

TO: Senior Partner Jones

FROM: Law Clerk #

DATE: November 24, 2009

RE: April Lester; Our File No. 09-100, public housing eviction action for alleged criminal conduct and service issue.

Questions Presented

- I. Is Ms. Lester protected from termination of her government assisted living and eviction, when the circumstances that led to her eviction were the criminal activities of a third party?
- II. When serving a complaint and summons for a federal suit to a defendant in the state of Oklahoma, is the service of process effective when presented to a seventeen-year-old relative at the defendant's usual place of abode?

Brief Answers

- I. Probably yes.
- II. Probably yes.

Fact Statement

Our client Ms. Lester lives in the Valley View Apartments in downtown Oklahoma, where her apartment is federally subsidized under the project-based Section 8 program. Valley View Apartments are owned by Regency Property Management which serves as the project's landlord.

Ms. Lester is a single mother who works part-time as a medical records clerk. She relies on her federal subsidies to help aid her in paying rent. Ms. Lester lives with her two children, ages eight and four. She does not allow anyone else other than her children to live in her apartment. From 2002 through 2005, Ms. Lester entered into a relationship with Jerry Lee, another tenant of Valley View who lived in a separate apartment building joined to Ms. Lester's building by an outdoor, covered walkway. The two had a child together in August of 2005. Despite having a child together both Ms. Lester and Mr. Lee each maintained their own separate residences and they never lived together or married each other.

Throughout their relationship Mr. Lee was verbally and physically abusive towards Ms. Lester, which eventually led to Ms. Lester ending their relationship after giving birth to their child in 2005. However, Mr. Lee's abusive conduct did not desist, and he has continued to abuse, stalk and harass Ms. Lester. One particular incident in November of 2006 led to Ms. Lester seeking hospital treatment after Mr. Lee punched her in the face, requiring her to get surgery for a deviated septum.

Mr. Lee was evicted in February 2007 for failure to pay rent; however, he was able to maintain his presence in the building by staying with friends and family who allowed him access to the building even after his eviction. The doors to the projects have not had working locks for years which also allowed easy access for Mr. Lee.

Both prior too and after his eviction, Mr. Lee would come to Ms. Lester's door intoxicated and shout obscenities at her and would carve these obscenities into her door. In addition Mr. Lee would constantly loiter in front of the building continuing to harass and intimidate Ms. Lester. She has filed a formal complaint with the police, used

alternative entrances to her apartment and requested a transfer to a different project, all in an attempt to avoid Mr. Lee and his conduct.

According to Regency Property management's court papers, Mr. Lee returned to the Valley View Apartments in the last week of April 2009, apparently intoxicated, and began kick and banging on Ms. Lester's door. Building security guard, Bob Richards, responded to her phone for assistance. Upon arriving he asked if Mr. Lee lived in the apartment or if he was on the lease. Ms. Lester responded that he was not on the lease and that he did not live there. After arguing with Mr. Lee about leaving the premises, Mr. Richards phoned the police and Mr. Lee left before their arrival. Again on May 5 2009, Mr. Lee returned to Valley View and punched Mr. Richards. He returned again later in the day and fired shots at Mr. Richards without hitting him. Mr. Lee was then arrested by the police, and upon his arrest, he stated that he was Ms. Lester's spouse and that he lived with her in her apartment.

On October 2 2009, Regency Property Management served a Ten Day Notice of Termination upon Ms. Lester, seeking to terminate her housing assistance payments and to evict her for the action of Mr. Lee in April and on May 5, 2009. The Notice erroneously stated that the incidents in late April and May 5 occurred on the same night, and that the incident in April occurred in Ms. Lester's apartment. In addition, the Notice mistakenly asserted that Mr. Lee was Ms. Lester's spouse, a member of her household or a guest on the night that he banged on her door and also on the day that he physically assaulted Mr. Richards. The Notice also stated that Ms. Lester failed to place Mr. Lee on her Section 8 recertification form.

The facts as presented in the Notice put Ms. Lester in a position that may warrant eviction; however, it is important to correctly understand the circumstances that made up Ms. Lester's relationship with Mr. Lee.

Discussion

- I. Is Ms. Lester protected from termination of her government assisted living and eviction from her apartment, when the circumstances that led to her eviction were the criminal activities of a third party?

The termination of assistance and the eviction from low-income housing assistance programs are addressed in Title 42 of the United States Code section 1437f, which provides:

During the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenants control, shall be cause for termination of tenancy, except that: (1) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights or program assistance, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking.

The Public Health and Welfare § 8, 42 U.S.C. §1437f(d)(1)(B)(ii) (2006). The language of §1437f can lead to the eviction and the termination of assistance of innocent parties as a result of the criminal activities of others. Courts have coined such evictions as 'no-

fault' evictions. The U.S. Supreme court has upheld no-fault evictions; however, it has emphasized that the Public Housing Authorities have discretionary authority in deciding whether or not to evict a tenant because of the illegal activity of a household member or guest. Dep't of Housing and Urban Development v. Rucker, 545 U.S. 125 (2002). No-fault evictions are an issue of first impression in the **Tenth Circuit**; therefore, we will have to draw from a number of persuasive authorities.

A. Mr. Lee was neither a guest of nor a member of Ms. Lester's household.

For the purposes of low-income housing lease provisions "a 'guest' is defined as a person temporarily staying in the unit with the consent of the tenant or another household member who has express or implied authority to give such consent on behalf of the tenant." **Barry G. Jacobs, HDR Hdbk. Of Housing and Dev. Law, Public Housing § 2:156 (2009). 24 C.F.R. §§ 966.4(f)(12), 5.100.**

In Rucker, pursuant to the United States Department of Housing and Urban Development (HUD) regulations, the Oakland Housing Authority (OHA) instituted state-court eviction proceedings against tenants of a subsidized housing development for the drug-related criminal activity of her household members. The tenant argued that HUD regulations did not and constitutionally should not authorize the eviction of innocent tenants. The Supreme Court held that the HUD regulation administering 42 U.S.C. § 1437(d)(1)(6) "unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household member and guests whether or not the tenant knew, or should have known, about the activity." **Rucker at 1232**. The Court recognized that it was reasonable for Congress to

allow no-fault evictions in order to provide federally subsidized housing that is “decent, safe, and free from illegal drugs”. Id at 1235.

Cuyahoga – supports Rucker provides remedy in court. Ms. Lester has the protection of the courts equitable authority which can overturn an eviction of what it deems an “innocent tenant”.

Powell – termination w/o proving.

Conclusion