

BEFORE THE TENNESSEE HOUSING DEVELOPMENT AGENCY

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| TENNESSEE HOUSING |] | |
| DEVELOPMENT AGENCY, |] | |
| <i>Petitioner,</i> |] | |
| vs. |] | Docket # 32.00-095961J |
| MICHELLE RUMLEY, |] | |
| <i>Respondent.</i> |] | |

INITIAL ORDER

This contested administrative case was heard at the Madison field office of the Tennessee Housing Development Agency in Davidson County, Tennessee, on October 20, 2008, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State and sitting for the Tennessee Housing Development Agency. Bruce Balcom, Assistant General Counsel, represented the Tennessee Housing Development Agency (“THDA” or “the Agency”). The Respondent, Michelle Rumley, was represented by David Kozlowski and Barbara Futter of the Legal Aid Society of Middle Tennessee and the Cumberlands.

PROCEDURAL HISTORY

The Respondent received a notice from the Tennessee Housing Development Agency, dated February 26, 2007, advising her that her Section 8 housing choice voucher was being terminated. She filed a timely request for an informal hearing.

An informal hearing was conducted on April 30, 2007, before THDA Hearing Officer Brady Banks. On June 12, 2007, he issued a decision upholding the termination of the Respondent’s housing choice voucher. The Respondent, through counsel, made a timely request for a contested case hearing before an Administrative Judge.

After numerous continuances were granted, the contested case hearing was conducted on October 20, 2008. Testimony was received from the Respondent; from Donna Richardson, the regional THDA Rental Assistance Manager; and from Tiesha Hampton, the Respondent’s

daughter. In addition, the deposition of Alecia Mitchell, the THDA rental assistance coordinator in the Covington office, was admitted into evidence.¹

At the conclusion of the hearing, the matter was taken under advisement, and the parties were directed to submit proposed orders, if they wished to do so, by December 8, 2008. On that date, the Respondent filed her *Proposed Findings of Fact and Conclusions of Law*; the Agency did not file a proposed order. The record was then closed, and the case was declared ready for consideration.

FINDINGS OF FACT

1. The Respondent, Michelle Rumley, is currently a resident of Rutherford County, Tennessee, where she lives with her five children. She has participated in the Section 8 Housing Choice Voucher program since 2003.
2. The Tennessee Housing Development Agency is responsible for administering the Section 8 Housing Choice Voucher program in many parts of Tennessee. As program administrator, one of THDA's responsibilities is to ensure that the residence being rented is safe and meets Housing Quality Standards.
3. Before any family with a voucher moves into a unit, a THDA rental specialist conducts a move-in inspection to assure that the residence meets the Housing Quality Standards. After that, an annual inspection of the unit is conducted.
4. At the annual inspection, the THDA housing specialist considers whether the unit has failed any of the Housing Quality Standards; if so, the THDA inspector determines whether the problems are the responsibility of the tenant or of the owner. A written summary of the findings is sent to the owner and to the tenant. If the unit fails the inspection, the tenant and/or owner are given thirty days to make repairs, at which time a re-inspection is scheduled. THDA does not routinely conduct inspections of the unit when a tenant relocates.

¹ Pursuant to the Post-Hearing Scheduling Order, the record was held open for submission of a supplemental deposition of Ms. Mitchell. The Tennessee Housing Development Agency subsequently notified the Administrative Procedures Division that it did not wish to supplement the deposition.

5. A family participating in the Section 8 Housing Choice Voucher program is responsible for damages caused to the unit beyond normal wear and tear. Damages caused by a third party, such as those occurring during a domestic violence incident, are not the responsibility of the tenant. If the annual inspection finds damages beyond normal wear and tear, the tenant is given an opportunity to make repairs or pay for repairs to be made -- including reimbursing the owner of the unit for making repairs. No tenant will be subject to immediate termination of the Section 8 voucher for damages done to the unit -- regardless of the cause or severity -- until they are afforded an opportunity to make repairs or have repairs made.

6. In August of 2006, the Respondent asked THDA to transfer her Section 8 voucher from Rutherford County to Shelby County. She found a home at 3988 Ashview Cove in Memphis, which was inspected by THDA and approved. The Respondent and her children were listed as household members, with no other adults included on the lease.

7. During the few months that the Respondent lived at the Ashview Cove address in Memphis, her boyfriend, Armand Bush, became abusive. In response to his behavior, the Respondent told Bush that he was not to be around her residence. However, at times, he was able to convince Ms. Rumley's children to let him in when she was not at home. The Respondent did not invite Bush into her residence.

8. In October and November, 2006, the situation with Bush escalated to the point that he threatened and assaulted Rumley. While physically attacking the Respondent, Bush caused damage to the unit at Ashview Cove, including knocking holes in the walls and doors. The Respondent was able to convince him to leave, but continued to fear for her safety. She did not report the assault to law enforcement, believing that it would do no good.

9. The Respondent reported the domestic violence to THDA and advised THDA that she did not feel safe in her home. She was told that she could move. The owner of the rental unit was advised that the Respondent and her family were being allowed to relocate because of Bush's acts of domestic violence. The Respondent and her children were allowed to rescind the

lease in Shelby County, and they returned to another unit in Smyrna in February of 2007. The Section 8 voucher was transferred.

10. Thinking that she would be responsible for repairing the damage caused by her boyfriend, the Respondent asked a family member to try to patch the holes in the walls. The attempted repairs were not done very well.

11. A few days after the Respondent and her family moved from Memphis, the THDA supervisor in Covington, Alecia Mitchell, sent a letter advising the Respondent that her Section 8 voucher was being terminated because of “Significant damages to unit and serious violations of family responsibilities and obligations.” The notice did not specify what damages had been done to the residence in Shelby County. Ms. Mitchell had never seen the residence at Ashview Cove. No pictures are available. Outside of the Respondent’s description of the holes put in the walls by her former boyfriend, THDA did not present proof as to the nature or extent of the damages.

12. THDA terminated the Respondent’s Section 8 voucher before giving her an opportunity to make repairs or reimburse the owner for any repairs that were caused by the Respondent and her family -- an opportunity which the family would have had if the asserted damages were reported at a regular annual inspection.

13. THDA seeks to terminate the Respondent’s Section 8 voucher because of “significant” damages to the home in Memphis. According to the THDA supervisor in Covington, termination of a voucher is only appropriate if there are “significant” damages to the unit. Ms. Mitchell was unable to explain the difference between significant and insignificant damages -- finally agreeing that there was no definition, but she would know “significant” damages when she saw them.

14. After relocating from Memphis, the Respondent made an effort to work with the owner of the Ashview Cove residence to pay for the damage that had been done. She made some

payments directly to the owner before the owner cut off contact with her.² The owner of the residence on Ashview Cove in Memphis did not obtain a judgment against the Respondent for the asserted damages. Nor did she provide any evidence in support of the Agency's case during the hearing.

15. THDA previously attempted to terminate the Respondent's Section 8 voucher, asserting that she had caused damage to a unit where her family had lived prior to the relocation to Shelby County. However, that termination was overturned by THDA Hearings Officer, Brady Banks, because the owner of the unit would not cooperate with THDA and did not seek a judgment against her in court proceedings.³ The Respondent denied that she or her family had caused significant damages to the unit and the record is unclear as to the extent of any damage beyond a stain on the rug.

CONCLUSIONS OF LAW

1. Section 8 of the Housing Act of 1937 was designed "[f]or the purpose of aiding low-income families in obtaining a decent place to live..." and authorizes rental assistance payments to eligible families who rent existing housing. U.S.C. § 1437f(a); *see also, Davis v. Mansfield Metropolitan Housing Authority*, 751 F. 2d 180, 183 (6th Cir. 1984). The Housing Act was amended by Congress in 1974 to add the voucher program. 42 U.S.C. § 1437f(o). The Housing Choice Voucher program is administered by local public housing agencies, such as Tennessee Housing Development Agency. Once issued a voucher, a family seeks a suitable residence with rent being subsidized by the federal government. *See generally, Wojcik v. Lynn Housing Authority*, 845 N.E. 2d 1160, 1162, n. 2 (Mass. App. 2006) [brief overview of Section 8 voucher program].

2. Among other reasons, a public housing agency may terminate a family's Housing Choice Voucher if the "family violates any family obligations under the program". 24 C.F.R.

² In conversations with the Respondent, the owner estimated the cost of the damage to be \$800. She kept the Respondent's \$350 damage deposit, and the Respondent paid an additional \$221 before the owner told her to stop sending payments because she was considering filing a legal action.

³ Mr. Banks' decision explained to the Respondent that she would be subject to losing her voucher if she refused to pay a future landlord for damages if a judgment was entered against her.

§982.552(c)(1)(i). As part of its obligation as a participant in the housing choice voucher program, a participant family is “responsible for an HQS [Housing Quality Standard] breach caused by the family as described in § 982.404(b)”. 24 C.F.R. § 982.551(c). More specifically,

[t]he family is responsible for a breach of the HQS that is caused by any of the following:

* * *

(iii) Any member of the household family or guests damages the dwelling unit or premises (damages beyond ordinary wear and tear)...

24 C.F.R. § 982.404(b)(1). This obligation must be read in the context of the statute’s prohibition on evicting or terminating assistance to a family when a member of the family has been a victim of domestic violence. *See*, 42 U.S.C. § 1437f(o)(7)(D)(i).

3. As the party asserting that certain allegations are true, the Tennessee Housing Development Agency has the burden of presenting evidence to prove, by a preponderance of the evidence, that the Respondent has violated the family obligation and that, as a result, her Section 8 voucher may be terminated. *See, Winford v. Hawissee Apartment Complex*, 812 S.W. 2d 293, 295 (Tenn. App. 1991); Rule 1360-4-1-.02(3),(7), TENN. COMP. R. & REGS. The Tennessee Housing Development Agency failed to meet that burden.

4. The Agency failed to prove that the Respondent violated a family obligation that would permit termination of her Housing Choice Voucher. Based on this record, the damage to the residence in Memphis consisted primarily of holes in the walls and damaged doors. The Respondent notified the Agency that the damage to her residence was the result of domestic violence, and the Agency authorized her to rescind the lease and relocate, based on that information. The damage to the Respondent’s residence, whether significant or not, was not caused by the Respondent or her family, but by her former boyfriend. At the time that he caused the damage to her residence, he was neither a member of her family (*See*, 24 C.F.R. § 982.4(b)) nor a guest. Consequently, the Respondent is not responsible for any damage caused by her former boyfriend.

5. And, finally, while the participating family may be “responsible” for a breach of any Housing Quality Standard beyond normal wear and tear, existence of damage to the unit is not,

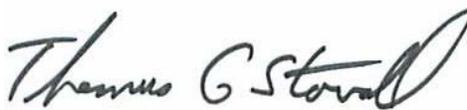
by itself, grounds for termination of the voucher. Rather, the concept of responsibility must be viewed in the context of the federal regulation which requires that a family must “correct the [HQS] defect within no more than 30 calendar days (or any PHA-approved extension)...” 24 C.F.R. § 982.404(b)(2). There is no distinction drawn between damages found at the annual inspection or those discovered at move-out. The Tennessee Housing Development Agency did not give the Respondent an opportunity to correct the “defect” related to any damage that was caused at the Ashview Cove residence.

It is therefore concluded that the Tennessee Housing Development Agency failed to prove, by a preponderance of the evidence, that the Respondent violated the obligations imposed on her by participation in the Housing Choice Voucher Program, or that her participation in the program should be otherwise terminated.

Accordingly, it is **HEREBY ORDERED** that the Tennessee Housing Development Agency’s request to terminate the Housing Choice Voucher of the Respondent, Michelle Rumley, as presented by its October 15, 2008 *Notice of Hearing* is **DENIED**.

Entered and effective this 12th day of December, 2008. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 12th day of December, 2008.



Thomas G. Stovall, Director
Administrative Procedures Division