

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

LYCOMING COUNTY HOUSING
AUTHORITY

v.

JENNIFER EVERLY

: NO. 08-00984

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: CIVIL ACTION - LAW

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FACTS AND PROCEDURAL HISTORY

At trial on September 19, 2008, this Court found as follows. Mr. Harold Beamer, the father of defendant's two children had originally received a defiant trespassing notice from the Authority on December 21, 2005 barring him from Housing Authority property. Ms. Everly received a copy of that notice. Both prior to and thereafter, in violation of the notice, Mr. Beamer has frequented the Plaintiff's property on numerous occasions disturbing the peaceful enjoyment of the premises for neighbors and other residents. The Court found as credible the testimony of Christy Leinbach in general and specifically found credible her testimony about numerous complaints from neighbors about loud music, drinking and swearing by Mr. Beamer. The Authority, on many occasions, personally discussed with defendant the need to have Mr. Beamer excluded from the premises, and Ms. Everly indicated that she would not allow him to return to the premises, but she did not follow through on that promise. In fact, the Court specifically finds that on numerous occasions, Ms. Everly permitted Mr. Beamer on the premises. The Court does not find credible Ms. Everly's testimony that she did not invite him and was somehow frightened to exclude him from the

premises contrary to her obligation. Mr. Beamer, the excluded guest, pled guilty before this court on October 10, 2007 for criminal trespass to the premises. Despite that plea, Housing Authority employees continued to observe Mr. Beamer on Housing Authority premises in the company of Ms. Everly. Also, the eviction notice was issued to the defendant, Ms. Everly, as a result of Mr. Beamer again being on the property on or about March 31, 2008. Defendant has requested reconsideration.

DISCUSSION

Defendant first argues that the Court erred in finding that Defendant had a grievance hearing opportunity. In accordance with the Public Housing Administration Grievance Procedure, normally a tenant must be given a grievance hearing before being evicted. However, under 24 C.F.R. 966.51, a grievance hearing is not required when HUD has issued a due process determination stating that such a hearing was not necessary to comply with procedural due process rights. Both the Plaintiff and Defendant agree that the ability of a defendant to defend a landlord tenant action in state court has been held to satisfy an individual's due process rights when they are evicted from public housing because of their or their guest's criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the [public housing authority]. 24 C.F.R. 966.51.

In Plaintiff's complaint in eviction, it asserts that Defendant has failed and refused to comply with the lease executed between her and Plaintiff. One of those lease requirements is that tenant, any member of the household or guest, shall not engage in (d) criminal activity

which includes violation of a defiant trespass notice by a household member or guest or knowingly assisting another person to violate a defiant trespass notice. The Court found that Ms. Everly violated this lease provision. As this Court stated in its September 19, 2008 opinion, “This is not a simple case of a one time defiant trespass but presents a course of conduct on the part of both Ms. Everly and Mr. Beamer that defies the basic covenants made in the lease.”

Ms. Everly was a complicit actor in Mr. Beamer’s criminal activity and therefore, the Court finds that Defendant was not entitled to a grievance hearing opportunity. Furthermore, this Court finds that Defendant was not denied due process of law as the Courts of this Commonwealth have decided that a grievance hearing is not required when a Defendant was evicted due to their engaging in criminal activity.

Defendant further asserts that she is a victim of domestic violence and that the Violence Against Women Act prohibits evictions directly related to acts of domestic violence. Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant’s family is the victim or threatened victim of that domestic violence, dating violence or stalking. 42 U.S.C.S. 1437f(9)(C).

This Court found credible the testimony of Christy Leinbach regarding numerous complaints from neighbors about loud music, drinking and swearing by Mr. Beamer. This Court further found that on numerous occasions, Ms. Everly permitted Mr. Beamer on the premises. Ms. Everly even testified that on one occasion she invited Mr. Beamer in and

ordered the two Chinese food. While this Court recognizes that a woman in a precarious domestic situation must make reasonable decisions on how to handle an ex-husband or ex-boyfriend, the Court cannot protect an individual from their own unreasonable decisions. Defendant's decision to maintain contact with Mr. Beamer as well as invite him into her home, on numerous occasions, despite an outstanding defiant trespass notice was unreasonable. It is this Court's opinion that the Violence Against Women Act was not meant to shield tenants from eviction from public housing who were complicit in criminal activity. It is one thing for an individual to hide behind the locked door of her apartment as an abusive ex partner commits criminal acts on the other side; it is quite another to invite that person inside, in violation of a defiant trespass notice as well as her lease, to enjoy conversation and a meal. This Court finds that Defendant was not among the class of individuals the cited provision was meant to protect and therefore the Court finds the eviction was not related to domestic violence.

Defendant next argues that this Court erred in not following the Court's holding in Diggs v. Housing Authority of Frederick, 67 F.Supp. 2d 522, 1999 U.S. Dist. LEXIS 16689 (1999). The Court recognizes that Diggs does not hold precedential weight in the courts of the Commonwealth of Pennsylvania as it was decided by United States District Court for the District of Maryland. Of greater importance this Court finds a significant distinction in the facts of Diggs as compared to the case at bar.

The Plaintiffs in Diggs were residents of property owned by the Housing Authority of the City of Frederick. In response to a perceived problem of drug dealing in the area, the Housing Authority authorized the Frederick Police to issue citations to non-residents who loiter in the public housing community. A newsletter issued to Housing Authority tenants

stated that persons believe to be at one of the apartments with no legitimate reason would be issued citations and warned of future arrest. The Housing Authority would then keep a log of those individuals cited. Once a person was put in the log, they remained there indefinitely. The Diggs Court held that this subjected tenants to a significant harm because it could be a virtual permanent bar to a tenant's right to invite a guest into her own home. The Court then weighed this harm against the defendant's law enforcement and safety efforts if enforcement of the policy was enjoined. As part of the court's record was testimony from the Frederick Chief of Police as well as residents of the public housing. They stated that while the trespass policy was an important tool in crime prevention, they also relied on the Urban Neighborhood Involvement Team, neighborhood service officer, NSO program, skip program, school community involvement team, block watch programs, citizens advisory council, citizens patrol, Explorer Post and Auxiliary Post. In finding that the trespass policy was not the only drug and crime fighting measure available or even the most effective, it found that the balance of hardships tipped in favor of the plaintiffs.

In the case at bar, there is no evidence in the record that could support a decision by this Court to follow the holding of Diggs. The record does not indicate that there are any community groups or alternative crime prevention procedures in place to protect the residents of the public housing in question. Therefore, finding the lease provisions in question to be unreasonable, would tilt the hardship in favor of the Housing Authority.

Furthermore, in the case before this Court it was not the Housing Authority granting the local police permission to enforce its own internal policy. Mr. Beamer pled guilty before this court on October 10, 2007 for criminal trespass to the premises. At that point forward, any

time Mr. Beamer appeared at the premises he could be arrested for defiant trespass. Therefore this is not a simple case of the police citing an individual for loitering but rather the police enforcing a defiant trespass notice against an individual who was found guilty of a crime by a court of this Commonwealth. If this Court were to find the lease provisions in question to be unreasonable, it would undermine not only the Housing Authority's responsibility to its tenants to protect their safety and welfare but would also impede law enforcement efforts. Therefore the Court finds Defendant's argument to be without merit.

ORDER

AND NOW, this 5th day of November 2008, based on the foregoing Opinion, it is hereby ORDERED AND DIRECTED that Defendant's Post Trial Motion is DENIED and order of September 18, 2008 is AFFIRMED.

BY THE COURT,

Judge Richard A. Gray

cc: John Bonner, Esq.
Jennifer Ayers, Esq.
Gary Weber, Esq.