IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

LYCOMING COUNTY HOUSING AUTHORITY,	:	
Plaintiff	:	
	:	
v.	:	98-01,890; 98-02,009
	:	
DEBORAH KLOPP,	:	
Defendant	:	

OPINION and ORDER

This case raises the important question of whether a public housing authority has the right to exclude dangerous individuals from its premises. The issue arises out of an eviction action filed by the Lycoming County Housing Authority, which is attempting to evict the Defendant, Deborah Klopp from her residence at 1811 Lincoln Drive in Williamsport, Pennsylvania. The Housing Authority alleges that Ms. Klopp violated her lease in two ways. First, she permitted her violent boyfriend, Steven Smith, to reside with her in violation of the border/lodger provision. Ms. Klopp denies that allegation. Second, she permitted Mr. Smith inside her apartment after the Housing Authority had issued a no trespass notice to him which stated he must stay off the premises. The Housing Authority argues that by being in Ms. Klopp's apartment Mr. Smith was committing the crime of defiant trespass; therefore, Ms. Klopp violated a provision in the lease stating that the tenant's guest may not commit a crime that threatens the safety of the housing project. Ms. Klopp contends she did not give Mr. Smith permission to be in her apartment after the notice was issued. More interestingly, she argues that even if she had invited him, Mr. Smith was not

committing defiant trespass because the Housing Authority may not exclude her guests.

After a full hearing, the court finds that Mr. Smith stayed in her apartment for more than fourteen days within a twelve month period and that she permitted him to be there after the trespass notice was issued. We must therefore face the difficult question of whether the Housing Authority had the right to exclude him. Under Pennsylvania case law, private landlords do not have this authority. We find, however, that the unique circumstances surrounding public housing permit public housing authorities to exercise greater control in this regard.

Public housing is one of America's most important social welfare programs. It is intended to provide a safe, affordable housing alternative for low income families. The depressing history of public housing, however, demonstrates how easily public housing projects can turn into crime-infested slums. To prevent this disaster, public housing authorities must have the ability to ban dangerous individuals from their premises and evict tenants who invite them–before they ruin public housing for everyone.

Findings of Fact

1. Steven Smith stayed at Deborah Klopp's residence for more than fourteen days within a twelve month period.
2. Deborah Klopp permitted Steve Smith to visit her after the no trespass notice was issued to him.

Conclusions of Law

1. The Border/Lodger provision in the Housing Authority lease and the Housing Authority's method of implementing it are not unconstitutional or unreasonable.
2. Deborah Klopp may be evicted based on her violation of the Border/Lodger provision in her lease, Part I, Section VIII, Paragraph A.
3. The Lycoming County Housing Authority has the authority to issue a no trespass notice to individuals to prohibit them from entering the project premises.
4. Deborah Klopp may be evicted based on the Criminal Activity provision in her lease, Part I, Section IX(9a).

DISCUSSION

The court's decision in this case is the result of making certain findings of fact as well as making conclusions of law as to the consequences of those facts. Each of these issues will be discussed in turn.

A. Findings of Fact

The testimony at the hearing demonstrated that Ms. Klopp permitted Mr. Smith to stay at her apartment for a time period sufficient to make him a border or lodger, and that she allowed him to visit her after the no trespass notice was issued. Although Ms. Klopp strongly denied both these allegations in her testimony, the court does not find her to be credible on these issues.

Border/Lodger Provision

The lease provides that tenants may not give accommodation to borders or lodgers without the written consent of management. Part I, Section VII, Paragraph A. The lease further states that guests of Housing Authority tenants may stay up to fourteen days within a twelve month period. The Housing Authority's policy is that the days need not be consecutive, and the time is calculated by totaling the hours a particular guest stays with a tenant. This policy was made clear to all the tenants. Ms. Klopp contests this method of administering the Border/Lodge provision, and that issue will be discussed later. In any event, the testimony established that Steven Smith stayed at her unit well over the fourteen days–however they are calculated.

Ms. Klopp's neighbor, Yvonne Chandler, testified that during July and August 1998 Mr. Smith stayed at Ms. Klopp's home on an almost daily basis. Another

neighbor, Kimbely Whelchel, testified that Mr. Smith stayed frequently with Ms. Klopp during the months of July, August, and half of September. She observed his car in front of Ms. Klopp's home at night and also the next morning. She estimated that during July he stayed almost every day, during August he stayed approximately one-half the month, and at the beginning of September he stayed at least twice a week. The court finds these witnesses to be credible.

The court was not persuaded by the testimony of Ms. Klopp's witnesses, none of whom could unequivocally state that Mr. Smith did not stay in her apartment for more than 14 days. Earl Fidler testified that although Mr. Smith lived with him, he did not know whether Mr. Smith had stayed at Ms. Klopp's apartment during the months in question. Edward Guthrie, the father of Ms. Klopp's son John, testified that he did not believe Mr. Smith was living at her apartment during the summer of 1998. Mr. Guthrie admitted, however, that Mr. Smith did visit her, and that he did not know whether Mr. Smith slept there. Moreover, Mr. Guthrie himself had complained to the Housing Authority about Mr. Smith's frequent presence in Ms. Klopp's apartment, because he feared for the safety of his son. Katherine McGinn was not in a position to know how often Mr. Smith might have stayed at Ms. Klopp's house. Ms. Klopp's son John testified that Mr. Smith did not live at their apartment during the summer of 1998, but it was clear that John was not always present at the apartment. Furthermore, John stated that his mother had strived to keep her relations with Mr. Smith a secret from him..

Most convincing of all, however, was the testimony of Housing Administrator Shawn McMillan and Executive Director Elizabeth Montgomery, both of whom testified that at Ms. Klopp's formal hearing on the lease violation she herself stated

that during July Mr. Smith stayed at her home approximately three times per week, during August at least twice, and during the first three weeks of September at least twice. Ms. Montgomery took notes at the grievance hearing, and wrote down exactly what Ms. Klopp had said. These notes were admitted into evidence. Ms. Montgomery testified that the most conservative estimate she came up with was that Mr. Smith stayed with Ms. Klopp at least 26 days–and probably significantly more than that. The court finds both these witnesses highly credible and therefore finds the evidence demonstrates that Ms. Klopp violated the Lodger/Border provision in her lease.

Criminal Activity of Guests Provision

The testimony at the hearing also established that Ms. Klopp permitted Mr. Smith to visit her in her apartment despite the no trespass notice the Housing Authority had issued to him. That was a violation of Part I, Section IX(9) of the lease, which states the tenant is obligated to ensure her guests do not engage in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the public housing premises by other residents or employees. By being in her apartment, Mr. Smith was committing the crime of defiant trespass[1] and because of his violent propensities, that crime threatened the health, safety, and right to peaceful enjoyment of Housing Authority residents and employees.

[1] Defiant trespass is committed when a person enters or remains in any place after being given notice that he is not licensed or privileged to be there. 18 Pa.C.S.A. § 3503(b)(1). It is a defense to prosecution if the actor reasonably believed the owner of the premises or another person empowered to license him to be there would have permitted him to enter or remain. Id. at (c)(3).

On 22 September 1998 the Housing Authority presented Mr. Smith with a no trespass notice. The notice was issued after he was involved in a physical altercation with the garbage man and after the Housing Authority received complaints about Mr. Smith's presence on the project grounds. The notice was presented to Mr. Smith while he was in Ms. Klopp's apartment, and while she was present. She did not contest the notice at that time or afterward. In fact, she herself testified that Mr. Smith is a very dangerous man.

Ms. Klopp contends that she did not violate this provision of the lease because after the notice was issued she never gave Mr. Smith permission to be there. The evidence shows, however, that Mr. Smith was arrested at her apartment for criminal trespass on 6 October 1998 and again on 19 October 1998.

Although no witness had direct knowledge that Ms. Klopp permitted him inside her apartment after the notice was issued, there was a wealth of circumstantial evidence to show that she did. Ms. Klopp admitted she continued to see Mr. Smith, although she maintained it was only outside the housing project grounds. Yvonne Chandler testified that she saw Mr. Smith around Ms. Klopp's apartment within the past two months, and as recently as two weeks ago. Lynne Siddle testified that since the trespass notice was issued she saw him at Ms. Klopp's apartment three times. She also saw them together very recently at the Family Dollar store. Kim Whelchel testified that after the notice was issued she saw Mr. Smith inside Ms. Klopp's apartment and that she has seen his car in front of her residence frequently, both in the mornings and at night. She spotted his car in front of Ms. Klopp's apartment as recently as two weeks ago.

Earl Fidler, brother-in-law to Steve Smith, testified that Mr. Smith and Ms.

Klopp talk on the phone very frequently and have continued to see each other, although he believes they meet outside the housing project. He stated that Ms. Klopp comes to his house to see Mr. Smith, and has been there as recently as 1 March 1999. Ms. Montgomery testified that she saw Ms. Klopp get into his car as recently as January. Most importantly, Ms. Montgomery testified that Ms. Klopp admitted to her that she allowed Mr. Smith to be at her apartment, and stated that she did not know why she kept permitting him inside. The court finds the testimony of Ms. Montgomery regarding Ms. Klopp's admission to be very credible.

The court does not doubt that Ms. Klopp has had mixed feelings about Mr. Smith. Her friends have repeatedly pleaded with her to stay away from him and she is well aware of his violent nature, having been abused by him on several occasions. He has hit her, shoved her, smacked her, choked her, put his hand over her face until she passed out, and very recently beat her with a baseball bat. In November 1998 she obtained a Protection From Abuse order against him.

Despite this sordid past, however, she continued to see him voluntarily outside the project premises, as she admitted in her own testimony. The logical inference is that she permitted him to visit her on the premises, as well. In short, Ms. Klopp appears to be one of those unfortunate women who at times wishes to break free from an abusive man but cannot bring herself to do it.

This is indeed a sad situation. Sympathy for Ms. Klopp is well warranted. However, the fact remains that for whatever reason, Ms. Klopp permitted Mr. Smith in her apartment. His presence there was a threat to the other public housing tenants and to the project's employees, as was amply demonstrated by his behavior in the past.

In America, individuals are free and independent. With that freedom comes responsibility for one's actions. For those who have difficulty taking care of their own welfare, help is available. But one must take the initiative to both seek help and follow it. In failing to do this, Ms. Klopp has endangered her friends and neighbors, as well as herself. That is precisely what this clause in the lease was designed to prevent, and that is why the Housing Authority wisely wants to evict her.

B. Conclusions of Law

Ms. Klopp has advanced several legal arguments as to why she should not be evicted.[2] All of these arguments require a close examination of the rights of public housing tenants.

1. *Unreasonableness of the Guest Provision*

The Lycoming County Housing Authority lease states that an individual may not stay with a tenant for longer than two weeks without permission from the Housing Authority. The time is calculated by adding the number of hours a person stays with a tenant in any given 12-month period. Ms. Klopp contends that this policy violates the federal law mandating that the Housing Authority make reasonable accommodation for guests. 24 C.F.R. 944.4(d). She also contends that it is an unreasonable way to implement the Border/Lodger provision which federal law

[2] The court notes that counsel for Ms. Klopp was well prepared for trial, with all the pertinent legal issues well researched in her trial memorandum. In addition, she submitted a supplemental trial brief after the hearing. The court appreciates her thoroughness of preparation, and regrets that counsel for the Housing Authority did not exhibit the same diligence.

requires to be in all public housing leases. Id. at 966.4(f)(2). The court rejects that argument for the following reasons.

The administration of public housing is a difficult task, and the concern for efficient management is particularly important because the number of applicants greatly exceeds the available housing. Gholston v. Housing Auth. of Montgomery, 818 F.2d 776, 781 (11th Cir. 1987); Rivera v.Reading Housing Authority, 819 F.Supp. 1323, 1329-1330 (E.D. Pa. 1993). It is no doubt due to this difficulty that Congress intended to rely heavily on state and local public housing agencies to make the bulk of the decisions on how to administer the program. This is apparent throughout the statute and regulations governing public housing. United States Housing Act, U.S.C.A. § 1401 et seq.; 24 C.F.R. The USHA explicitly states that Congress intended to vest local public housing agencies with "the maximum amount of responsibility" in the administration of public housing programs. § 1437. However, the agencies must exercise their discretion consistently with the objectives of the Act. Id. The USHA permits public housing authorities to use leases that do not contain unreasonable terms and conditions. Id. at § 1437(l). Consequently, the scope of judicial review of a local authority's policies and practices is limited to (1) determining whether the rule is inconsistent with the federal statute and regulations and if so, then (2) whether it is reasonable. Chevron USA v. Natural Resources Defense Council, 467 U.S. 837, 844, 104 S.Ct. 2778, 2782, 81 L.Ed.2d 694 (1984); Ritter v. Cecil Cty Office of Housing & Cmty. Dev., 33 F.3d 323 (4th Cir. 1994). When evaluating the reasonableness, a court must show some deference to a state agency interpreting regulations under the authority of a federally created program. General Electric Co. v. Gilbert, 429 U.S. 125, 141, 97 S.Ct. 401, 410, 50 L.Ed.2d 323

(1976); Skidmore v. Swift & Co., 323 U.S. 134, 140, 65 S.Ct. 161, 164, 89 L.Ed. 124 (1944).

The Housing Authority's policy is not inconsistent with the USHA or the regulations. On the contrary, both establish stringent guidelines for eligibility and mandate that the local authority carefully screen applicants. Because public housing utilizes public funds and those funds are limited, housing agencies have a responsibility to ensure that only those individuals truly in need are accorded this benefit. Eligibility is determined by family composition and household income. The regulations promulgated by the Department of Housing and Urban Development (HUD) require participants to supply detailed documentation on their circumstances and to update it when changes occur. 24 C.F.R. § 882.118(a). Failure to report additional adults living in the unit may result in eviction, lifetime loss of eligibility for housing assistance, and criminal charges. Furthermore, the prohibition against accommodating borders and lodgers is a requirement that must be included in all public housing leases. § 966.4(f)(2). This provision is necessary in order to prevent abuse of the system, and the Lycoming County Housing Authority's policy is a method of implementing that provision. Therefore, it is fully consistent with the statute and the regulations.

Nor is the policy unreasonable. Neither the statute nor the regulations provide guidance as to how an agency should determine who is a guest and who is a permanent resident. The regulations merely state that the tenant must "Use the dwelling unit . . . solely for residence by the Family . . . ." 24 C.F.R. § 882.118. As the 4th Circuit has pointed out, reading the language strictly, one could argue that a non-resident is not authorized to stay overnight even once. Ritter, supra, at 329

(upholding a policy designating visitors staying over two weeks to be residents). Certainly there is no clear line between when a guest becomes a resident. In fact, there are a multitude of factors involved: length of the stay, intention of the parties, whether the individual has another residence, whether the individual keeps personal belongings in the unit, whether the individual stays overnight, and whether the days and nights spent in the unit are consecutive. In view of the inherent difficulty of differentiating between a visitor and a resident and the deference we must show to the agency, the court cannot say that the Housing Authority's policy is unreasonable. See also Zajac v. Altoona Housing Authority, 156 Pa. Cmwlth. 209, 626 A.2d 1271 (1993) (holding that a policy requiring tenants to report individuals staying in the unit more than 30 days is not unreasonable); Allegheny Cty. Housing Auth. v. Morrissey, 651 A.2d 632 (Pa. Cmwlth. 1994) (holding that a no-pet policy is not unreasonable).

The court also rejects the argument that the policy unconstitutionally burdens the tenants' right to free association or privacy. As in Zadac, supra, the policy does not prohibit visitors, nor does it prohibit additional permanent residents. It merely considers individuals who stay more than fourteen days in a 12-month period to be members of the tenant's household for eligibility purposes. This is a small burden indeed in light of the tremendous benefit of public housing.[3] Moreover, limiting the

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[3] A review of the cases Ms. Klopp has submitted in support of her proposition does not convince us otherwise. In McKenna v. Peekskill Housing Authority, 647 F.2d 332 (1981), the 2nd Circuit considered a public housing policy requiring all overnight guests to be registered and approved. The court found that the policy violated the tenants' rights of privacy and association because it was unreasonably broad to accomplish any of its stated goals. The court, however, engaged in little discussion of the constitutional issues.

In Lancor v. Lebanon Housing Authority, 760 F.2d 361 (1985), the 1st Circuit held that a similar policy was unreasonable and thus violated the federal regulations. The court declined to decide whether the policy also violated the Constitution.

protected freedom of association is not a substantial or motivating factor behind the government action. See Mr. Healthy City Sch. Dist. Bd. Of Educ. v. Doyle, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977). The sole purpose of the policy is to ensure that all public housing tenants meet the federal eligibility requirements.

The Housing Authority has made its policy known to all its tenants, and there is no excuse for noncompliance. Given the scarcity of public housing units and the high demand, the Housing Authority is justified in evicting those individuals who refuse to comply.

2. ***Authority to Issue a No Trespass Notice***

Ms. Klopp next argues that even if she is found to have permitted Mr. Smith in her apartment after the no trespass notice was issued, that was not a violation of the lease because he was committing no crime by being there. The crux of this argument is that the Housing Authority has no right to prevent the tenant from having a guest; therefore, the notice is void, Mr. Smith was not a defiant trespasser, and he committed no crime.

In support of this argument, Ms. Klopp points to the case of Branish v. NHP Property Management, Inc., 694 A.2d 1106 (Pa. Super.1997), where the Superior Court held that under the Landlord and Tenant Act, 68 P.S. § 250.504-A, a tenant has a right to invite social guests to his or her apartment and the landlord may not interfere with that right by issuing a no trespass notice to a visitor. That case is not as strong as

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Neither of these cases address the issue here, which involves how long a "guest" must stay with a tenant before being deemed a possible financial contributor to the household.

it appears from a distance. The decision was by a three-member panel of the Pennsylvania Superior Court. Judge Olszewski filed a concurrence emphasizing that a tenant had an obligation not to allow on the premises any person who willfully or wantonly causes destruction or disturbs other tenants, and that re-inviting such a person would be grounds for eviction. Judge Popovich dissented, and would have held that the no trespass notice issued by the landlord was valid.

Even so, this court accepts Branish as the law in Pennsylvania. However, there is one crucial distinction between Branish and the case before this court: here, the tenant is a recipient of public housing. We think that makes a tremendous difference, and we believe that the policies behind public housing permit a public housing landlord to take pre-emptive action and issue a no trespass notice rather than waiting for the guest to commit violence before evicting the tenant.[4]

Ms. Klopp argues that any rights granted to private tenants apply even more to public housing tenants because public housing tenants are accorded far greater rights. It is true that public housing tenants have been granted certain rights that private tenants do not enjoy.[5] What she fails to realize, however, is that although public housing tenants have greater rights than private tenants in some ways, they have lesser

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[4] The court recognizes that a trial court in Massachusetts has ruled otherwise. Souza v. Fall River Housing Authority, Housing Code Department Southeastern Division, Docket No. 95 CV 00321 (1996). However, that laconic court included only one sentence of explanation, which stated that the no trespass notice was issued in contravention of the tenant's right to have guests. The court cited a 1942 case in support of its conclusion. There is no indication that court considered the USHA and the HUD regulations or that the court paused to ponder the important public policy issues discussed in this opinion.

[5] For instance, once an individual acquires a public housing unit that government benefit cannot be taken away without certain due process procedures, as specified in the Act and regulations.

rights in others. Even the most cursory glance at the USHA and the HUD regulations implementing it reveals that public housing is not a one-way street. Individuals who receive the benefit of public housing must also submit to certain limitations that are not imposed on private tenants. The court believes that the issue of guests is one area in which public tenants have lesser rights.

Our analysis begins by recognizing that the rights granted to public housing tenants are not constitutional rights–they are statutory rights, set forth in the United States Housing Act and the HUD regulations which implement it. In establishing the public housing guidelines, it is clear that Congress intended to create a set of rules for public housing agencies and tenants to abide by. The statute and regulations set forth a whole array of specific provisions that must be included in all public housing leases. See 42 U.S.C.A. § 1437(l); 24 C.F.R. § 966.4. These provisions do not pertain to private landlords and tenants.[6]

The overarching purpose of the statute and regulations is to "assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income." 42 U.S.C.A. § 1437. In order to achieve that goal, Congress has found it necessary to impose obligations on both public housing agencies and tenants. Congress and HUD have done this by mandating that certain provisions be included in every public housing lease. See 42 U.S.C.A. § 1437(l); 24 C.F.R. § 966.4.

These provisions reveal, more than anything else, an effort to make public

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[6] Certainly states may impose their own obligation on private landlords and tenants, as Pennsylvania has done in the Landlord and Tenant Act, 68 P.S. § 250.504-A.

housing safe for the residents and employees. The Act states that public housing leases must "obligate the public housing agency to maintain the project in a decent, safe, and sanitary condition." 42 U.S.C.A. § 1437(l)(2). The tenants too have an obligation to promote safety in public housing. For instance, all leases must impose upon the tenant the responsibility "[t]o act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe, and sanitary condition." 24 C.F.R. § 966.4(f)(11).

In an ideal world, tenants would live up to this responsibility. They would refuse to allow dangerous individuals on the premises. Unfortunately, that is not the case in the real world, as Ms. Klopp has vividly demonstrated. For a variety of reasons there are some tenants, both private and public, who invite violent people into their homes, thereby endangering not only themselves but their neighbors, as well.

Our Superior Court has held in Branish that a private landlord may not issue a no trespass notice to a tenant's guest because Pennsylvania law imposes the responsibility for the guest's actions on the tenant. 68 P.S. § 250.503-A. However, as stated above, the USHA imposes a duty on the *agency* to maintain the entire project in a safe condition. It is difficult for the agency to do this if it has no control over who can come onto the premises. Being able to evict a tenant *after* the guest commits violence is simply not good enough in a public housing situation, given the high priority for safety. There are also other reasons which convince this court that public housing agencies may take pre-emptive action by issuing no trespass notices to violent or destructive guests.

First, private landlords can adequately protect their interests themselves from

property destruction caused by guests through provisions in the lease regarding restitution for damages or by bringing suit against the tenant. Public housing agencies may certainly do the same; however, it is unlikely they will receive any restitution because public housing tenants are, by definition, poor. Destruction of housing project property is destruction of public property, which harms all taxpayers. The government certainly should have the right to prevent the destruction and loss of public resources.

Moreover, private landlords are able to get rid of tenants who invite undesirable guests by simply declining to renew a person's lease when it expires. Public housing agencies, however, may only terminate a lease for serious or repeated violation of the terms or for other good cause. Under U.S.C.A. § 1437(l)(5) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants engaged in by the tenant or the tenant's guest constitutes cause for termination of tenancy. However, the court believes that Congress also intended to give the agencies authority to *prevent* such criminal activity from occurring in the first place by excluding individuals it has good reason to believe are violent.

Such an interpretation is in perfect harmony with the entire tenor of the USHA and the regulations, both of which heavily emphasize safety. It also follows from the announced purpose of the USHA: "to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income." U.S.C.A. § 1437. The Act and regulations demonstrate that Congress *mandated* that the housing agencies take a direct and pro-active approach toward ensuring their premises are safe. We believe that as a part of this power,

agencies have the ability to exclude obvious troublemakers from their premises.

Of course, there are limits to such power. Public housing authorities can abuse their discretion if they exclude individuals for no good cause. However, the Act and regulations adequately protect public housing tenants from such abuses because they establish a grievance procedure for tenants to challenge such action.[7] Private tenants do not have this right. Moreover, no public housing tenant may be evicted without court action. 24 C.F.R. § 966.7. Should a tenant refuse to obey an unreasonable exclusion of his or her guest and the agency attempts to evict, a court would certainly dismiss the action. Therefore, public tenants are adequately protected from an agency's potential abuse of its power to exclude guests.

The crucial point is that agencies should be allowed to issue the no trespass notice first, rather than waiting for the guest to commit a violent crime and then moving to evict the tenant. This approach not only is consistent with the strong policy of establishing safe public housing, but is also consistent with the obvious policy of protecting the rights of the other public housing tenants to a safe and peaceful environment. The mandatory lease provisions set forth in the Act and regulations demonstrate the deference public housing tenants must accord to the rights of the

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[7] Ms. Klopp was free to request a grievance hearing after the Housing Authority issued the notice to Mr. Smith. Although the Housing Authority should probably have given her official notice of the no trespass notice and informed her of her right to challenge it at a hearing, 24 C.F.R. § 966.4(e)(8)(ii)(A) and (B), that is no reason to prevent eviction here. Ms. Klopp knew of the notice because she was present when it was issued. Furthermore, in her testimony she indicated that she did not allow Mr. Smith on the premises, so it may well be that she would not have requested a hearing. And finally, even if she had requested a hearing she would surely not have prevailed because the Housing Authority had sufficient reason to preclude Mr. Smith from the premises, as Ms. Klopp does not contest. She is merely contesting the *right* of the Housing Authority to exclude him.

other residents of the project. Both are filled with references to the other tenants and the project as a whole. One reason for such protection is that public housing residents cannot move to another residence as easily as private tenants. The fact that they are eligible for public housing means they have limited financial resources, which makes it difficult to pay the normal rental fees for comparable private units.

This approach is also consistent with the high degree of authority Congress intended to give local agencies in administrating the housing program. Section 1437 of the USHA specifically states that one of the policies of the Act is to "vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs." As discussed earlier, this discretion is not unlimited. The leases must contain "reasonable terms and conditions." Id. at § 1437(l). In addition, the agency must make "reasonable accommodations" for the guests of tenants. 24 C.F.R. § 966.4. The court finds that these limitations do not prohibit the housing authority from issuing a no trespass notice to a violent individual. Such action is not only reasonable, but it is fully in line with the USHA and its regulations and is necessary in order to reach Congress's goal of providing safe public housing to low income individuals.

Such a policy would not, as Ms. Klopp argues, violate the freedom of association rights of the tenants. The United States Supreme Court has viewed this First Amendment freedom largely as pertaining to the right to gather together to organize for political reasons and the right of intimate association, which involves marriage and family. This court doubts whether a social guest falls into either of these protected categories but even assuming it does, the no trespass notice would not constitute a First Amendment violation. This issue would be governed by Mt.

Healthy City Sch. Dist. Bd. Of Educ. v. Doyle, 429 U.S. 274, 287, 97 S.Ct. 568, 576, 50 L.Ed.2d 471 (1977). In that case, the United States Supreme Court established a test to determine whether governmental action violates the First Amendment in instances where the action might be constitutionally justified on some other basis. First, the person claiming her rights have been violated must show that her conduct was constitutionally protected and the conduct was a substantial or motivating factor in the government's decision to deny a benefit. If the person satisfies these requirements, the burden then shifts to the government to show, by a preponderance of the evidence, that the benefit would have been denied even in the presence of the protected conduct.

Here, there is absolutely no evidence that the Housing Authority issued the no trespass notice or instituted eviction proceedings in order to infringe on Ms. Klopp's privacy or association rights. Its sole purpose was to protect other tenants and its employees from the violent conduct of Mr. Smith. Moreover, the government interest in establishing and maintaining safe public housing far outweighs any interest of Ms. Klopp to invite violent individuals into her apartment. In addition, she retained the freedom to see Mr. Smith outside the project premises.

As her final argument, Ms. Klopp contends that even if the no trespass notice were valid and even if Ms. Klopp permitted Mr. Smith in her apartment after the notice was issued, she cannot be evicted because the lease permits eviction only for *conduct* of guests–not for the mere presence of guests in her residence. The court does not agree. The relevant provision states that the tenant must ensure that her guests do not engage in "[a]ny criminal activity or abuse of alcohol that threatens the health, safety, or right of peaceful enjoyment of the HACL's public housing premises

by other residents or employees of the Authority." Part I, Section IX(A)(9).

Ms. Klopp points to the case of Herring v. Chicago Housing Authority, 850 F.Supp. 694 (N.D.Ill. 1994), to support her argument. In that case the court held that a tenant could not be evicted for allowing violent protesters of the housing authority policy to meet in her apartment–even though their mere presence was a threat to the health and safety of other tenants. Those guests, however, were not committing a crime simply by being there. By contrast, Mr. Smith was committing defiant trespass *simply by entering* Ms. Klopp's apartment. Therefore, her permitting him falls squarely within the provision of the lease: she allowed her guest to engage in the criminal activity of defiant trespass and based on his past behavior, that crime threatened the safety and peaceful enjoyment of the other tenants and the agency employees.

Finally, Ms. Klopp argues that giving agencies the power to exclude violent guests will discourage women like herself from reporting incidents of abuse to housing authorities. We fail to see the merit of that argument. If a woman truly wants to remove herself from an abusive relationship she will be all the more likely to report the abuse. She will want the agency to issue a no trespass notice and to support her efforts to keep the perpetrator away. Notifying the agency will also demonstrate that she does not permit the man in her apartment, and thus will eliminate the possibility of eviction if he returns.

Unfortunately, some abused women apparently do not wish to keep their perpetrators away, or cannot bring themselves to act upon their wishes. Those women need help, and this court hopes they will obtain it. In the meantime, they should not be able to endanger the safety of the other public housing residents.

Conclusion

Public housing is an important social program which is immensely valuable to low income families who cannot afford private housing. The laudable goal is to provide families with a decent, affordable home in a safe environment instead of being forced to live in poverty-stricken, crime-ridden neighborhoods. Unfortunately, public housing has not always lived up to this promise. Instead of being a safe haven, all too many public housing projects have become hotbeds of crime and drugs. If we are ever to turn the tide and make public housing all it was intended to be, public housing agencies must have the ability to take a direct and active role in administrating the projects and should have the power to take pre-emptive, preventative measures to keep out those individuals who would ruin one of the most important social programs ever created.

O R D E R

AND NOW, this _____ day of March, 1999, the court finds that sufficient grounds exist for the eviction of Deborah Klopp from her rental unit. Judgment is entered in favor of the Lycoming County Housing Authority and against Deborah Klopp for possession of the real estate located at 1811 Lincoln Drive, Williamsport, Lycoming County, Pennsylvania.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell, Esq., Law Clerk
Hon. Clinton W. Smith
Kathleen O'Donnel, Esq.
John Bonner, Esq.
Gary Weber, Esq., Lycoming Reporter