

JUSTICE COURT: VILLAGE OF SPRING VALLEY  
COUNTY OF ROCKLAND: STATE OF NEW YORK

x

SPRING VALLEY HOUSING AUTHORITY,

Petitioner,

DECISION AND ORDER

- against -

HERBIE LAMARRE and RITA LAMARRE,

Respondents.

x

This matter is a Landlord Tenant matter that has come before this Court for determination. It was agreed by both sides to submit the issues to the Court on what is an agreed statement of facts.

The papers before this Court are listed as follows:

1. Notice of Petition - Holdover dated January 10, 2006 by Spring Valley Housing Authority.
2. Answer by Respondent dated March 9, 2006.
3. Affirmation of Facts and Position submitted by Petitioner dated April 10, 2006.
4. Respondent's Memorandum of Law.

**THE CONTENTIONS OF THE PARTIES**

**THE PETITIONER:**

1. Lease paragraph 16 c provides that landlord may terminate tenancy based on "furnishing false or misleading information during the application or review process..." Specifically, the provision in respondent's lease providing for termination for being a registered sex offender (par. 16q), although not present in respondents' initial lease when they took

occupancy in 1998, was added in respondents' most recent renewal lease dated December 1, 2003, yet respondent did not reveal to landlord that he was a registered sex offender at the time.

2. Violation of lease paragraph 16 e ("failure to abide by necessary and reasonable rules made by the Landlord for the benefit and well being of the housing development and the residents") which provides that the landlord is not required to assist applicants who have a lifetime registration under a State sex offender registration program.

3. Violation of lease paragraph 16 q ("determination or discovery that a resident is a registered sex offender") is based on the landlord's discovery on or about April 4, 2005, by way of a printed notice provided to the landlord by the Spring Valley Police Department of respondent Herbie Lamarre's status as a registered sex offender, which status was not previously known to the landlord nor previously revealed to landlord by respondents either in respondents' initial application or respondents' subsequent re-certifications to the landlord.

4. Title 24 CFR 960.204 provides for those bases for denial of admission that are required for all housing authorities. Petitioner contends that it is allowed, by adopting appropriate policies and lease provisions, to provide for other causes for both denial of admission and termination of a tenancy, as long as such are not specifically prohibited by federal statute or regulation.

5. Title 24 CFR 966.4 ("Lease Requirements") further defines "other good cause" for termination of a lease as "discovery after admission of facts that made the tenant ineligible." Here, the lease provision paragraph 16 q does just that, by providing for the discovery of the registration of the tenant as a sex offender as the basis for termination.

### **THE RESPONDENT'S CONTENTIONS ARE**

1. The Spring Valley Housing Authority ("SVHA") may not now terminate the tenancy of the respondents who have lived, without incident, in the subject premises since 1998 solely on the basis that respondent Herbie Lamarre is a registered sex offender resulting from a conviction in 1990.

2. 42 USC 13663 and 24 CFR §960.204 (a) (4) which prohibits admission to Public Housing of applicants who are subject to lifetime registration under a State sex offender registration program applies only to the screening of applicants for admission and are not retroactive to tenants, such as the Lamarres, who were admitted prior to the enactment of the law under different admission standards. Neither the statute or the regulation authorizes or requires termination of current tenants admitted prior to its enactment.

3. Barring proof of fraud, subsequent acts of criminal conduct or discovery of information that would make the Respondents ineligible at the time of admission Respondents, once admitted cannot be evicted for conduct pre-dating the tenancy.

### **FINDING OF FACTS**

1. The Landlord Petitioner is the owner of the apartment which is the subject of this proceeding.

2. The Tenant Herbie Lamarre and Rita Lamarre and their family occupy the apartment pursuant to a lease (written) originally issued on December 27, 1997.

3. The lease and tenancy and the Landlord's enforcement of same are subject to the rules and regulations of the Federal Public Housing Program regulations are set forth at 24CFR § 960 and 966.

4. In June of 2005 the Petitioner served upon the Respondent a thirty (30) day Notice to

Terminate the Tenancy.

5. The Notice was based upon the following reason:

The reason for the termination of your lease is as follows: Serious violation of Tenant's obligations pursuant to Lease paragraph 16, subparagraphs ( c ), ( e ) and ( q ): "The Landlord shall not terminate or refuse to renew the Lease other than for serious or repeated violation of material terms of the Lease, such as, but not limited to, the following ... ( c ) furnishing false or misleading information during the application or review process ..., ( e ) failure to abide by necessary and reasonable rules made by the Landlord for the benefit and well being of the housing development and the Residents" and "(q) determination or discovery that a resident is a registered sex offender."

Specifically, Landlord was notified by the Spring Valley Police Department on or about April 4, 2005 that Tenant Herbie LaMarre has been designated as a level 2 Sex Offender based on a conviction for rape in the second degree on 03/29/90. Said conviction and designation were not previously revealed to the Landlord by the Tenant. Said designation is grounds for termination of the Tenant's lease under Paragraph 16 ( c ), under Landlord's policies section 8.4 (Q), as incorporated into Tenant's lease under Paragraph 16 ( e ), and under Paragraph 16 ( q ).

6. The Lease provisions cited were not in Respondents; initial lease and it appears did not become effective until some time in December 2003.

7. Based upon the notice supplied by the Petitioner, Respondent requested a hearing.

8. A Grievance Hearing was held in August 2005 before a Hearing Officer who in a decision dated December 6, 2005 upheld the Petitioner's decision to terminate the tenancy. This gave rise to the Instant Proceeding.

9. On March 29, 1990, Herbie Lamarre was convicted of rape in the second degree.

10. Based upon the conviction Herbie Lamarre was imprisoned until some time in 1994.

11. Also based upon the conviction Herbie Lamarre was adjudicated a level 2 sex offender pursuant to the New York State Sex Offender Registration Act.

12. In about March 2003 the Landlord-Petitioner changed their policy and required prospective tenants to supply criminal history information.

13. That the Respondent cooperated with Petitioner in disclosing his record.

14. No allegation has been made that the Tenant committed any negative act while a Tenant - either payment of rent or conduct of a negative manner.

### CONCLUSIONS OF LAW

1. This Court has the authority to determine De Novo the validity of the allegations in the Petition and it is not bound by the prior determination of a Hearing Officer in this matter.

2. That the Petitioner as a participant in the Public Housing process as administered by the Federal Government - HUD had a right to establish standards for tenants to meet to be eligible for public housing providing same are reasonable and non-discriminatory.

3. I specifically find that the rules banning sex offenders from public housing is a fair and proper standard to adopt and enforce in order to insure a quality of life in public housing.

4. I further find as a Conclusion of Law that the Petitioner must still prove the allegations on the Petition to sustain an eviction.

5. A Landlord Tenant action is both an action in law and in equity and therefore equitable principles of law are also applicable.

6. The Petition alleges breach of the lease in the Notice to Terminate.

7. In order to terminate the lease the Petitioner must show that the Notice to Terminate is justified.

8. The Petitioner contends that the Tenant Herbie Lamarre violated the terms of the lease by the following acts:

(A) 16 ( c) of lease provides that Landlord may terminate tenancy based upon Tenant furnishing false or misleading information.

No evidence or contention was raised as to any information that the Respondent actually supplied was false or misleading.

(B) 16 (e) of the lease- failure to abide by necessary and reasonable rules made by the Landlord. Relying on Policy 8.4 Q "Landlord is not required to assist applicants who have a lifetime registration under a State Sex Offender's Registration Program.

Does not apply to this Respondent because he is an existing tenant and not a new applicant and the term not required does not mean a right to deny an existing tenant who is living peacefully at the premises a right to renew the lease.

( C ) 16 (q) The discovery that respondent is a sex offender does not appear to be adequate because at the time of the original lease no questions were asked and no evidence was submitted that the Respondent lied about this.

(D) 24 CFR 960.204 and 24 CFR 166.4 do not appear under the facts present in this case to apply so as to deny the Respondents continued occupancy.

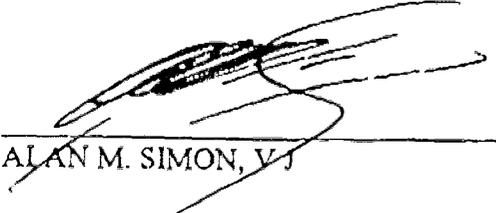
It is the ruling of this Court that absent any proof that the Respondent made any false representations and/or absent any proof that the Respondent's actions while a tenant caused any harm to the Petitioner or any other tenant and based upon the fact that the Tenant apparently pays rent timely, I find no legal justification to order the lease terminated and therefore this action to evict this Tenant is dismissed.

This shall constitute the ruling of the Court.

Dated:

April 27, 2006

SO ORDERED



ALAN M. SIMON, V.J.