

IN THE COURT OF APPEALS OF TENNESSEE  
EASTERN SECTION AT KNOXVILLE

**FILED**

June 5, 1997

Cecil Crowson, Jr.  
Appellate Court Clerk

FAIRVIEW LIMITED, d/b/a Fairview Apartments,	)	ANDERSON CIRCUIT
	)	
Plaintiff/Appellee	)	NO. 03A01-9703-CV-00071
	)	
v.	)	HON. JAMES B. SCOTT, JR.,
	)	JUDGE
PINKIE DANIEL,	)	
	)	
Defendant/Appellant	)	AFFIRMED

Paul E. Drozdowski, Oak Ridge, for Appellant.  
Harold P. Cousins, Buxton Law Office, Oak Ridge, for Appellee.

**OPINION**

INMAN, Senior Judge

The appellant was evicted from her apartment for a violation of the lease and applicable statutory law, and she appeals.

She has been a tenant of Fairview, a federally subsidized project, for ten years. The lease extant was executed July 21, 1995 for a one-year term and, as pertinent here, provides that the Landlord may terminate it “[for] criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises . . . .” An addendum to the lease provides that the “[t]enant . . . shall not engage in acts of violence or threats of violence.”

On May 28, 1996, the appellant was served with an eviction notice advising her that the lease would terminate on May 31, 1996. This notice is reproduced in the Appendix hereto and describes the incident which provoked the eviction notice. Reduced to brief terms, the appellant engaged in an altercation with police officers near the apartment occupied by appellant’s mother. She was arrested and charged with resisting arrest and obstructing an officer. The General Sessions and Circuit Courts held that the appellant was subject to eviction under T.C.A. § 66-28-517, which provides for a 3-day notice, as contrasted to the lease, which requires, *inter*

*alia*, 30 days notice.

The Tennessee Uniform Residential Landlord and Tenant Act (“URLTA”) was enacted in 1975 with the underlying purposes to:

- 1) Simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;
- (2) Encourage landlord and tenant to maintain and improve the quality of housing.
- (3) Promote equal protection to all parties; and
- (4) Make uniform the law in Tennessee.

T.C.A. § 66-28-103(b).

The URLTA is to be liberally construed and applied to promote these purposes. T.C.A. § 66-28-103(a); *Beets v. Pioneer Western Properties Co.*, No. 03A01-9506-CV-00183, (filed at Knoxville, November 28, 1995). The Act was amended in 1983 by adding T.C.A. § 66-28-517, which provides:

A landlord may terminate a rental agreement within three (3) days from the date written notice is delivered to the tenant if the tenant or any other person on the premises with the tenant’s consent willfully or intentionally commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises.

The notice required by this section shall specifically detail the violation which has been committed and shall be effective only from the date of receipt of the notice by the tenant.

T.C.A. § 66-28-517(a) & (b).

The URLTA allows a landlord to terminate a lease for a breach of the rental agreement or non-compliance with the tenant’s obligation under T.C.A. § 66-28-401 by giving a 30-day notice of the non-compliance and lease termination. T.C.A. § 66-28-505(a). If the tenant cures the breach or non-compliance within 14 days, the lease does not terminate.

It is apparent that the 1983 Amendment was enacted to cure the shortcomings in URLTA with respect to criminal behavior.

It was incumbent upon the landlord to prove that the appellant willfully committed a violent act or behaved in a manner which constituted or threatened to

be a real and present danger to the health, safety or welfare of the life or property of other tenants or person on the premises. T.C.A. § 66-28-517(a). While the trial judge made no findings of fact, he held that the plaintiff's case "is well-taken," meaning that the material allegations thereof were proved by a preponderance of the evidence.

Our review is *de novo* on the record, accompanied by the presumption that the trial court's findings of fact are correct, unless the evidence otherwise preponderates. T.R.A.P. 13(d). The presumption of correctness applies to the findings of fact and not to conclusions of law. *Hillsboro Plaza Enterprises v. Moon*, 860 S.W.2d 45, 47 (Tenn. App. 1993).

The evidence accredited by the trial judge revealed the following:

The incident involving the appellant and the Oak Ridge Police referred to in the termination notice occurred on Saturday, May 25, 1996, on the premises of Fairview Apartments. Fairview Apartments is an apartment complex housing 246 people, about one-half of whom are children and approximately 26% are elderly.

On that day, the appellant called the Oak Ridge Police to come to the Fairview Apartments to hear a complaint about her nephew. Two Oak Ridge Police officers, Officer McCoy and Sgt. Nall, responded to her call. Sgt. Nall arrived first and was interviewing her when Officer McCoy arrived and entered the apartment to interview her relatives while Sgt. Nall continued to speak with the appellant.

Officer McCoy returned outside and joined Sgt. Nall and the appellant. After a discussion with Sgt. Nall, the officers decided not to place any charges against anyone, which upset the appellant, who returned to the apartment with the two police officers. She wanted a warrant taken against her nephew and threatened that if the police weren't going to take care of the matter she would take care of it herself. She told the police officers that if they didn't take care of the matter then she would just have to kill everybody in the apartment and the police would come back and find bodies later.

The police then observed the outline of a heavy pointed object in the front pocket of the robe she was wearing. They were concerned that it was a weapon.

When asked what was in her pocket, she withdrew a key that did not match the outline of the object. When the officers again asked her what was in her pocket, she did not respond but reached for her pocket; Officer McCoy then grabbed her hand and told her he would have to see what was in the pocket. She became extremely agitated and resisted physically and tried to free her hands and scratched the officer. She continued to resist and had to be handcuffed. Throughout this incident, the appellant was using profane, loud, obnoxious and belligerent language in the apartment common area in the presence of other persons.

The object was removed from her pocket and was discovered to be a pair of needle-nose pliers.

Appellant argues that her conduct was not sufficiently serious as to justify the eviction and cites us to the case of *Investors Diversified Property Mgmt., Inc. v. Brown*, LEXIS 621 (Tenn. App. 1988), wherein eviction was found unjustified where a tenant's son sexually assaulted another tenant's child. The son was eleven years old with no prior history of violence, and there was no evidence that the evicted tenant knew of her son's tendency to commit a sexual assault. The inapposition of *Brown* is obvious.

To accord the appellant the relief she seeks would be to substitute our judgment for that of the trial judge, which is not a permitted function. There is little doubt that the conduct of the appellant was within the prohibition of the statute; she committed a violent act and threatened the lives of other persons on the premises. The result may appear harsh, since she is disabled and has limited means; but any amelioration is with the landlord, not with us, because the evidence does not preponderate against the judgment.

The judgment is affirmed. In our discretion, costs are assessed to the appellee.

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William H. Inman, Senior Judge

CONCUR:

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Don T. McMurray, Judge

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Charles D. Susano, Jr., Judge

**APPENDIX**

**Fairview Apartments**  
100 Utica Circle  
Oak Ridge, TN 37830

May 28, 1996

Ms. Pinkie Daniel  
303 Utica Circle  
Oak Ridge, TN. 37830

SUBJECT: Eviction Notice

Dear Ms. Daniel:

You are hereby given written notice pursuant Tennessee Code 66-28-517 of the Uniform Residential Landlord and Tenant Act. Termination of Lease Agreement due to violence or threats to health, safety or welfare of persons or property.

You are in material non-compliance with the terms and conditions set forth in your Lease Agreement.

The Lease Agreement will terminate on MAY 31, 1996

Reason for termination of Lease Agreement is as follows:

On 4-29-96 an Oak Ridge Police Officer was called to Ms. Cluster Daniel's apartment #103 Utica Circle, Oak Ridge to help keep peace while the Manager of Fairview Apartments spoke in person to Ms. Cluster Daniel. You became violent and threatening physically to the officer present. A report was made by the officer in which you stated you were very disruptive.

On 5-25-96, you were arrested outside of apartment #103 for resisting arrest and obstructing an officer. Resisted a frisk in order to subdue a possible attack with a 6" pair of needle nose pliers. You continued to fight, scream and resist arrest in which force had to be used. You continued to resist arrest while in the police car in which you had been handcuffed and broke free and resisted again as officers handcuffed you again. You were out of control with the arresting officers in [illegible] you screamed, fought and threatened violence. You made comments that you would just kill them then, (apparently family members) and the police would have to come back to find the bodies.

See Paragraph #13 General Restrictions -- 13.c. engage in or permit unlawful activities in the unit, in the common areas or on the project grounds. See Paragraph #13 part E. Tenant agrees not to make or permit noises or acts that will disturb the rights or comfort of nieghbors[sic].

See Paragraph #23. The Landlord may terminate this agreement for: 1) material non-compliance -- 2) failure of tenant to carry out obligations under any State Landlord and Tenant Act or; 3) criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants. Material Non-compliance includes 1) one or more substantial violations of the lease; 2) repeated minor violations of the lease that: A) disrupt the livability[sic] of the project, B) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises C) interfere with the Management of the project.

See Lease house rules: #22 Tenants shall not use profane, obscene, or abusive language nor make threats or harassment type comments to/or against management

or Landlord. Tenant is obligated for herself and others under him/her not to permit or do anything that will annoy, harass, embarrass, or inconvenience any other tenant or occupant on adjoining properties. See rules #23 Violation of any one of the House Rules will be considered just cause for termination after previous warning.

9-22-92 complaint from a resident of your harassing him. 10-26-92 harrassing[sic] another resident. 11-25-92 harrassment[sic] of tenants, threats interferring[sic] with Management and other residents. 8-13-92 disrupting office, harrassing[sic] manager. 10-28-93 threatened maintenance man with a shotgun (verbal threats).

You have received numerous notices in regards to your behaviour[sic].

Be advised that should litigation result, you have the right to defend the action in court. The Landlord agrees to rely only upon those termination grounds cited in this notice.

Be further advised that you the Tenant agrees[sic] to pay Landlord's reasonable attorney's fees, as well as all expenses and court costs, for the enforcement and/or defense by the Landlord of any provisions of this agreement, if so ordered by the court.

Sincerely,

s/Connie McDonald  
Manager

CM/cm  
CC: file  
Attorney  
Reed F. McCandless Co., Inc.