IN THE COURT OF APPEALS OF IOWA

No. 1-857 / 11-0167
Filed December 21, 2011

AHEPA 192-1 APARTMENTS,
Plaintiff-Appellant,

vs.

HARRY E. SMITH,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Carol L. Coppola, District Associate Judge.

The plaintiff was granted discretionary review of the district court's ruling that its forcible entry and detainer action was barred by Iowa Code section 648.18 (2009). **REVERSED AND REMANDED.**

Christopher P. Jannes of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellant.

Christopher B. Rottler of Iowa Legal Aid, Des Moines, for appellee.

Heard by Danilson, P.J., and Tabor and Mullins, JJ.

DANILSON, P.J.

This appeal concerns the proper interpretation of a lease and the interplay with federal regulations, Iowa Code section 562A.27A, and chapter 648 (2009). The district court determined this forcible-entry-and-detainer (FED) cause of action accrued at the time of the tenant's physical assault or the threat of physical assault upon other tenants. Consequently, the court found the cause of action was statutorily barred by section 648.18 because the landlord provided the offending tenant thirty-days' notice of termination rather than three-days' notice allowed by section 562A.27A. Because we conclude the tenant did not have thirty days peaceable possession, and federal public policy makes paramount that subsidized housing be safe and crime-free for all tenants, we reverse and remand.

I. Background Facts and Proceedings.

AHEPA 192-1 Apartments is the operator of an apartment community providing subsidized housing for elderly and disabled persons in Johnston, Iowa. AHEPA entered into a contract with Housing and Urban Development (HUD) and is subject to applicable federal regulations. When leasing apartments, AHEPA uses the model lease for § 202 of the Housing Act of 1959, which is required by HUD.[1]

[1] The model lease may not be modified without prior approval of HUD. *See* 24 C.F.R. § 247.4(d); HUD Occupancy Handbook, Directive 4350.3 REV-1, 6-4(1)(B), (D) (hereinafter "HUD Handbook"). The Iowa Supreme Court has given effect to the HUD Handbook when not unreasonable or inconsistent with statutory authority. *See Horizon Homes of Davenport v. Nunn*, 684 N.W.2d 221, 226 (Iowa 2004).

Harry Smith is a tenant of AHEPA. In December 2007, Smith signed a lease for apartment 123 and received notice of the house rules,[2] which include the prohibition against "acts of violence or threats of violence," a single violation of which "shall be deemed a serious violation and a material non-compliance with the lease" and "good cause for termination of the lease." Rent for the apartment was set at $642 per month, $431 of which was payable by or at the direction of HUD.

On September 29, 2010, AHEPA notified Smith:

> Pursuant to the terms your lease, 24 C.F.R. Part 247 and Iowa Code § 562A.27A . . . your lease is terminated as of midnight on October 31, 2010, and it is demanded that you vacate and surrender possession of dwelling unit #123 . . . on or before midnight on October 31, 2010.
>
> This Notice of Termination and Notice to Quit is being given to you for the reason that you or persons on the premises with your consent have created circumstances, or maintained a threat, constituting a clear and present danger to the health or safety of other tenants. This clear and present danger includes, but is not limited to, the following activities:
>
> Physical assault and/or the threat of physical assault directed to and against other tenants, and occurring on September 14, 2010, and on September 22, 2010.
>
> Should you remain in the leased unit after termination of your lease, the Landlord may seek to enforce the termination by bringing a judicial action, at which time you may present a defense.

On November 2, 2010, AHEPA filed an action for forcible entry and detainer, demanding possession and asserting:

> [Y]our lease was terminated as of midnight on October 31, 2010 . . . and you have failed to surrender possession . . . . The incident or incidents giving rise to the notice of termination and notice to quit includes physical assault and/or the threat of physical assault

[2] The lease references the tenant's receipt of the "House Rules," which outline acceptable and unacceptable behaviors on the leased premises. For example, "[a]lcoholic beverages are not allowed in the common areas," but "[b]eer & wine are permitted during an AHEPA or Tenant Association sponsored event."

> directed to and against other tenants, and occurring on September 10 and/or September 14, 2010, and on September 22, 2010.

Attached to the notice was a copy of Smith's lease, the termination notice, and proof of service of the termination notice.

Smith moved to dismiss the FED action asserting as defenses: (1) the September 29 notice lacked the specificity required by Iowa Code section 562A.27A as to who or what caused a clear and present danger; (2) defendant was not given adequate notice for terminating the lease for "other good cause" as required by 24 C.F.R. § 247.3(a)(4); (3) defendant was not given ten-day period required by HUD Handbook, 8-13(B)(2)(c)(4); (4) the action was barred pursuant to Iowa Code section 648.1(3) and defendant's thirty-days' peaceable possession; (5) plaintiff could not prove defendant posed a clear and present danger where fifty-seven days had elapsed from alleged assault or threatened assault; (6) AHEPA had waived the right to terminate by accepting rental subsidies from HUD after the alleged assault or threatened assault; and (7) the attempted eviction was in retaliation for defendant's good faith complaint of violation of landlord's duties under 562A.15.

A hearing before a magistrate was held on November 9 and 15, 2010.

> Three tenants testified regarding the September 22nd incident. The incident occurred after an event in the community room. Smith did not attend the event but arrived after the event in the community room when other residents were present. Beth Lauber testified that as she entered the community room she heard Smith talking in a loud voice. Lauber further testified that Smith made a motion towards her and then came "across a table" at her. She testified he had an evil scary look and she felt threatened and scared. She told him "you lay a hand on me and you will go to jail." Smith replied something like "if I do I will get you" or "I am going to come and get you." Another tenant, Bonnie Klouda confirmed that Smith entered the room screaming and yelling, came across the

> table at Lauber and made statements to Lauber about coming after her. She also felt threatened. She also testified that Smith told Lauber "let's take it out back."

The police were notified.

The magistrate found the September 22, 2010 incident rose to the level of a threat of physical assault and established grounds for eviction on the basis of an alleged clear and present danger. The magistrate also rejected Smith's defenses and entered a small claims judgment for possession in favor of AHEPA.

Smith appealed to the district court, contending the trial court erred in finding AHEPA had provided proper notice under Iowa and federal law; in finding the FED action was timely filed and not retaliatory; and in finding he presented a clear and present danger under Iowa Code section 562A.27A.

The district court first rejected Smith's contention that notice of termination of tenancy was inadequate because it did not contain the HUD Handbook requirement to "[a]dvise the tenant that he/she has 10 days within which to discuss termination of tenancy with the owner." HUD Handbook, 8-13(B)(2)(c)(4). The district court observed Smith conceded that HUD law does not contain a right to cure in the circumstances presented. Without a right to cure, there is no need to provide an opportunity to discuss termination. Consequently, the court concluded the notice requirement was inapplicable.

The district court then turned to whether the notice was defective under Iowa Code section 562A.27A. That provision of the Uniform Residential Landlord and Tenant Act provides:

> 1. Notwithstanding section 562A.27 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the

> landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property, the landlord, after the service of a single three days' written notice of termination and notice to quit *stating the specific activity causing the clear and present danger*, and setting forth the language of subsection 3 which includes certain exemption provisions available to the tenant, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. *The petition shall state the incident or incidents giving rise to the notice of termination and notice to quit*. The tenant shall be given the opportunity to contest the termination in the court proceedings by notice thereof at least three days prior to the hearing.
>
> 2. A clear and present danger to the health or safety of other tenants . . . includes . . . [p]hysical assault or threat of physical assault.

Iowa Code § 562A.27A (emphasis added). The district court found the notice provided was not defective on its face as the statute does not require identification of the alleged victims or accusers as urged by Smith.

However, relying upon the phrase "after the service of a single three days' written notice of termination and notice to quit," the district court agreed with Smith that the notice was defective because it allowed more than three-days' notice of termination and notice to quit. The court's decision rested on the "thirty days' peaceable possession" bar of Iowa Code section 648.18, as well as the court's finding that AHEPA had, in effect, provided too much notice to Smith before commencing the FED action. The court reasoned:

> The lease is confusing. At page 3 it sets out reasons for termination of the lease including 1) material noncompliance with the agreement, 2) material failure to carry out obligations under any state landlord or tenant act, and 3) other good cause. It then provides a requirement of a 30 day notice for all of these grounds for termination. These grounds for termination are identical to those set out in 24 [Code of Federal Regulations (CFR) section] 247.3(a)(1), (2), and (4) and require 30 days notice pursuant to 24 CFR 247.4(c). So clearly both the lease and the applicable HUD

> law would require the 30 days if in fact the eviction was based on these provisions.
>
> However, page 4 of the lease then contains another provision "(i)" that allows the landlord to terminate the agreement for other reasons. The listed reasons would appear to qualify for a clear and present danger conviction.[3] Eight reasons are listed including criminal activity by a tenant that threatens the health safety and right to peaceful enjoyment of the premises by other residents. These grounds would appear at 24 CFR 247.3(a)(3). No reference is made in the lease back to the provision requiring 30 days notice. Nor does 24 CFR 247.4(c) refer to any specific notice requirement for criminal activity.
>
> Although AHEPA argues that 30 days' notice was appropriate because the termination was for "material noncompliance" with the lease or "material failure to carry out obligations" under the landlord/tenant act, the notice given to Smith makes clear those were not the reasons for the termination. The stated reason was for presenting a clear and present danger pursuant to Iowa Code 562A.27A. AHEPA cannot now claim different reasons for termination when the notice was clear. The 30 day requirement was not applicable.
>
> The question then becomes whether or not the notice was defective because it allowed more time than is required under Iowa Code 562A.27A. Was the action barred as a result of 30 days' peaceable possession as Smith argues?

The district court went on to answer this question in the affirmative.

> The last date of the incidents which AHEPA based its request for eviction on was September 22, 2010. The notice was dated September 29, 2010. The FED was filed on November 2, 2010. Iowa Code [section] 648.18 provides: "Thirty days' peaceable possession with the knowledge of the plaintiff after the

---

[3] It appears the eight reasons listed in subparagraph 9(i), which includes "criminal activity by a tenant . . . that threatens the health, safety, or right to peaceful enjoyment . . . by other residents," encompass the "criminal activity" for which the landlord may terminate tenancy under 24 C.F.R. § 247.3(a)(3), "in accordance with 24 CFR section 5.859" (answering the question "When am I specifically authorized to evict . . . criminals?). 24 C.F.R. § 5.859 states in part:

> The lease must provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person: (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or (2) 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.

The reasons are "good cause" to terminate the lease.

> cause of action accrues is a bar to this proceeding. The cause of action accrued when the "lessee holds contrary to the terms of the lease." AHEPA did not have to wait 30 days. They could have acted after the 3 day notice required by Iowa Code [section] 562A.27A. The fact that AHEPA believed they were required to give a 30 day notice rather than a 3 day notice does not determine when the cause of action accrued or nullify the clear 30 day peaceable possession bar codified in Iowa Code [section] 648.18. The Court therefore concludes that AHEPA's action is barred by Iowa Code 648.18 and should be dismissed. The added security provided by AHEPA did not interrupt the peaceable possession. The affirmative step at ouster did not occur until AHEPA filed its action on November 2, 2010.

AHEPA was granted discretionary review by the supreme court, and the case was transferred to this court.

On appeal, AHEPA contends the district court erred in concluding the time it gave Smith to vacate the premises violated Iowa Code section 648.18 because the termination notice was adequate; the termination notice was pursuant to the terms of the lease, 24 C.F.R. § 247, and section 562A.27A, not solely upon 562A.27A as stated by the district court; and there is no basis to conclude AHEPA could not give more than three-days' notice to terminate Smith's tenancy.

II. Scope and Standard of Review.

Because Iowa Code section 648.5 provides that FED actions are to be tried as equitable actions, our scope of review is de novo. Iowa R. App. P. 6.907; *Capital Fund 85 Ltd. P'ship v. Priority Sys.*, *L.L.C.*, 670 N.W.2d 154, 156-57 (Iowa 2003); *Petty v. Faith Bible Christian Outreach Ctr., Inc.*, 584 N.W.2d 303, 306 (Iowa 1998). "In such a review, we are to 'look at both the facts and the law and then determine—based on the credible evidence—rights anew on those propositions properly presented.'" *Petty*, 584 N.W.2d at 306 (quoting *Bernet v. Rogers,* 519 N.W.2d 808, 810 (Iowa 1994)).

The interpretation of statutes is reviewed for errors at law. *Horizon Homes of Davenport v. Nunn*, 684 N.W.2d 221, 224 (Iowa 2004).

III. Analysis.

A. Statutory remedy. An action for FED is a summary statutory remedy for possession. Iowa Code § 648.1; *Steele v. Northup,* 168 N.W.2d 785, 788 (Iowa 1969). The action is available in the landlord-tenant context in four situations: where a party has taken possession from another by force, intimidation, fraud, or stealth; a tenant holds over after termination of the lease; a tenant holds possession contrary to the terms of the lease; or there is default in the payment of rent. Iowa Code § 648.1(1)–(3), (5). "The only question in a forcible entry and detainer action is whether the defendant is wrongfully detaining possession of the real property at the time of the trial." *Bernet*, 519 N.W.2d at 811. However, to reach this question we must consider the affirmative defenses raised by Smith. Because termination of the lease is at issue, we must also consider the terms of the rental agreement, federal law, and state law. *See Hunter v. City of Des Moines Mun. Hous. Auth.*, 742 N.W.2d 578, 587-88 (Iowa 2007).

"In interpreting the FED statutes we give them a liberal construction with a view toward promoting their object of enabling a person entitled to the possession of real estate to obtain such possession from anyone illegally in possession thereof." *Petty*, 584 N.W.2d at 307. The defendant has the burden of proving by a preponderance of the evidence any affirmative defenses raised. *Bernet*, 519 N.W.2d at 810. We determine if the defendant has met that burden

by considering all the evidence, both in support of and contrary to the proposition, and then weighing each to determine which is more convincing. *Id.*

B. FED allowable where lessee holds over after termination of the lease. The landlord who pursues the summary remedy of a FED action "is subject to the defense provided in Iowa Code section 648.18." *Petty*, 584 N.W.2d at 307. Section 648.18 provides, "Thirty days' peaceable possession with the knowledge of the plaintiff *after the cause of action accrues* is a bar to this proceeding." (Emphasis added.)

The district court's ruling is premised on its determination of when the FED action accrued. Quoting Iowa Code section 648.1(3), the district court found: "The cause of action accrued when the 'lessee holds contrary to the terms of the lease.'" The district court's implicit ruling was that because Smith was in violation of the terms of the lease on September 22, 2010, that is when the FED cause of action accrued and when the peaceable possession began.

AHEPA argues its FED cause of action accrued when Smith's lease was terminated and because the lease required thirty-days' notice of termination, the action was timely. While we do not hold that the lease necessarily requires thirty-days' notice of termination in all cases,[4] we agree that thirty-days' notice did not preclude the FED action here.

The house rules include the prohibition against "acts of violence or threats of violence," a single violation of which "shall be deemed a serious violation and a material non-compliance with the lease" and "good cause for termination of the lease." AHEPA gave Smith notice of termination of the lease as of October 31,

[4] We need not decide that question.

2010, based upon a physical assault or threat of physical assault on September 14 and 22, 2010.

We agree, the FED was premised upon "[w]here the lessee holds over after termination of the lease." Iowa Code § 648.1(2). The original notice filed to institute this action states:

> YOU ARE HEREBY NOTIFIED that the Plaintiff demands from you possession of Apartment #123, located in AHEPA 192-1 Apartments, 6190 NW 59th Court, Johnston, IA 50131, for the reason that your lease was terminated as of midnight on October 31, 2010 pursuant to a Notice of Termination and Notice to Quit and you have failed to surrender possession of Apartment #123 in compliance with the Notice. The incident or incidents giving rise to the notice of termination and notice to quit includes physical assault and/or the trheat of physical assault directed to and against other tenants, and occurring on September 10 and/or September 14, 2010 and on September 22, 2010. See attached Exhibits.

AHEPA notified Smith the lease was terminated as of October 31, 2010. *See Hillview Assocs. v. Bloomquist*, 440 N.W.2d 867, 873 (Iowa 1989) (finding cause of action accrued at the end of sixty-day notice of termination of lease, and thus FED was not barred by thirty days peaceable possession provided in section 648.18.); *McElwee v. DeVault*, 255 Iowa 30, 38, 120 N.W.2d 451, 456 (1963);[5] *see generally Jack Moritz Co. Mgmt. v. Walker*, 429 N.W.2d 127, 130 (Iowa 1988) ("[I]n order to terminate a lease, the lessor must manifest its intent to do so by some clear and unequivocal act."). The date the lease terminated, October 31, 2010, is the date upon which AHEPA relies. *Cf. Petty*, 584 N.W.2d

[5] As stated in *McElwee*, 255 Iowa at 38, 120 N.W.2d at 456:

> Tenant misconstrues both the law and the terms of the lease. The lease gives the landlord the right to elect to forfeit the lease for breach of the covenants. He did so August 18 declaring it forfeited as of March 1, 1962. The cause of action for forcible entry and detainer therefore did not accrue until March 1, 1962. The action was commenced 9 days thereafter and tenants did not have 30 days peaceable possession.

at 307 (noting FED cause of action accrued on June 19, 1996—the date of termination fixed by lease). This is consistent with the HUD Handbook, 8-1(B), which states:

> Termination of tenancy is the first step in the eviction process and is often used interchangeably with the term *eviction*. When terminating tenancy, the owner gives the tenant notice to vacate the unit because of a lease violation(s). A tenant who fails to vacate the unit after receiving notice from the owner may face judicial action initiated by the owner to evict the tenant.
>
> We acknowledge section 562A.27A states that
>
> if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants . . . the landlord, after the service of a single three days' written notice of termination and notice to quit . . . *may file suit* against the tenant for recovery of possession of the premises pursuant to chapter 648.

(Emphasis added.) However, here the district court determined not only that the landlord *could have* terminated the lease upon a single three-days' notice, but the landlord *was required* to terminate the lease on three days' notice from the date of the assault. This, we conclude, was error.

Here, the lease was a month-to-month lease and under Iowa law could have been terminated by written notice "at least thirty days prior to the end of the monthly tenancy." *Hunter*, 742 N.W.2d at 588 (citing Iowa Code § 562A.34(2)). We note, however, the parties agreed by the lease terms that any termination must be upon good cause consistent with federal law. 12 U.S.C. § 1715z-1b(b)(3); 24 C.F.R. § 247.3; *see Horizon Homes*, 684 N.W.2d at 226 ("The statute and regulations cited plainly require good cause for the termination of not only the initial term but also the month-to-month tenancy.")

We acknowledge section 562A.27A authorizes the filing of a FED suit if the tenant creates or maintains a threat constituting a clear and present danger. *See* Iowa Code § 4.1(3) ("The word 'may' confers a power."). While it also states the landlord may proceed with a single notice of termination and three-days' notice to quit, here AHEPA provided thirty-days' notice of termination. The district court's interpretation is inconsistent with the HUD Handbook, 6-4(1)(E), which provides: "If any provision of a model lease conflicts with state or local law, the *owner must follow the rule that is of most benefit to the tenant.*" (Emphasis added.) We strive to interpret a statute consistent with its purpose. *Heartland Express v. Gardner*, 576 N.W.2d 259, 262 (Iowa 2003). And we avoid creating impractical or absurd results. *Id.* We are hard pressed to understand how *less* notice would be of the most benefit to the tenant. *See Wright v. Zachgo*, 222 Iowa 1368, 1371, 271 N.W. 512, 513 (1937) ("The defendant cannot complain that he was given more than the statutory time in which to prepare to yield possession of the premises to the plaintiff."); *see also A.P. Dev. Corp. v. Band*, 550 A.2d 1220, 1226-27 (N.J. 1988) (rejecting tenant's claims of equitable estoppel and laches; noting lapse of time between landlord's notice to cease and termination of tenancy benefitted rather than prejudiced tenants). Moreover, simply because a landlord may be able to proceed upon more than one theory to terminate a lease and regain possession, we know of no requirement that the landlord pursue the legal theory that has either the shortest or longest notice requirements.

AHEPA's FED cause of action was premised upon the ground that Smith was holding over after the termination of the lease accrued when the lease was

terminated. According to the notice provided to Smith, he was informed the lease was terminated on October 31, 2010. The FED petition filed November 2 was not barred by section 648.18 as clearly thirty days had not expired between the date of termination of the lease and the date of filing the FED action.

C. Notice of termination was adequate. Smith was notified on September 29, 2010, that "[p]ursuant to the terms of your lease, 24 CFR Part 247 and Iowa Code § 562A.27A" his lease was terminated on October 31, 2010.[6] The specific reason given was:

> Physical assault and/or the threat of physical assault directed to and against other tenants, and occurring on September 14, 2010 and on September 22, 2010.

Smith argues the notice was defective because it fails to name the identity of persons making allegations against him. Nothing in state or federal law requires such an allegation.

Federal regulation requires the notice of termination "state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense." 24 C.F.R. § 247.4(a); HUD Handbook, 8-14(B)(2)(c)(2). Smith does not assert he was unable to prepare a defense.

Nor was the notice given "vague and conclusory," which some courts in other jurisdictions have determined inadequate. *See*, *e.g.*, *Moon v. Spring Creek*

---

[6] We disagree with the district court's statement:

> Although AHEPA argues that 30 days' notice was appropriate because the termination was for "material noncompliance" with the lease or "material failure to carry out obligations" under the landlord/tenant act, the notice given to Smith makes clear those were not the reasons for the termination. The stated reason was for presenting a clear and present danger pursuant to Iowa Code 562A.27A.

Notice given to Smith cited the "terms of your lease, 24 CFR Part 247[,] and Iowa Code § 562A.27A."

Apartments, 11 S.W.3d 427, 433 (Tex. Ct. App. 2000) ("Termination notices for federally subsidized housing have been found to be insufficient where they contain only one sentence, are framed in vague and conclusory language, or fail to set forth a factual statement to justify termination. For example, in *Associated Estates Corp. v. Bartell*, 492 N.E.2d 841, 846 (1985), the court found that a notice failed to provide due process where it merely stated the grounds for termination as 'serious, repeated damage to unit, repeated disturbance.' And in *Escalera v. New York City Housing Authority*, 425 F.2d 853, 858 (2nd Cir. 1970), the court found a termination notice to be inadequate where it stated the grounds for termination as '[i]llegal acts of Mr. Humphrey, having an adverse effect on the project and its tenants.'").

Smith's reliance on *Swords to Plowshares v. Smith*, 294 F. Supp. 2d 1067 (N.D. Cal. 2002), is also misplaced. There the tenant, as a result of his failure to pay rent was served with notice to pay rent or quit; and as a result of having "engaged in behavior that threatens the safety of other tenants and their comfort in and enjoyment of the property," was served with notice to quit for nuisance. *Swords to Plowshares*, 294 F. Supp. 2d at 1068. The tenant challenged the nuisance notice, in part, on grounds it did not

> put Defendant [on notice of] the specific allegations of nuisance against him because the allegations were vague and failed to identify when the events occurred, the persons involved in each of the events, and the person who brought the event to Plaintiff's attention, all of which must be identified to meet the specificity requirement protected by the Due Process Clause. In support, Defendant relies on cases which stand for the proposition that under California law, failure to provide the tenant with adequate particularity could constitute a violation of his or her due process rights, and specificity is required to give the tenant the opportunity

> to decide whether to cure the breach, quit the premises, or defend against the allegations.

Id. at 1070. The court found the notice deficient because "it failed to identify the alleged victim or the time or date, such details being necessary for Defendant to be put on notice of the complained of conduct so that *he might begin preparing his defense*." *Id.* at 1073 (emphasis added).

Section 562A.27A authorizes a FED action if the tenant "has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants." Iowa Code § 562A.27A(1). The provision requires the notice of termination state "the specific activity causing the clear and present danger." *Id.* Even though AHEPA does not rely upon section 562A.27A(1) for the basis of its FED, AHEPA identified the specific activity, i.e. physical assault or threat of physical assault on specific dates and identified the victims as "other tenants." A physical assault or threat of physical assault statutorily constitutes a clear and present danger to the safety of others. *Id*. § 562A.27A(2)(a). As already stated, Smith does not contend he was unable to prepare a defense. In fact, he acknowledges the thirty-days' notice he received allowed him time to seek the assistance of an attorney who moved to dismiss on several grounds.[7] We conclude Smith was adequately apprised of the allegations to prepare a defense.

D. The HUD Handbook requirement that tenant receive a ten-day notice of right to meet and confer is inapplicable. Smith also bases his defense on the HUD Handbook, 8-13(B)(2)(c)(4), statement: "When an owner terminates

[7] We also observe Smith could not be confused by the incident on September 22, 2010, because a law enforcement officer spoke to him about the incident.

tenancy, written notice must be provided to the tenant and must . . . [a]dvise the tenant that he/she has 10 days within which to discuss termination of tenancy with the owner." However, as implicitly acknowledged by Smith, the ten-day notice to meet and confer is not required by the lease, or state or federal law. *Cf. Hunter*, 742 N.W.2d at 589-90 (holding that in month-to-month tenancy, there is no right to cure and thirty-day's notice of termination was all that was required under Iowa Code § 562A.27(1), governing terminations of rental agreements for failure to pay rent). The district court concluded this requirement was inapplicable in the case of criminal activity. We agree.

Smith contends the ten-day notice reflects the purpose and intent behind the good cause requirements for terminating HUD housing. However, criminal activity is treated differently as we have already discussed with respect to Iowa Code section 562A.27A and federal law recognizes a duty to provide safe housing to all residents in HUD housing assistance programs.

> Among the many conditions imposed by HUD's housing assistance programs, are that specific provisions must appear in the written lease agreements with individual tenants. As relevant here, 42 U.S.C. § 1437f(d)(1)(B) states:
>
> > Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that—
> >
> > . . . .
> >
> > (iii) during the term of the lease, *any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants* . . . engaged in by a tenant of any unit . . . or any guest or other person under the tenant's control, "*shall be cause for termination of tenancy.*"
>
> In enacting this provision, as in enacting a parallel provision for public housing, *see* 42 U.S.C. § 1437d(*l*)(6), Congress declared that "the Federal Government has a duty to provide public and

> other federally assisted low-income housing that is decent, *safe,* and free from illegal drugs." 42 U.S.C. § 11901(1).

Scarborough v. Winn Residential L.L.P./Atl. Terrace Apartments, 890 A.2d 249, 255-56 (D.C. 2006).

In *Department of Housing & Urban Development v. Rucker,* 535 U.S. 125, 135, 122 S. Ct. 1230, 1236, 152 L. Ed. 2d 258, 269 (2002), the Supreme Court affirmed the federal government's authority "as a landlord of property that it owns," to "invok[e] a clause in a lease to which respondents have agreed and which Congress has expressly required"[8] to prevent crime in federally-assisted housing by permitting the eviction of tenants when they or persons they have allowed access to their premises commit crimes threatening the health or safety of other residents.

In *Horizon Homes*, our supreme court has stated the HUD Handbook "is entitled to notice as the agency's interpretation of its own regulations and should be accepted by us unless there is a showing that the handbook is unreasonable or inconsistent with statutory authority." 684 N.W.2d at 226. Where a lease is terminated for criminal activity such as here, Smith conceded before the district court that there is no "right to cure," and thus there is no need to meet and confer. *See Scarborough*, 890 A.2d at 255 (rejecting tenant's argument that a D.C. law requiring notice and opportunity to correct a violation of lease as applied to criminal activity that endangers other tenants' safety or right to peaceful enjoyment would frustrate the objectives of the federal program); *see also Ross v. Broadway Towers, Inc.*, 228 S.W.3d 113, 121 (Tenn. Ct. App. 2006) (finding

[8] The model lease sets apart criminal activity as reason for which the landlord may terminate in subparagraph 9(i).

Tenn. Code Ann. § 66–28–508 ["If the landlord accepts rent without reservation and with knowledge of a tenant default, the landlord by such acceptance condones the default and thereby waives such landlord's right and is estopped from terminating the rental agreement as to that breach."] has no application as it would be contrary to "the intent of the regulations to protect all the occupants of the subsidized housing project").

E. The termination of tenancy was based upon good cause. As noted above, 42 U.S.C. § 1437f(d)(1)(B)(iii) states "any criminal activity that threatens the health, safety, or right of peaceful enjoyment of the premises of other tenants . . . shall be cause for termination" (except for specified instances of criminal activity directed at a victim of domestic violence). Criminal activity as good cause for termination is required, and is included, in the model lease in subparagraph 9(i). Iowa law deems physical assault a clear and present danger. Iowa Code § 562A.27A(2). The magistrate found Smith committed an assault, which is good cause for termination of his tenancy.

Smith now attempts to characterize the September 22, 2010 incident as a mere verbal conflict or disagreement between tenants. But the magistrate found Smith's threats credible and concluded Smith's conduct rose to the level of an assault. He recognized that elderly individuals residing in federally subsidized housing are particularly susceptible to the adverse health effects associated with the increased anxiety that accompanies threats of violence. Here, Smith while very angry and screaming, made a motion at a tenant, came across a table toward the tenant, and after the tenant told Smith he would go to jail if he laid a hand on her, said to her that "I will" or "I am going to get you" or "come after you."

Smith was also heard telling the tenant to "let's take it out back." We conclude as did the magistrate, and implicitly found by the district court, that Smith's actions on September 22, 2010, constituted an assault. Upon our de novo review, we reject Smith's characterization of his conduct and find the termination of his tenancy was based upon good cause and proper notice.

F. The termination of tenancy was not retaliatory. The magistrate and the district court both rejected Smith's claims that the FED was retaliatory. We likewise find Smith failed to carry his burden to prove this defense.

IV. Conclusion.

The district court erred in concluding the FED was barred by section 648.18. We therefore reverse the district court and remand for entry of an order and judgment awarding AHEPA possession of the premises occupied by Smith, including a writ of removal and possession if necessary, consistent with this opinion.

REVERSED AND REMANDED.