

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

LYCOMING COUNTY HOUSING :	:	
AUTHORITY,	:	
Plaintiff	:	
	:	
v.	:	NO. 99-01,655
	:	
ROSE HIVELY,	:	
Defendant	:	

OPINION and ORDER

In this case the Lycoming County Housing Authority is attempting to evict Rose Hively from her public housing unit. Mrs. Hively has been a Housing Authority tenant for thirty-five years, and was previously considered a model tenant. However, she violated her lease by permitting Richard Randall to live in her publically subsidized unit for extensive periods of time.

Ironically, the Housing Authority learned about this bad deed because Mrs. Hively performed a good deed: she provided a county detective with a videotape found among Mr. Randall’s belongings that led to his conviction for sexual abuse of a child.

Certainly Mrs. Hively is to be commended for turning Mr. Randall in. However, that does not change the fact that for four years, she cheated the public welfare system by permitting him to live in her unit without notice to the Housing Authority.¹ Therefore, we find that eviction is proper and appropriate.

Findings of Fact

¹ We are reminded of Shakespeare’s sage remark through the mouth of Mark Anthony: “The evil that men do lives after them; the good is oft interred with their bones.” Julius Caesar: Act III, Scene 2.

Mrs. Hively became acquainted with Richard Randall through her son, Jeff, in the mid 1980's. From May 1995 until May 1999, Mr. Randall frequently stayed at Mrs. Hively's home.² Although his testimony was somewhat confusing, Mr. Randall confirmed his previous testimony that he stayed at her residence about ten times a month, except for the times he lived out of the area, which was for most of 1998. That was his best estimate of the time he spent at her apartment. Mr. Randall also had his mail delivered to her address.

Doris Van Horn, a downstairs neighbor of Mrs. Hively from December 1995 to March 1998, testified that during the time she lived below Mrs. Hively she saw Mr. Randall at Mrs. Hively's apartment almost every day and night, and heard him there, as well.³ In fact, she believed he lived there.

Mrs. Hively herself admitted that Mr. Randall stored many of his belongings in her living room closet, including clothing and bed linens. Mrs. Hively never registered him as a guest except one time, in January 1999, when she did not enter him in writing on the register, although she notified the Housing Office by phone.

Some time around May 1999, Mrs. Hively found a videotape among Mr. Randall's belongings. Her son Jeff gave the tape to Floyd Reed, a county detective. Mrs. Hively was highly cooperative with Mr. Reed, and Mr. Randall's subsequent conviction and incarceration for child sexual abuse was largely due to her actions.

On 11 May 1999 an article about the charges filed against Mr. Randall

² Mrs. Hively first lived at 1606 Sherman Street, and then moved to 1613 Catherine Street about two years ago. Both are public housing units.

³ Ms. Van Horn even complained to Mrs. Hively that she could hear snoring in her living room, and Mrs. Hively confirmed that it must be the snores of Mr. Randall, who apparently slept in her living room.

appeared in the local newspaper, which quoted Mrs. Hively as saying that Mr. Randall was like a son to her, and that if she had known about his criminal behavior she would have “put him out.”⁴ After the article appeared, the Housing Authority took steps to evict her.⁵

The required grievance hearings were held and the case was heard by District Justice Allen Page, who found for the Housing Authority. Mrs. Hively then appealed to this court.

DISCUSSION

Congress has vested local public housing authorities with the maximum amount of responsibility to administer public housing programs. Therefore 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 United States Housing Act, U.S.C.A. § 1401 et seq.; 24 C.R.F.R., 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 and Cmty. Dev., 33 F.3d 323 (4th Cir. 1994).

The lease between the Housing Authority and Mrs. Hively states at Section VII(A)(1):

⁴ Mrs. Hively admitted making the statement, but insisted she meant that she would put him out of her life, not out of her house. The court does not find this explanation plausible. We also note that there was no evidence whatsoever Mrs. Hively knew of Mr. Randall’s illegal activity while he was staying there, nor did the Housing Authority allege that she was aware of it.

⁵ Prior to the eviction notice at issue in this case, the Housing Authority issued two other notices, for allowing Mr. Randall to store child pornography at her residence. These notices were rescinded.

Tenant shall use and occupy the premises exclusively as a private dwelling for Tenant and her family and for no other purpose and only during such time as Tenant may be eligible. Tenant shall not assign this Lease, sublet or transfer possession of the premises, or give accommodation to boarders/lodgers, whether paying or not, without the written consent of the Authority. This provision does not include reasonable accommodation to Tenant's guests or visitors who remain within the premises for a period not in excess of forty-eight (48) hours. **TENANT MUST REGISTER ALL GUESTS (WHO VISIT MORE THAN 48 HOURS) WITH THE DEVELOPMENT OFFICE. REGISTERED GUESTS MAY STAY UP TO 14 DAYS PER YEAR (PER VISITOR) WITH NOTICE TO THE DEVELOPMENT OFFICE AND APPROVAL BY THE HOUSING COORDINATOR.**

This prohibition against boarders and lodgers is required to be included in all Housing Authority leases. 24 C.F.R. § 966.4(f)(2). The Housing Authority calculates this two week period by adding up the total number of hours a person stays with a tenant in any given 12-month period. The hours need not be consecutive.

This court has already found that the lease provision at issue, as well as its interpretation by the Housing Authority, is not inconsistent with the United States Housing Act, is not unreasonable, and is not unconstitutional. We adopt our discussion of that issue in Lycoming County Housing Authority v. Klopp, Lyc. Co. Docket Numbers 98-01,890; 98-02,009, affirmed by the Superior Court on 16 March 2000. It therefore remains to decide whether Mrs. Hively violated the lease. The evidence clearly shows that she did.

The court finds the testimony of Mr. Randall and Mrs. Van Horn to be credible, and the evidence they offered established that at least during the period of time from May 1995 through the end of 1997, and from January 1999 to early May 1999, Mr. Randall stayed at Mrs. Hively's apartment well in excess of fourteen days a year—no matter how they are calculated. He also received mail there and stored his

belongings at her residence. Mrs. Hively maintained that Mr. Randall was merely a frequent visitor, for 20-25 minutes a day, but we do not find her testimony to be credible on that issue.

Mrs. Hively clearly violated the lease at least for the years 1995, 1996, and 1997, for she permitted Mr. Randall to live in her apartment for extensive periods of time during those years. And even if we conclude that Mrs. Hively registered him as a guest in January 1999, she nonetheless violated the lease in that year as well, because Mr. Randall stayed far longer than the permitted fourteen days. In short, there is no doubt in this court's mind that Mrs. Hively violated the border/lodger provision in her lease.

Mrs. Hively's Plea for Mercy

Mrs. Hively complains that she is being punished for helping the police apprehend a criminal. That is obviously untrue. Mrs. Hively is not being evicted for helping the police. She is being evicted for violating one of the most important public housing rules: for allowing another individual to reside in her unit without notifying the Housing Authority. This policy exists to ensure that only the truly needy receive the benefits of public housing, and to ensure that all tenants pay what their household can afford. When individuals violate this provision they undermine this important social welfare program and cheat the public, which pays for it.

Mrs. Hively feels the Housing Authority is acting inappropriately in evicting her. She believes that under the circumstances, she deserves a break. The court does not agree. By enforcing the lease aggressively and impartially, the Housing Authority is merely carrying out its duty to administer the public housing system

effectively and fairly. By refusing to overlook Mrs. Hively's violation, the Housing Authority has demonstrated it will not engage in favoritism or discrimination among tenants.

Mrs. Hively asks this court to consider the serious consequences of her eviction: she will lose her inexpensive housing during her retirement years. Mrs. Hively should have considered those consequences during the four years she violated her lease, and indeed should consider herself lucky to have escaped eviction for those four years.

Certainly the community and the Housing Authority should be grateful to Mrs. Hively for helping the police nab a criminal. However, that does not wash away her past sins. For four years, Mrs. Hively harbored an unreported individual in her public welfare unit, and thus abused the system that provided her with safe, decent, low-income housing for thirty-five years. For reporting this child abuser, Mrs. Hively deserves praise; for allowing him to live in her unit for four years without telling the Housing Authority, she deserves to be evicted.

ORDER

AND NOW, this _____ day of March, 2000, for the reasons stated in the foregoing opinion, judgment is entered in favor of the Lycoming County Housing Authority and against Rose Hively for possession of the real estate located at 1613 Catherine Street, Williamsport.

BY THE COURT,

Clinton W. Smith, P.J.

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