

Section 8 Housing: Court Reverses Landlord's Refusal to Rent by CD Publications

Wisconsin: An appellate court orders a Section 8 landlord to allow a tenant to move into an apartment after the landlord rejected her application because one of her guests was arrested on a drug charge while visiting at her previous apartment.

The prospective tenant submitted an application for admission to the federal Section 8 Housing Voucher Program to rent an apartment from the landlord. The landlord, a management company hired by the local public housing authority to administer the Section 8 program, denied the tenant's application because one of the tenant's guests "engaged in illegal drug activity" at a different location four months earlier.

The tenant appealed the decision to the trial court. The trial court agreed that federal law allowed the landlord to deny an apartment to a prospective tenant based on the prior conduct of one of the tenant's guests. The tenant appealed the decision to the state court of appeals.

The appellate court reverses the lower court's decision and concludes a landlord may only deny a tenant's admission to a program under federal law (24 C.F.R. section 982.533 (a)(2)(ii)(A) based on the conduct of a household member and "not that of a guest."

A landlord, in most cases, may evict a tenant from public housing when a member of the tenant's household or a guest engages in drug related criminal activity. But the statutes and case law that deal with evictions are different from the statutes and case law regarding admission to a voucher program and other public housing programs.

Since the federal statute allows the landlord to deny admission based only on a "household member's" illegal activity and does not address or refer to a guest's conduct, the landlord could not deny admission to the tenant says the appellate court.

The facts presented to the court indicated that a man had been arrested in the tenant's apartment four months before she applied for admission into the landlord's voucher program at the landlord's building.

The man was arrested for smoking marijuana in her apartment in front of the police who came into the apartment looking for someone else. He was not convicted of the crime and there was no evidence the tenant was a participant in the drug activity or that she was aware of the arrest.

A public housing authority or landlord who participates in the program may prohibit admission of a household to the program if the housing authority "determines that any household member is currently engaged in or has engaged in "drug related criminal activity or violent criminal activity or other criminal activity which could threaten the health or safety of other tenants or employees.

But the prospective tenant may not be denied admission based on the conduct of a guest says the appellate court. The appellate court sends the case back to the trial court with instructions to reverse the landlord's decision to deny her application.

Lesson: The standards for admission into a public housing program are different from those allowing for eviction from a public housing property. The landlord could not consider the conduct of her guest four months earlier in making its decision about her admission into the program. The landlord would probably have been justified had the man been a household member.

Beverly A. Williams, Petitioner-Appellant v. Integrated Community Services, Inc. Respondent-Respondent. 2007 Wisc. App.

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