

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

ESSEX, ss.

HOUSING COURT
NORTHEAST DIVISION
DOCKET NO: 04-CV-00067

BLANCA G,
Plaintiff,

vs. COMPLAINT

JOHN VASILOU,
Defendant.

JURISDICTION

1. The Court has jurisdiction of this matter pursuant to M.G.L. Ch. 185c §3.

PARTIES

2. The Plaintiff is a resident of Lynn, Massachusetts who resides at 24 Lewis Street in that city.
3. The Defendant is a resident of Swampscott, Massachusetts who resides at 45 Bale Street in that city.

FACTS

4. **The Plaintiff, Blanca G, is the mother of three children who are 11, 9, and 6 years old. (See Plaintiff's attached affidavit ¶ 2.)**
5. **G has been a participant in the Federal Section 8 Housing Choice Voucher Program for approximately fourteen (14) years. (See Plaintiff's attached affidavit ¶ 3.)**
6. **G signed a lease with her landlord in February, 2004. The tenancy was to commence on February 15, 2004. On information and belief, a Housing Assistance Payment (HAP) contract was also executed between the landlord and the Lynn Housing Authority (LHA). The contract established the rent at \$1400.00 a month. G's portion was \$124.00 until she stopped working due to domestic violence inflicted by her batterer and estranged husband, Rafael G. Mr. G knew where she worked and would harass her at work thus causing her to leave work. The Housing Authority now pays the entire contract amount and G receives a \$54.00 utility allowance per month. (See Plaintiff's attached affidavit ¶¶ 4-5.)**
7. The Plaintiff and Mr. G have been separated since December, 2003. Since that

time, the Plaintiff has become increasingly fearful of him. He has been verbally and physically abusive to both her and her minor children. On information and belief, he suffers from a substance abuse problem that is untreated. (See Plaintiff's attached affidavit ¶ 6.)

8. Things between the couple escalated in April, 2004 and as a result, G asked her landlord if she could terminate the tenancy and lease so that she could relocate to a safer area where Mr. G would not be able to find her. Her landlord refused to allow the termination. (See Plaintiff's attached affidavit ¶¶ 7-8.)

9. Because of the violence G and her children have suffered at the hands of Mr. G, she sought and obtained a year long 209A restraining order against Rafael G. A temporary order was sought on May 10, 2004 and a year long order was granted on May 24, 2004. This order will expire on May 10, 2005. The Plaintiff is also pursuing a divorce from Mr. G. (See Plaintiff's attached affidavit ¶ 10.) (See Exhibit A attached hereto.)

10. The Plaintiff seeks to terminate her lease with the Defendant because she cannot secure alternative housing elsewhere until she can use her Section 8. Currently, the Section 8 voucher is being used to pay the Defendant who has to date, refused to allow the Plaintiff to terminate the tenancy. This refusal has placed G in a position of imminent danger. She is fearful to stay at the leased premises because Mr. G knows the address of that apartment.

11. The Plaintiff fears for her life and for the safety of her children. At the time of the drafting of this motion, the Plaintiff was investigating her options at a battered women's shelter.

12. The Plaintiff needs to leave her current address as soon as possible. However, without the use of her Section 8, it will be virtually impossible for her to secure safe, affordable permanent housing. (See Plaintiff's attached affidavit ¶ 14.)

CLAIMS AGAINST THE DEFENDANT

FIRST CLAIM: IMPOSSIBILITY OF PERFORMANCE

13. In older common law, once a contract had been executed, the parties were bound by it and remained absolutely committed to the contract even if a change in circumstances made it extremely difficult or even impossible for one or both of the parties to perform. However, changes in the law have ameliorated the harshness of this rule by judicial recognition of the doctrines of *impossibility of performance* and *frustration of purpose*. "Under the doctrine of 'frustration of purpose,' where, after contract is made, party's principal purpose is substantially frustrated without his fault by occurrence of event the nonoccurrence of which was a basic assumption on which contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary." *Chase Precast Corp. v. John J. Paonessa Co., Inc.*, 566 N.E.2d 603 (Mass.,1991). (Attached.)

14. The actions of G's husband render it impossible for her to fulfill her obligations under the contract. G should not be forced to put her life at risk simply because the landlord refuses to allow her to terminate the lease prior to its expiration.

SECOND CLAIM: 24 C.F.R § 982.314

15. The Plaintiff, as a participant in the Federal Section 8 Housing Choice Voucher Program, has limited authority under federal regulations to unilaterally terminate the tenancy. 24 C.F.R § 982.314(b)(3).

16. A participant in the Section 8 program may terminate the tenancy if she "has given notice of lease termination (if the tenant has a right to terminate the lease on notice to the owner, for owner breach or otherwise)." 24 C.F.R § 982.314(b)(3).

17. In the instant case, the Plaintiff, by right, may terminate the tenancy according to the above cited language. She notified her landlord at the end of April, 2004 of the need to terminate and explained her situation. He refused to honor her request. She also sought assistance from the Housing Authority who by the nature of her request, was on notice of her intention and need to terminate the tenancy. Even though regulations governing the program indicate that a participant within the first year of tenancy with a particular landlord may not terminate within that first year, the circumstances in this case give rise to an exception to that regulation. "Except as provided in paragraph (a)(2) of this section, the initial lease term must be for at least one year." 24 C.F.R § 982.309(a)(1).

18. 24 C.F.R § 982.309(a)(2)(i-ii) provides that "The PHA (public housing authority) may approve a shorter initial lease term if the PHA determines that (i) (s)uch shorter term would improve housing opportunities for the tenant; and (s)uch shorter term is the prevailing local market practice."

19. The regulations go on to indicate that a HAP contract terminates if the lease is terminated "by the owner or tenant."

20. By regulation, G may not terminate unilaterally unless the owner has breached his obligations under the program or for other reasons delineated in the regulations as "otherwise." 24 C.F.R § 982.314(b)(3). "Otherwise" is not further explained, defined or referenced although it does seem to imply that some other circumstance may allow a tenant to terminate unilaterally. The Lynn Housing Authority's Administrative Plan is silent about the ability of participants to move during the initial lease term even though "The PHA may establish policies that prohibit any move by the family during the initial lease term." 24 C.F.R § 982.314(c)(2)(i).

21. Though it is not specifically contemplated by the regulations, a participant facing the situation in the instant case ought to be able to terminate her tenancy and thus cause the HAP contract to terminate so that she may flee the area for safety with her housing subsidy. Anything short of that is contrary to public policy and principles of equity and fairness.

22. The balance of harm between the Plaintiff and the landlord leans heavily on behalf of the Plaintiff. Though the landlord may incur a modest cost because he must now find new tenants, the housing market suggests that it should not be entirely difficult for him to do so within a relatively short time. The Plaintiff however risks bodily harm to her and her family.

THIRD CLAIM: HOUSING QUALITY STANDARDS

23. Section 8 regulations dictate various standards for housing quality (Housing Quality Standards (HQS)). In the event that these standards are breached, the tenant may terminate, even if she is within the initial term of the lease. 24 C.F.R § 982.314(b)(3).

24. One obligation the owner has is to provide space and security. “The dwelling unit must provide adequate space and security for the family.” 24 C.F.R § 982.401(d)(1). The regulations also say that “all program housing must meet HQS performance requirements at both commencement of assisted occupancy, and throughout the assisted tenancy.”

25. In the instant case, G is no longer renting an apartment that is safe and secure. It may be that this has no relation to the landlord, but it is counter-intuitive to force a participant who is now renting an apartment under the Section 8 program to stay renting that unit if the apartment is not safe, even if the lack of safety has little if anything to do with the landlord. The prolonged requirement that G stay at the premises in question is a technical breach on the landlord’s part as he is essentially forcing her to remain in the apartment that isn’t safe when his alternative is to mutually terminate the tenancy (24 C.F.R § 982.314(b)(1)(ii)) and allow her to move with continued assistance by the Lynn Housing Authority.

FOURTH CLAIM: EQUITY

26. Section 8 regulations allow an owner to terminate a tenant’s lease within the initial lease term for “other good cause.” 24 C.F.R § 982.310(d)(2). “During the initial lease term , the owner may not terminate the tenant for “other good cause”, unless the owner is terminating the tenancy because of something the family did or failed to do.” In turn, a tenant may not terminate unless she has “a right to terminate the lease on notice to the owner, for owner breach or otherwise.” 24 C.F.R § 982.314(b)(3). This language suggests, although it is not entirely clear, that the lease can only be terminated if either the landlord or the tenant breach an obligation. This ignores principles of fairness and equity and if held to the letter, would impose immense hardship on G.

27. As a result of being a victim of domestic violence, G is being victimized again by regulations that at the very least have not contemplated her circumstances; at the very worst find her reasons for wanting to terminate insufficient.

28. Based on principles of equity and fairness, G should be allowed to unilaterally terminate her tenancy. Though her actions in terminating this tenancy will void a contract, she has few if any other options and therefore should not be without the opportunity to enlist principles of equity in her favor. “Equity does not demand perfection in general conduct of plaintiff as condition of its aid.” *New York, N.H. & H.R. Co. v. Pierce Coach Lines*, 183 N.E.

836(Mass.,1933). (Attached.)

WHEREFORE, the Plaintiff requests that the Court:

- A. Allow G to immediately unilaterally terminate her tenancy and remain in good standing with the Housing Choice Voucher Program so that she may flee her batterer and locate new safe, affordable housing. The unilateral termination should not affect her right to retain her Section 8 voucher.
- B. Award such other relief as the Court deems appropriate.
- C. Award applicable attorney's fees.**

By her attorney,

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