

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
SUMMARY PROCESS
NO. 06-SP-0/2/2/5/4/

BOSTON HOUSING AUTHORITY,
Plaintiff

VS.

GENEVA PEREZ,
Defendant

FINDINGS OF FACT, RULINGS OF LAW AND
ORDER OF JUDGMENT

This is a summary process action in which the plaintiff is seeking to recover possession of the premises from the defendant for breach of lease. The plaintiff alleges that in violation of the defendant's public housing lease, the defendant's son engaged in criminal activity (illegal possession of a class D drug and illegal possession of a firearm). The plaintiff alleges that under the terms of the lease, the defendant is responsible for her son's conduct.

Based upon all the credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

The plaintiff, Boston Housing Authority (BHA), owns and manages the Franklin Field public housing development in the Dorchester section of Boston. The residential building at 22 Ames Street is part of the Franklin Field development. The defendant, Geneva Perez, resides at 22 Ames Street Street, Apartment 1066, subject to the terms of a BHA public housing lease. Her

most recent lease covers the period from June 2001 to the present.¹ As was set forth in the 2001 lease, the defendant's three children, including Raul Figueroa, are listed as members of the defendant's household. Raul Figueroa was born on January 11, 1986. He was nineteen years old at the time of his arrest on February 27, 2005.

Under the provisions of Section 8 (J) (2) of the BHA lease, the defendant agreed neither she nor any member of her household would engage in any criminal or illegal activity including "any violent or drug related criminal activity on or off BHA property, or any activity resulting in a felony conviction." However, under the lease not every felony conviction constitutes grounds for termination of the defendant's tenancy. Section 9 (B) (8) of the BHA lease provides that the BHA may terminate the defendant's lease for the following types of criminal activity:

Commission by the Resident, a member of Resident's household, a guest, or other person under Resident's control, of:

(a) Any criminal or other activity which threatens the health or safety of another resident or a BHA employee, or which threatens their rights to peaceful enjoyment of public housing premises, or which threatens the health or safety of any person residing in the immediate vicinity of the public housing premises;

(b) Any violent or drug-related criminal activity on or off BHA property.

On February 27, 2005, the defendant's son, Raul Figueroa, was arrested in the Dorchester section of Boston. On March 24, 2005, Raul appeared before a justice of the Dorchester District Court and pleaded guilty to possession of a firearm without a license and FID, G.L. c. 269, § 10(a) (g), and possession of a Class D substance (marijuana), G.L. c. 94C, § 34. On the firearms possession charge, he was sentenced to a term of 2½ years in prison (one year to be served with

¹ The defendant has been a BHA tenant since 1989.

the remainder of the sentence suspended). He was placed on probation until March 23, 2007 on the remaining counts.²

Shortly after the incident, the BHA learned that Raul had been arrested. In March 2005, the defendant met with the BHA's property manager to discuss the incident. The defendant told the property manager that Raul was living with his grandmother at the time of his arrest. The property manager told her that she needed to provide proof that Raul had a new permanent residence (such as a lease, utility bill, etc.). The defendant did not produce any supporting documentation.

In June 2005, the BHA, acting pursuant to G.L. c. 121B, § 32, commenced a summary process action. Relying on what it believed was the applicable provision of § 32, the BHA did not afford the defendant the opportunity to request an administrative grievance hearing before it proceeded to court. In August 2005, acting on a motion filed by the defendant, the Court dismissed the BHA's eviction action without prejudice.³

The BHA began the termination process a second time. First, the BHA served the defendant with a Notice of Private Conference to discuss the February 27, 2005 incident. The defendant and her property manager met but were unable to resolve the problem. Second, on February 15, 2006, the BHA served the defendant with a thirty-day notice to quit for cause (subject to BHA grievance procedure). Third, the defendant requested and received a grievance panel hearing under the BHA Grievance Procedure. On May 17, 2006, the grievance panel voted

² In June 2006, his probation was revoked and he was returned to prison to serve his full sentence on the firearms charge.

³ The Court ruled that the locus where Raul was arrested was not "on or adjacent" to BHA property. For that reason, the BHA was obligated to provide the defendant with the right to request a grievance hearing before it initiated a summary process action. The BHA did not appeal that decision. Instead, it restarted the eviction process in accordance with the BHA lease.

to allow the BHA to proceed to court against the defendant. The BHA complied with all pre-termination provisions of the BHA lease and governing regulations.

The uncontested evidence establishes that on February 27, 2005, Raul Figueroa engaged in drug-related criminal activity off BHA property. Such conduct constitutes a material violation of Section 9 (B) (8) (b) of the BHA lease.⁴

Under the terms of her BHA lease, the defendant is responsible for the conduct of her household members. The defendant argued that she was not responsible for her son's actions because Raul was not a member of her household on February 27, 2005, the date he was arrested. The evidence does not support the defendant's claim. First, the most recent BHA tenant certification form (signed by the defendant on February 11, 2005) states that Raul remained a member of the defendant's household. This was only two weeks before Raul was arrested. Second, the criminal docket lists the defendant's apartment as Raul's residence. Third, the defendant did not provide any documentary evidence to show that Raul had established a residence at any location other than the defendant's apartment.⁵ I find that Raul Figueroa was a member of the defendant's household on February 27, 2005.⁶

⁴ Raul Figueroa pleaded guilty to gun possession charges (a felony). Even though Raul's conduct constitutes a violation of the defendant's obligations under Section 8 (J) (2) of the BHA lease, such conduct does not constitute grounds to terminate the defendant's tenancy under Section 9 (J) (1) or (2) because there was no evidence that Raul engaged either (1) engaged in conduct that threatened the health or safety of a BHA tenant, BHA employee or person residing in the immediate vicinity of public housing property, or (2) engaged in violent criminal activity on or off BHA property. As of February 27, 2005, the BHA had not incorporated the lease termination provisions of 24 CFR §966.4(l)(3)(ii)(3)(i) into the defendant's lease.

⁵ The defendant did not present Raul's grandmother as a witness at trial. Raul was not called to testify. Other than her own testimony, the defendant did not present any evidence to support her contention that Raul had moved and was living with his grandmother. The evidence in this case does not have the persuasiveness or reliability the court found in *BHA v. Bruno*, 58 Mass. App. Ct. 486 (2003).

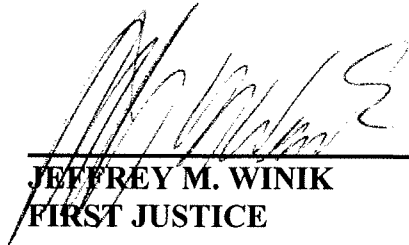
⁶ The Franklin Field development is federally subsidized. As a matter of federal law, public housing tenants may not assert a "special circumstances" or "innocent tenant" defense to defeat a claim for possession based upon the criminal conduct of a household member. *Department of Housing and Urban Development v. Rucker, Et Al.*, 535 U.S. 124, 131 (2002) ("the plain language of §1437(d)(l)(6) requires leases that grant public housing authorities the discretion to terminate tenancy without regard to the tenant's knowledge of the . . . criminal activity.")

Accordingly, I rule that the BHA has established that the defendant violated Section 9 (B) (8) (b) of her BHA lease and is entitled to recover possession of the premises.

ORDER FOR JUDGMENT

Based upon all the credible testimony and evidence presented at trial in light of the governing law, it is **ORDERED** that:

1. Judgment enters for the plaintiff for possession.
2. Execution for possession shall issue on February 1, 2007.



JEFFREY M. WINIK
FIRST JUSTICE

November 1, 2006

cc: Jay S. Koplove, Esq.
Boston Housing Authority
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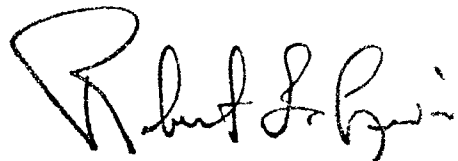
GENEVA PEREZ,
Defendant

NOTICE OF JUDGMENT ENTERED

This action came on for hearing before the Court, **Winik, J.** presiding and the issues having been duly heard and findings have been duly rendered, it is **ORDERED** and **ADJUDGED** under **Rule 10** of the **Uniform Rules of Summary Process** that:

1. Judgment enters for the plaintiff for possession.
2. Execution for possession shall issue on February 1, 2007.

Accordingly, judgment enters at **10:00 a.m.** this **2nd** day of November **2006**.



ROBERT L. LEWIS
CLERK MAGISTRATE