

CASE NO. A07 - 2103

STATE OF MINNESOTA
IN COURT OF APPEALS

Barbara Wilhite,
Relator,

vs.

Scott County Housing and Redevelopment Authority,
Respondent.

Relator's Reply Brief and Appendix

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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ARGUMENT

Ms. Wilhite's inability to vacate her rental unit after her lease ended and her consequent eviction as a holdover tenant did not require the Scott County HRA to terminate her Section 8 Housing Choice Voucher.

In her testimony at the informal hearing on August 24, 2007, Scott County HRA employee Nicole Horner testified that it was the HRA's policy to terminate Section 8 voucher rental assistance if a voucher holder was simply evicted from their housing. A-14. The HRA's hearing officer then attempted to justify the HRA's decision to terminate Ms. Wilhite's Section 8 assistance by determining that Ms. Wilhite "did in fact seriously and repeatedly violate a provision of her lease on numerous occasions" and that "this led to a court ordered eviction..." A-71. (Emphasis added.) Now, in its Brief to this Court, the HRA has departed from the conclusion reached by its hearing officer that numerous serious and repeated lease violations led to Ms. Wilhite's eviction; instead it has taken the position that Ms. Wilhite's failure to immediately vacate her rental unit was her only lease violation, and that, in its view, this failure was a serious lease violation. The HRA's new position is not supported by either the evidence or the law.

On June 30, 2007 Ms. Wilhite's lease with her landlord, Evergreen Heights Townhomes, ended. A-49, A-38. She had been notified in a letter from Evergreen Heights Townhomes Community Manager, dated April 16, 2007, that her lease would expire on June 30, 2007 and would not be renewed. A-38. Though Ms. Wilhite's inability to vacate the premises after her lease expired was an unauthorized holdover of the premises, it was not a

breach of the lease because the lease had expired and was no longer in effect.

In *Span-Deck, Inc. v. Fabcon, Incorporated*, 570 F. Supp. 81, 87-88 (D.C. Minn. 1983), the court determined that, under Minnesota decisional law, a post-contract provision cannot create a contract remedy where no contract exists, declaring that “an agreement’s post-contract provision is but a nullity” and holding that a franchisor had no contract remedy for use of its trade secrets after termination of the franchise agreement (though a tort remedy remained available).

A similar principle has been followed by courts in cases involving eviction proceedings. Courts have held that when a landlord’s right to recover the premises is based on a civil wrong such as possession of property by a trespasser or a holdover tenant, and does not emanate from a breach of a lease provision occurring during an unexpired term of a lease, the right to recover possession of the property in an eviction proceeding has its inception in tortious conduct rather than contract. *Fragomeno v. Insurance Company of the West*, 207 Ca. App. 3d 822, 830-831 (Cal. App. 2 Dist., 1989); *Drybread v. Chipain Chiropractic Corporation*, 151 Ca. App. 4th 1063, 1074-1077 (Cal. App. 3 Dist., 2007).

Since the landlord’s right to recover the premises from Ms. Wilhite did not emanate from any breach of the lease occurring within the unexpired term of the lease, but rather from Ms. Wilhite’s holdover after the lease expired, the HRA’s claim that she was evicted for a serious violation of her lease must fail.

The Minnesota Court of Appeals also has noted that an eviction action based on lease

violations is distinct from an eviction action for a holdover, and that the evidence required to sustain an eviction for holdover status is different from the evidence needed to sustain an eviction for a violation of a lease. *Anoka Community Action Program v. Solmonson*, 2006 WL 1320332 (Minn. App. 2006).

In this case, the Scott County District Court, in its Findings of Fact and Conclusions of Law, Order and Judgment, dated July 24, 2007, made clear that its evidentiary basis for granting Ms. Wilhite's landlord recovery of the premises was that Ms. Wilhite was given proper notice to vacate the property and that she failed thereafter to vacate the property. A-24, 25. Her eviction was therefore based on the fact that she was a holdover tenant. The District Court deliberately decided not to find that Ms. Wilhite had broken the terms of her rental agreement. *Id.* And by proceeding to obtain an eviction on the grounds that Ms. Wilhite was a holdover tenant, Ms. Wilhite's landlord avoided the difficult, and perhaps impossible, burden of proving that in some way Ms. Wilhite had violated her lease.

Even if Ms. Wilhite's unauthorized holding over of her rental premises were to be viewed as a violation of an expired lease, Respondent's assertion (Respondent's Brief, p. 8) that Ms. Wilhite "blatantly refused" to vacate the premises finds no support whatsoever in the record. Respondent's exaggeration of the seriousness of Ms. Wilhite's conduct should therefore be rejected. At the informal hearing Ms. Wilhite testified "...I really had no intention of just, you know, staying somewhere where I was told to get out." A-12. Ms. Wilhite further testified, "I really don't have a place to go and I had mentioned to Hannah

[the landlord's property manager] and actually I told her about the situation and she is the one that told me \$25 a day." *Id.* The record offers no basis for speculation that Ms. Wilhite was not making every effort she knew how to move out without becoming homeless. *Id.* The delay in vacating her rental unit was due entirely to her inability to find another place to stay. *Id.* The record is simply devoid of any evidence of an intent by Ms. Wilhite to refuse to move from the premises. The HRA's attempt to label her inability to find another place to stay as some sort of serious infraction is simply not supported by the record.

The HRA's reliance on the case of *Cole v. Metropolitan Council HRA*, 686 N.W. 2d 334, 337 (Minn. App. 2004) is misplaced. The HRA erroneously contends that *Cole* stands for the proposition that a default judgment in an eviction case could be deemed sufficient proof of a serious violation of the terms of the lease for purposes of terminating a participant's Section 8 housing assistance. Respondent's Brief, pp.6-7. Not only does the HRA mis-state what *Cole* stands for but the facts and circumstances of *Cole* sharply differ from the present case.

The HRA's reliance on *Cole* is flawed in at least three important respects. First, the default judgment in *Cole* was granted on the grounds that the tenant had violated provisions of an unexpired lease and not on the grounds that the tenant was a holdover tenant like Ms. Wilhite. Second, Ms. Cole's lease violations, unlike Ms. Wilhite's inability to vacate her apartment after her lease expired, were without question serious; the trial court based its conclusion that Ms. Cole's lease violations were serious on the uncontested allegations in the

landlord's complaint that she had caused \$1,259 worth of damage to the apartment unit and that she was using drugs regularly in the apartment. Third, the Court of Appeals in *Cole* clearly did not hold, as Respondent contends, that a default judgment in any case, regardless of whether it was based on a violation of an unexpired lease or a tenant holding over the premises, could be deemed sufficient proof of a serious violation of the terms of the lease for purposes of terminating a participant's Section 8 housing assistance.

The HRA, as a matter of policy, has continued to assume that any eviction judgment is automatically based on a serious lease violation and that in every instance in which an eviction judgment is rendered against a Section 8 participant, it must terminate the participant's rental assistance voucher. However, such a policy is plainly at odds with the controlling federal regulation. 24 C.F.R. §982.552(b)(2) provides that a PHA is only required to terminate program assistance "for a family evicted from housing assisted under the program for a serious violation of the lease." In the case of Ms. Wilhite, the HRA misread and misapplied this regulation.

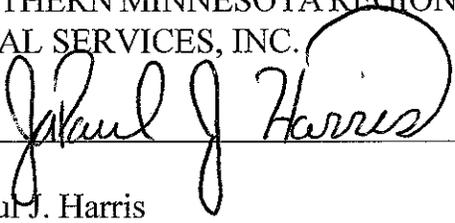
CONCLUSION

For the reasons set out above and in the Petitioner's Brief, Ms. Wilhite respectfully requests this Court to reverse the decision of Respondent and its hearing officer terminating her Section 8 Housing Choice Voucher.

Dated: April 3, 2008

Respectfully submitted,

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CERTIFICATE OF BRIEF LENGTH

Scott County Housing and Redevelopment
Authority,

Appellate Case No. A07-2103

Respondent.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subd. 1 and 3, for a brief produced with proportional font. The length of this brief is 1,416 words. This brief was prepared using WordPerfect 9.

Dated: April 3, 2008

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