and Occupancy Policies or another definition. Therefore, Plaintiff cannot enforce its definition or definitions of “drug-related criminal activity” against Defendant.

14. Defendant did not violate paragraph 9 of his own lease.

15. To evict under Minnesota law the landlord must prove not only a breach of lease but a

material breach of lease. Cloverdale Foods v. Pioneer Snacks, 580 N.W.2d 46,49 (Minn. Ct. App. 1998). A subsequent case explained the meaning of “material breach” as follows:

A material breach is “[a] substantial breach of contract, usu[ally] excusing the aggrieved party from further performance and affording it the right to sue for damages.” *Black’s Law Dictionary* 183 (7th ed. 1999); see also *Restatement (Second) of Contracts* § 241 (1981). And a material breach “goes to the root or essence of the contract.” 15 Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts* § 44:55 (4th ed. 2000). Our case law has not clearly defined the term “material breach,” but other jurisdictions have concluded that it is a breach that is “so fundamental to the contract that the failure to perform that obligation defeats an essential purpose of the contract,” *Horton v. Horton*, 487 S.E.2d 200, 204 (Va. 1997), and that is “so substantial and fundamental that it defeats the object of the parties in entering into the contract,” *Mountain Rest. Corp. v. ParkCenter Mall Assocs.* 833 P.2d 119, 123 (Idaho Ct. App. 1992).

Minnesota appellate courts have concluded that a breach was material when “one of the primary purposes” of a contract was violated. ... And even when express conditions of the contract are violated, the breach is not necessarily material. See *Boatwright Constr., Inc. v. Kemrich Knolls*, 306 Minn. 519, 520-21, 238 N.W.2d 606, 607 (1976) (holding that although seller of tract of land made express contractual agreement to sell lots in tract to buyer and to oil streets within tract by a specific date, seller’s failure to oil such streets was not material breach).

Skogberg v. Huisman, File No. C7-02-2059 (Minn. Ct. App. Aug 19, 2003).

16. Using common-law analysis, Plaintiff would not have shown that Defendant’s possession of marijuana off site goes to the root or essence of the contract or violates a primary or essential purpose of the contract, and thus would not have shown a material breach by Defendant based on marijuana possession off site.

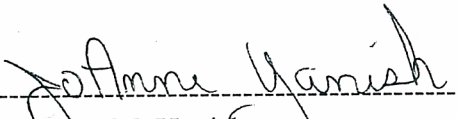
17. In this case, Minn. Stat. § 504B.171 sets the standard of what is a material breach. This statute requires that the possession occur in the “premises or in the common area and curtilage of the premises”. *Id.* at subd. 1(1)(i). Defendant’s possession did not occur in one of these places. The possession was not a material breach. See Maryland Park Apartments v. Robinson, Ramsey Cty File No. CX-02-4044 (Jun. 17, 2002, order by Judge Cohen).

18. Minn. Stat. Chap. 504B, including Minn. Stat. § 504B.115 and Minn. Stat. § 504B.171, govern all residential evictions in the state of Minnesota. Federal law and regulations do not preempt these state laws.

WHEREFORE, the Court hereby ORDERS that:

1. Plaintiff's request for a writ of eviction is denied and the case is dismissed.

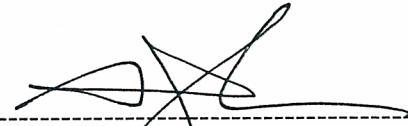
Recommended by:



Jo Anne M. Yanish
Referee of District Court

Dated: 10/27/09.

BY THE COURT:



Judge of District Court

Dated: 10/27/09.