



1802 N. Division Street, Ste. 507
Morris, IL 60450

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June 22, 2015

Mr. Paul Professional, Executive Director
ABC County Housing Authority

Via Electronic Mail: paul@abcpha.com

In Re: Robert Resident

Mr. Professional:

This matter came for hearing on June 10, 2015, at 9:30 a.m. at the ABC County Housing Authority's Really Tall Tower Building, 145 W Broadview Dr, ABC, IL. Present for the ABC County Housing Authority (ABC PHA) was Attorney Allen Axelrod of Axelrod, Babbitcone, & Retina; Paul Professional, ABC PHA Executive Director, and Molly Manager, ABC PHA Property manager. Present for Robert Resident was Attorney Ami Wright of Partridge Family Legal Service, and Robert Resident, a participant in the ABC PHA Project Based Housing Choice Voucher Program.

Background:

Robert Resident is a participant in the ABC County Housing Authority Project Based Housing Choice Voucher Program (ABC PHA Exhibit 7). This program provides a rental subsidy to Mr. Resident's landlord to help Mr. Resident afford an apartment appropriate to his household size. The subsidy is provided by the ABC County Housing Authority, and is calculated based on Mr. Resident's adjusted household income. The Project Based Housing Choice Voucher Program program is authorized and funded by Congress; governed by regulations promulgated by the United States Department of Housing and Urban Development (HUD); and administered by the ABC County Housing Authority, pursuant to its HUD approved administrative plan..

On or about April 6, 2015, ABC PHA alleges it issued a 10 Day Notice to Terminate Tenancy (ABC PHA Exhibit 6) to Mr. Resident. The notice indicated to Mr. Resident his assistance was being terminated because he had violated provision of his lease agreement with ABC PHA, to wit:

1. Failure to keep the premises assigned to Mr. Resident in a clean and safe condition;
2. Disturbing the other tenants' rights to peaceful enjoyment;
3. Engaging in activity ABC PHA determined to interfere with the health, safety or right to peaceful enjoyment of the premises by other tenants;
4. Failure to use reasonable care in the operation and maintenance of appliances and equipment at all times.

Mr. Resident alleges he submitted to ABC PHA a grievance request for a hearing to contest the previously referenced termination of benefits.

ABC PHA further alleges it subsequently notified Mr. Resident a hearing would be conducted on June 10, 2015, at



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9:30 a.m.

Summary of the Evidence

At hearing ABC PHA presented:

1. ABC PHA 1 - ABC Fire Department Report for Incident 14-0004625 for incident date October 23, 2014.
2. ABC PHA 2 - ABC Fire Department Report for Incident 14-0005023 for incident date November 19, 2014.
3. ABC PHA 3 - ABC Fire Department Report for Incident 14-0005028 for incident date November 20, 2014.
4. ABC PHA 4 - ABC Fire Department Report for Incident 15-0000641 for incident date February 12, 2015.
5. ABC PHA 5 - ABC Fire Department Report for Incident 15-0001294 for incident date March 25, 2015.
6. ABC PHA 6 - ABC County Housing Authority 10 Day Notice to Terminate Tenancy for Robert Resident
7. ABC PHA 7 - Section 8 Project Based Voucher Program - Notice of change to Lease and Contract
8. ABC PHA 8 - Notice of Lease or Occupancy Agreement Violation dates 2-12-15
9. Sworn testimony from Captain Frank Firefighter, Director, Fire Prevention Division, ABC Fire Department
 - a. Summary:
 - i. Cpt. Firefighter has worked for the ABC Fire Department twenty-four years. It is his responsibility to oversee operations related to fire safety and prevention of the Fire Department in the City of ABC.
 - ii. Captain Firefighter testified Mr. Resident's unit has been determined by the ABC Fire Department to be an unit at risk for fire.
 - iii. Captain Firefighter further testified no one was injured or hurt during any of the incidents reported in ABC PHA Exhibits 1-5.
 - iv. Captain Firefighter testified the fire department had been called to Really Tall Tower 51 times in calendar year 2015, and approximately ninety percent of the calls were calls for medical services.
 - v. He also testified if there is an alarm in the building, the system is designed to provide an audible alarm in Really Tall Tower.
10. Sworn testimony from Chris Neighbor, a tenant at Really Tall Tower



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a. Summary:

- i. Mr. Neighbor was aware of 5 fire incidents since October, 2014. He further testified he was in the building during a fire incident in 2015.
- ii. He saw a lot of black smoke coming from the window of Mr. Resident's apartment during one of the incidents.
- iii. The building was evacuated during one of the incidents.
- iv. During one of the incidents an alarm sounded and he used the stairs to leave the building.
- v. During one of the incidents some residents of the building (including Mr. Neighbor's wife) had to use the stairs to leave the building due to physical mobility issues.

11. Sworn testimony from Sally Robbins, a tenant at Really Tall Tower

a. Summary

- i. Ms. Robbins lives 2 doors down from Robert Resident.
- ii. Ms. Robbins is aware of 3 fire incidents in Mr. Resident's apartment; 1 this year and 2 last year.
- iii. During the last incident Ms. Robbins was required to leave the building so smoke could be removed from the building.
- iv. During a fire incident an alarm sounds and it is loud.
- v. During a fire incident caused by Mr. Resident Ms Robbins was required to go down the stairs during the evacuation and it was difficult for her because she uses a cane.
- vi. During a fire incident caused by Mr. Resident the smell and smoke from the fire in Mr. Resident's unit went into the hallway of the building.

12. Sworn testimony from Paul Professional, Executive Director, ABC County Housing Authority

a. Summary

- i. ABC PHA served a 10 day notice of termination of tenancy to Robert Resident for various violations to Mr. Resident's lease.
- ii. Mr. Resident did not request a reasonable accommodation for a disability prior to his



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informal hearing with the ABC Housing Authority regarding the termination of Mr. Resident's lease.

- iii. The ABC County Housing Authority is prohibited from asking Mr. Resident if he has a disability.
- iv. Mr. Professional considered the fire incidents in Mr. Resident's apartment as serious or repeated violations of Mr. Resident's lease.
- v. Mr. Professional gave consideration not just to fire incidents involving cooking, but also the fire incident involving a scorched blanket in Mr. Resident's apartment prior to issuing a ten day termination of tenancy to Mr. Resident. Consequently, it was Mr. Professional's opinion the risk of harm to Mr. Resident and the other tenants of the building would not be reduced by removing the stove from Mr. Resident's unit or by other accommodations for Mr. Resident's disability requested by Mr. Resident's requested during informal discussions with ABC PHA.

13. Sworn testimony from Molly Manager, Property Manager, ABC County Housing Authority

a. Summary

- i. Ms. Manager was present during various of the fire incidents upon which ABC PHA relied in making its determination to terminate Mr. Resident's tenancy.
- ii. Ms. Manager personally served Mr. Resident with a Notice of Lease or Occupancy Violation on February 12, 2015. Mr. Resident did not respond to the notice.
- iii. When fire alarms sound in Really Tall Tower residents leave the building.
- iv. The ABC Fire Department recommended ABC PHA replace Mr. Resident's stove because of the number of fires on his stove.
- v. Ms. Manager has received complaints from residents regarding fires in Mr. Resident's apartment.

At hearing Mr. Resident presented:

1. Sworn testimony from Bobbie Bothered, a tenant at Really Tall Tower.

a. Summary

- i. Ms. Bothered is resident of Really Tall Tower.
- ii. Ms. Bothered can remember alarms going off in the building at least twice during the past 6 months.



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- iii. Ms. Bothered was outside with Mr. Resident during at least one of these incidents when the fire department came to the building.
- iv. When the alarms go off Ms. Bothered typically stays in her apartment.
- v. When the alarms go off they are very aggravating but Ms. Bothered has become conditioned to ignore them.
- vi. Alarms go off practically all the time.
- vii. The one time the alarm went off and Ms. Bothered knew it could be attributed to Mr. Resident she was outside. The other time she was inside and the alarm was aggravating to Ms. Bothered because alarms go off all the time.

2. Sworn testimony from Hattie Heard, a tenant at Really Tall Tower

a. Summary

- i. Ms. Heard is a resident of Really Tall Tower.
- ii. Ms. Heard has heard alarms sound in the building once every one to two months.
- iii. When the alarms go off they are shrill.
- iv. Detectors go off in apartments at least once a day and Ms. Heard can hear any of them that go off on her floor.
- v. Ms. Heard knows of a total of three times that alarms have sounded in the hallways during the past 6 months or more. Ms. Heard is certain one of those alarms was this year.
- vi. When the alarm went off this year Ms. Heard evacuated her apartment along with other residents of Really Tall Tower.
- vii. When the alarms go off it is annoying. The shrillness of the alarm vibrates in her head because of her hearing disability.
- viii. Ms. Heard doesn't like the noise, but she is used to it, and accepts it as part of living at Really Tall Tower.
- ix. It's hard for her to evacuate the building because Ms. Heard uses a walker and lives on the 4th floor of the building.



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3. Sworn testimony of Robert Resident.

- a. Mr. Resident recalls being in the lobby during the October, 2014, fire incident; his son was in his unit cooking.
- b. Mr. Resident recalls a blanket being scorched in his apartment November 19, 2014.
- c. Mr. Resident was not served with a 10 day notice personally, it was placed under his door after he paid his rent.
- d. Mr. Resident recalls a total of 4 incidents related to fire in his apartment since October, 2014, but does not remember a fire on November 20, 2014.
- e. During the most recent fire incident in his apartment Mr. Resident was in the washroom of his apartment throwing up.
- f. The burners on Mr. Resident stove remain hot for approximately 15 minutes after they are turned off.
- g. Mr. Resident is willing and able to reside in his unit without a stove.
- h. Mr. Resident testified he has been successfully treated for mental health issues since October, 2014.

Relevant laws, regulations and policy

Regarding the ABC PHA's authority to terminate assistance:

24 CFR § 982.404(b)(3) permits ABC PHA to terminate assistance to Mr. Resident if a violation of his family obligations occurs pursuant to 24 CFR §982.552.

24 CFR §982.552(c)(1)(i) provides that ABC PHA may at any time terminate program assistance to Mr. Resident violates any family obligations under the program as indicated in 24 CFR § 982.551.

24 CFR §982.551(e) provides Mr. Resident may not commit any serious or repeated violation of his lease.

Regarding the rules governing this hearing

24 CFR Part 983 is the is the basic regulation for the Project Based Voucher Program. Paragraphs (b) and (c) of that section describe the provisions of 24 CFR Part 982 that do not apply to the Project Based Voucher program. The rest of part 982 applies to the PBV program. 24 CFR §982.55 is not covered by 24 CFR 983(b) or 24 CFR 983(c). Consequently, this hearing has been governed by the provision of 24 CFR §982.55.



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24 CFR 982.55 provides in relevant part:

1. ABC PHA must give a participant family an opportunity for an informal hearing to consider whether certain ABC PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations, and ABC PHA policies based on a determination to terminate assistance for a participant family because of the family's action or failure to act as provided in 24 CFR 982.552.
2. The family must be given the opportunity to examine before the ABC PHA hearing any ABC PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the ABC PHA does not make the document available for examination on request of the family, the ABC PHA may not rely on the document at the hearing.
3. The ABC PHA hearing procedures may provide that the ABC PHA must be given the opportunity to examine at ABC PHA offices before the ABC PHA hearing any family documents that are directly relevant to the hearing. The ABC PHA must be allowed to copy any such document at the ABC PHA's expense. If the family does not make the document available for examination on request of the ABC PHA, the family may not rely on the document at the hearing.
4. The term "documents" includes records and regulations.
5. At its own expense, the family may be represented by a lawyer or other representative.
6. The hearing may be conducted by any person or persons designated by the ABC PHA, other than a person who made or approved the decision under review or a subordinate of this person.
7. The person who conducts the hearing may regulate the conduct of the hearing in accordance with the ABC PHA hearing procedures.
8. The ABC PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
9. The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.
10. The ABC PHA is not bound by a hearing decision:



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- a. Concerning a matter for which the ABC PHA is not required to provide an opportunity for an informal hearing, or that otherwise exceeds the authority of the person conducting the hearing under the ABC PHA hearing procedures.
- b. Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

11. If the ABC PHA determines that it is not bound by a hearing decision, the ABC PHA must promptly notify the family of the determination, and of the reasons for the determination.

Regarding the ABC PHA presentation of ABC Fire Department Incident Reports and Mr. Resident's objection to these reports as hearsay:

In *Richardson v. Perales*, the United States Supreme Court held that a decision could be based on hearsay in the context of applications for Social Security disability assistance. 402 U.S. 389 (1971). In *Perales*, the government denied the plaintiff's application for disability benefits based solely on examining physician's written medical reports; the plaintiff asserted that his inability to confront and cross-examine these physicians at the application hearing violated his right to due process. The Court, however, held that a written report by licensed physicians who examined a claimant could be received into evidence at the administrative hearing. The Court in *Perales* defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 401

In 1976, in *Mathews v. Eldridge*, the U.S. Supreme Court laid out the current test for determining what the specific dictates of procedural due process require for a given hearing regarding the deprivation of public benefits, 424 U.S. 319, 333-335 (1976). The Court considered a plaintiff's claim that the termination of his Social Security disability benefits violated his right to procedural due process where he did not receive a full pre-termination evidentiary hearing of the kind contemplated in *Goldberg v. Kelly*, 397 U.S. 254.

The plaintiff in *Mathews* had been receiving disability benefits when the state agency asked him to complete a medical questionnaire about his condition. He stated that his condition had not improved, and provided the names of his physicians. The state agency then obtained reports from these doctors and determined that the plaintiff was no longer disabled. The plaintiff was allowed to respond in writing with additional information, but the agency again determined he was not disabled and was no longer eligible to receive disability benefits.

The Court held that these administrative procedures were constitutionally adequate in the case of termination of benefits of a Social Security disability recipient, and that a hearing like that in *Goldberg* was not required. It emphasized that due process is not a technical conception; rather, it is flexible and varies according to the particular situation. It held that identification of the specific requirements of due process in any particular case required consideration of three factors: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest under current procedures and any probable value of additional or substitute procedures; and (3) the



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government's interest, "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." See Mathews, 424 U.S. at 335

Discussion

The Department of Housing and Urban Development Public Housing Occupancy Guidebook provides a useful framework for analysis of these circumstances. Though Mr. Resident participates in a different HUD subsidized program, the Project Based Voucher program is similar in nature. In fact, the calculation of Mr Resident's rent is based on the exact same HUD calculation as if he were living in traditional public housing. Page 17 of the Guidebook provides:

"Federal disability discrimination laws do not cover persons whose tenancy would pose a direct threat to the health or safety of others or whose tenancy would result in substantial physical damage to the property of others. However, neither Section 504 nor the Fair Housing Act allows for exclusion of individuals based upon fear or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (e.g., current conduct, a recent history of overt acts). A housing provider's good faith belief or speculation that an individual poses a direct threat is not sufficient. The assessment should consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable modifications of rules, policies, practices, procedures, or services that will reduce or eliminate the risk of a direct threat. Consequently, in evaluating a recent history of overt acts, a provider should take into account whether the individual has received intervening treatment or medication that has reduced or eliminated the risk of a direct threat. In such a situation, the provider may request that the individual document how the circumstances have changed so that he/she no longer poses a direct threat. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him or her from the housing on that basis".

This document can be found online at: <http://goo.gl/OhjiaR>

The overwhelming reliable, objective evidence in this matter suggests Mr. Resident is responsible for numerous fires in his residence during the period of October, 2014, to March, 2015, and that these fires pose a direct threat to his health and safety, as well as the health and safety of other residents of Really Tall Tower. Given the nature, duration, and severity of these fires, it is increasingly probable a risk of injury will actually occur. There does not appear to be reasonable modifications of rules, policies, practices, procedures that will reduce or eliminate this direct threat. Further, Mr. Resident has presented no objective third party evidence he has successfully intervening treatment or medication to mitigate this risk.

Mr. Resident has suggested these incidents do not breach the warranty of quiet enjoyment of other residents of the building because there is so much noise in Really Tall Tower. Even assuming, without conceding, this argument is true, residents of Really Tall Tower should not be forced to accept these conditions simply because they occur with such frequency. Nor does this argument address the smell of smoke disturbing residents in the building and caused by the repeated fires in Mr. Resident's apartment.

Findings of Fact:



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1. Mr. Resident was provided with an appropriate notice of this hearing.
2. Mr. Resident was given the opportunity to examine before the hearing any ABC PHA documents directly relevant to the hearing. Mr. Resident was permitted to copy any such document at his expense.
3. ABC PHA was given the opportunity to examine at its offices before the hearing any family documents that are directly relevant to the hearing. The ABC PHA was allowed to copy any such document at the ABC PHA's expense.
4. Mr. Resident has been given the opportunity to present evidence and question witnesses.
5. ABC PHA has been given the opportunity to present evidence and question witnesses.
6. Evidence has been considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
7. Mr. Resident was provided the opportunity to have representation of counsel, at his own expense.
8. Mr. Resident has repeatedly failed to keep the premises assigned to Mr. Resident in a clean and safe condition.
9. Mr. Resident is responsible for a pattern of fires in Really Tall Tower which pose a direct threat to himself and others.
10. Mr. Resident is responsible for fire incidents which have repeatedly violated the peaceful enjoyment of the residents of Really Tall Tower.
11. Mr. Resident has failed to use reasonable care in the operation and maintenance of appliances and equipment at all times in his unit at Really Tall Tower.
12. Mr. Resident is responsible for fire incidents which have cause serious and repeated violations of his lease agreement with his landlord.

Conclusions:

Based on a preponderance of the evidence presented, the above referenced facts show and it is determined:

The ABC County Housing Authority did meet its burden of proof to terminate the tenancy and project based housing assistance benefits of Robert Resident..

Order:

The project based housing choice voucher benefits and tenancy of Robert Resident with the ABC County



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Housing Authority are terminated.

ABC PHA is not bound by this decision for matters regarding which ABC PHA determines:

1. it is is not required to provide an opportunity for a hearing.
2. this decision exceeds the authority of the hearing officer,
3. this decisions conflicts with or contradicts HUD regulations, requirements, or is otherwise contrary to Federal, State or local laws.

If ABC PHA determines it is not bound by this decision in accordance with HUD regulations, it must promptly notify Mr. Resident of the determination and the reason for the determination.

Very truly yours,

A handwritten signature in blue ink that reads "Brent Newman".

T. Brent Newman, J.D.
Hearing Officer

CC: Attorney Ami Wright; Partridge Family Legal Service at Ami.Wright@pflegal.org
Attorney Allen Axelrod; Axelrod, Babbitcone, & Retina at AAllen@abclawfirm.com