

FINDINGS OF FACT

1. Plaintiff owns and operates a federally subsidized apartment project known as St. George Villa apartments, located at 351 West Tabernacle, St. George, Washington County, Utah.

2. Defendant is a tenant in these apartments and has resided there for nine years, initially with her husband and after his death in 1995, by herself.

3. Defendant entered into a series of leases for the premises, most recently on May 16, 1996 for a term ending May 31, 1996. Defendant pays \$95 per month as rent. The balance of the rent is paid for by the US Department of Housing and Urban Development. The lease incorporates "House Rules".

4. Defendant is severely disabled as a result of mental illness. She has a dual diagnosis of chronic bipolar disorder and major depression, chronic and recurring, with psychotic tendencies.

5. Defendant participates in group therapy and receives counseling and medication through the Southwest Center, a mental health facility in St. George, Utah. Several medications have been prescribed for defendant by staff at Southwest, including Prozac (an anti-depressant), Klonopin (an anti-anxiety medication), Eskalith (a mood balancer), and Benadryl (to control side effects of the other medications). All of these medications are necessary to her health. Defendant requires some medical supervision of her access to these medications.

6. As a result of her disability, defendant has an impaired ability to perceive problems and potential corrections for the

problems.

7. A number of incidents occurred at the complex over a period of years involving persons who spoke obscenities to tenants, left beer bottles in shrubbery, used vulgar language, wore shoddy clothing, shook a fist at another tenant, and two instances of assault or alleged assault on others. There was little evidence that any of the persons involved in these incidents had been invited to the project by defendant. These persons were not under the control of defendant and were not her guests.

8. There was testimony about other incidents where defendant was present, including disputed testimony about defendant's failing to clean the carpet (which admittedly had not been replaced during the nine years of her tenancy), disputed allegations about family or friends staying in the apartment for more than twenty-four hours without permission and testimony that permission was granted on some occasions, allegations of loud talking and party noises coming from defendant's apartment, and one incident where defendant threatened to throw water on a neighbor's barbecue.

9. Defendant, because of her disability, has limited ability to control the behavior of persons who visit her, including their use of alcohol and tobacco.

10. Defendant, because of her disability, lacks the ability to judge or perceive problems and determine possible solutions and is unable to recognize when some persons should be excluded from her apartment and lacks the judgment to determine how to exclude them.

11. Plaintiff has given defendant several written notices and warnings about incidents at the apartment, including notices of January 29, 1993 (which plaintiff did not enforce), several notices in 1995 near the time of defendant's husband's death, a Notice of Lease Termination dated February 28, 1996, and a Notice of Lease Agreement Violation and Termination of Tenancy for Other Good Cause served on or about April 25, 1996. This action was filed June 7, 1996. Defendant has remained in the premises during the pendency of this matter.

12. Plaintiff has made eight to ten contacts with mental health personnel concerning defendant, who have then contacted defendant. This is the extent of plaintiff's reasonable accommodation of defendant's disability. Defendant participates in some mental health programs and has rejected some other offers of assistance, especially concerning control of her money.

From the above Findings of Fact, the Court now enters the following

CONCLUSIONS OF LAW

1. Plaintiff may rely upon complaints of lease violations which have occurred at any time during defendant's tenancy and is not limited to complaints which have arisen since May 16, 1995, the date the current lease was entered into. The relevance of such alleged lease violations diminishes with time and subsequent circumstances.

2. While the House Rules, including paragraph 15 which seeks to hold tenants "responsible for the actions of their guests," are

incorporated into the lease, tenants here are not subject to strict vicarious liability for the actions of all persons who visit the complex and come to their apartment or have some contact with them.

3. Tenants are responsible for the actions of persons who visit the complex at the tenant's invitation to the extent that the tenant is aware of and able to control those persons' actions. This conclusion is consistent with 42 USC § 1437f(d)(1)(B)(iii), the applicable federal statute.

4. The incidents upon which plaintiff has relied in its eviction notices are not sufficiently connected to defendant or are so insubstantial as to be inadequate grounds for eviction with two exceptions: persons staying with defendant without management approval and conversation or party noises from defendant's apartment.

5. Plaintiff's last notice and its complaint is based on defendant's alleged violation of paragraph 23(b)(4) of the lease, the "other good cause" provision.

6. Plaintiff's evidence and argument, however, are based on paragraph 23(b)(1) of the lease, the "material violations" provision, a separate and distinguishable provision of the lease. Plaintiff's termination notice is technically defective and in violation of federal law and regulations. This is the basis for the dismissal of plaintiff's complaint, since plaintiff has not strictly complied with applicable eviction law.

7. The Fair Housing Amendments Act of 1988 (FHAA), 42 USC § 3604(f)(3)(B) and Section 504 of the Rehabilitation Act, 29 USC § 794, require that a landlord make a reasonable accommodation in rules, practices and services when such accommodation is necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

8. Pursuant to the above statutes and applicable case law, plaintiff is under a legal duty to make a reasonable accommodation which is specifically tailored to the needs of defendant, a mentally disabled person.

9. Plaintiff's contacts with the local mental health personnel are not a reasonable accommodation of defendant's mental illness.

10. Plaintiff's attempts to enforce house rules against defendant which require her to control persons whom her disability prevents her from controlling are not a reasonable accommodation of her disability.

11. Plaintiff has failed to make a reasonable accommodation for defendant's mental illness.

12. Plaintiff's complaint should be dismissed.

DATED this day of _____, 1996.

G. Rand Beacham
District Court Judge