



National Center
on Poverty Law
founded 1967

Taking action to

Poverty Law Library

Poverty Law Library

Advocacy

Poverty Law News

About NCPL

Search

Cases

Clearinghouse
Review

Links

Illinois
Welfare News

WomanView

Hotline

Pers

YWCA v. Park

Available Documents
49,421

Landlord Participating in the Low-Income Tax Crediting Housing Program May Not Evict Tenant Without Good Cause

[49421A](#) Nonrenewal Noti
[Format: Paper Only]

YWCA v. Park, No. 93SC4248 (Wis. Cir. Ct. Dane County
May 28, 1993)

[49421B](#) Eviction and Rep
Summons and Complaint
[Format: Paper Only]

*Defendant represented by Connie Deer, Legal Action of
Wisconsin, 31 S. Mills St., Madison, WI 53715, (608) 256-
3304.*

[49421C](#) Decision and Ord
Granting Summary Judgm
of Dismissal
[Format: Paper Only]

Clearinghouse Number 49,421

Granting defendant tenant's motion for summary judgment, the court has held that a landlord who is participating in the Low-Income Tax Credit Housing Program pursuant to section 42 of the Internal Revenue Code may not evict a tenant without good cause. Tenant lives in the YMCA's housing for young mothers and children. After giving tenant a nonrenewal notice, landlord commenced this eviction action against her. The notice did not state any reasons for the nonrenewal. Tenant argued that, since landlord was a participant in the Low-Income Tax Credit Housing Program, it must have a valid reason for evicting a tenant under 26 I.R.C 26 and under the Land Use Restriction Agreement entered into between landlord and the state housing agency. The court agreed with tenant that, under the land use restriction agreement, landlord could not evict an existing tenant or terminate an existing tenant's tenancy absent good cause and that tenant was clearly an existing tenant protected by the provision.

Notify Me When This Ca Updated!

NCPL will automatically n
registered users when thi
case is updated if you sig
for this service. [Click here](#)
sign up.

Help!

You must be logged into
Web site in order to down
full-text documents or to
subscribe to case notifica
Case notifications are fre
require registration.
Downloads require a
subscription. [More inform](#)

STATE OF WISCONSIN

CIRCUIT COURT
Branch 10

DANE COUNTY

YWCA,

Plaintiff,

FILED
DANE COUNTY
CIRCUIT COURT

241

vs.

MAY 28 1993

Case No. 93SC4248

CAMILLE PARK,

AM PM
7,8,9,10,11,12,1,2,3,4,5,6

Defendant.

1

DECISION AND ORDER GRANTING SUMMARY JUDGMENT OF DISMISSAL

Plaintiff seeks to evict defendant from her room on "Third Street," the floor devoted to housing young single mothers and children. The notice given to terminate defendant's right to possession is a "nonrenewal notice" electing not to renew defendant's lease and requiring her to vacate her room by midnight, March 31, 1993. No cause for termination is given in that notice.

Defendant moves for a summary judgment of dismissal, alleging that under Title 26 of the Internal Revenue Code, §42(h)(6)(e)(ii), and under the Land Use Restriction Agreement for Low-Income Housing Tax Credit between plaintiff and the Wisconsin Housing and Economic Development Authority (WHEDA), plaintiff may not evict defendant without cause.

In order to prevail on this motion for summary judgment, defendant must show that she is entitled to a judgment of dismissal as a matter of law based on undisputed facts. To defeat this motion, plaintiff must either show that there is a dispute of material fact requiring

trial, or that defendant is wrong in her interpretation of the law.

It is undisputed that plaintiff is receiving tax credits as a result of its status as owner and manager of low income housing in compliance with 26 I.R.C. §42. It is undisputed that in order to qualify for low-income housing tax credits, that plaintiff is required to enter into an agreement with the state agency designated to allocate low-income housing tax credits. In Wisconsin, that agency is WHEDA. The required agreement between WHEDA and plaintiff is exhibit D-H attached to the affidavit of Connie Deer. That agreement is dated as of December 30, 1992.

The premises were placed in service, as defined in §42 of the I.R.C., on September 9, 1992. (Exhibit D-H, supra, at p.). It is alleged in the answer and counterclaim of defendant, and not denied by plaintiff, that defendant entered into a lease agreement with plaintiff on or about February 28, 1992, and has continued as a tenant since that time.

Plaintiff's Agreement with WHEDA provides in part as follows:

2. Representations, Covenants and Warranties of the Owner.

Owner makes the following representations and warranties to induce the Authority to enter into this Agreement and further represents, warrants and covenants that:

* * *

g. The Owner warrants that . . . the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

* * *

o. The Owner covenants that it shall neither (i) evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit . . .

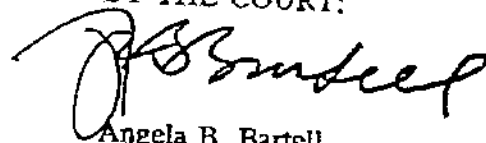
It is obvious from the undisputed facts in this record that defendant qualifies as an

"existing tenant" as of December of 1992, when plaintiff bound itself not to terminate existing tenants, except upon good cause. Since good cause was not alleged in connection with the nonrenewal of defendant's lease, defendant's possessory right has not been effectively terminated.

Therefore, defendant is entitled to dismissal of this eviction action. Defendant's motion for summary judgment of dismissal based on the Nonrenewal Notice dated March 1, 1993, is hereby granted.

Dated: May 28, 1993.

BY THE COURT:



Angela B. Bartell
Circuit Judge

cc:
ATTY WALTER R STEWART
ATTY AT LAW
330 E WILSON ST STE 100
MADISON WI 53703
256-7902
FAX: 256-7909

✓ ATTY CONNIE E DEER
LEGAL ACTION OF WISCONSIN INC
PO BOX 9686
MADISON WI 53713
256-3304
FAX: 256-0510