IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1155

Filed: 17 September 2019

Wake County, No. 18 CVD 5405

RALEIGH HOUSING AUTHORITY, Plaintiff,

v.

PATRICIA WINSTON, Defendant.

Appeal by defendant from order entered 26 June 2018 by Judge Michael Denning in Wake County District Court. Heard in the Court of Appeals 22 May 2019.

The Francis Law Firm, PLLC, by Charles T. Francis and Ruth A. Sheehan, for plaintiff-appellee.

Legal Aid of North Carolina, Inc., by Thomas Holderness, Daniel J. Dore, and Darren Chester, for defendant-appellant.

ZACHARY, Judge.

Defendant Patricia Winston appeals from the district court's order granting immediate possession of Defendant's leased premises to Plaintiff Raleigh Housing Authority. We affirm.

Background

On 17 April 2017, Defendant entered into a twelve-month Lease Agreement with Plaintiff for the rental of a one-bedroom apartment located in the Walnut Terrace Community in Raleigh. Between October and December of 2017, Plaintiff received three written, and multiple oral, complaints from Defendant's neighbors

concerning noise disturbances coming from Defendant's apartment. Specifically, in the written complaints, Defendant's neighbors described being awoken late at night by "stomping, fighting, cursing and knocking over furniture" as well as "loud music." One complaint further alleged that it "look[ed] like drug exchanges [were] going on."

When the complaints continued after a written warning, on 1 December 2017 Plaintiff's property manager sent Defendant a Notice of Lease Termination for violation of Paragraph 9(f) of the parties' Lease Agreement, which required Defendant "[t]o conduct . . . herself and cause other persons who are on the premises with [her] consent to conduct themselves in a manner which [would] not disturb the neighbors' peaceful enjoyment of their accommodations."

Thereafter, Defendant had an informal meeting with Plaintiff's property manager, during which Defendant informed the manager that the complaints had arisen from incidents of domestic violence committed against Defendant by her former partner, Walter Barnes. Defendant indicated that she had since obtained a Domestic Violence Protective Order against Mr. Barnes, thereby preventing him from returning to the Leased Premises and causing additional disturbances. Based on Defendant's explanation for the noise complaints, Plaintiff rescinded the lease termination.

However, Plaintiff soon received another written complaint from a neighbor of Defendant describing a disturbance caused by Defendant's conduct on the late evening and early morning hours of 5 February and 6 February 2018, to wit:

> I was awaken [sic] out of my sleep at 1:00 A.M. from my neighbor upstairs with loud fussing, cursing and yelling, which then proceeded down the steps, outside my door and continuing still into the parking lot.
>
> She approached me the next morning . . . when I came home for my break from her balcony, yelling saying that I'm trying to get her put out, and I told her no I wasn't. I can't continue letting them keep me awake when I have to get up at 3:00 A.M. to go to work. I'm sleepy at work because I'm not getting any sleep at night.
>
> She told me that I'm not suppose[d] to report anything to the office, that I should be telling her and not the office. I've spoken to her about this on several occasions and she apologized and said that it would not happen again, but it still continues to happen.
>
> She told me that if I continue reporting this to the office, they will evict both she and I.

Following this complaint, on 13 February 2018, Plaintiff sent Defendant a second Notice of Lease Termination notifying Defendant that Plaintiff

> intends to terminate your Lease to the premises . . . under the provisions in your Lease Agreement and pursuant to Raleigh Housing Authority's Grievance Procedure due to the following:
>
> <u>Inappropriate Conduct—Multiple Complaints</u>
>
> 9. OBLIGATIONS OF RESIDENT
> F. To conduct himself/herself and cause other

> persons who are on the premises with the Resident's consent to conduct themselves in a manner which will not disturb the neighbors' peaceful enjoyment of their accommodations.

The Notice of Lease Termination further notified Defendant that

> 1. You have the right to request a private conference with **Carol McTearnen,** Property Manager of your development, to discuss informally the reasons for the proposed termination and to determine whether the dispute may be settled without a grievance hearing. You must contact the manager on or before **February 23, 2018**. If you do not request a private conference with the manager on or before **February 23, 2018,** you may not be entitled to a grievance hearing before the Hearing Officer as described below.
>
> 2. You have the right to examine Raleigh Housing Authority documents directly relevant to the termination or eviction. A request to examine such documents should be made in writing and delivered to the development manager. The manager will notify you of the time and place for this review.
>
> 3. If after a private conference as described above you are not satisfied with the decision of the Housing Authority, you will have the right to request a grievance hearing of your dispute before the Hearing Officer. The development manager will inform you how to request such a hearing at the informal private conference described above.

In response, on 17 February 2018, Defendant sent a letter to Plaintiff, in which she acknowledged that "there was a disturbance at my address which was caused entirely by me." Defendant further conceded that "[t]here are others who visit me who make too much noise," but she indicated that she "placed trespass orders on them."

However, Defendant had "neither received a no[-]trespass order for any of the individuals nor ha[d] she made any affirmative efforts to do so" by the time of the 25 June 2018 district court hearing in this case.

Thereafter, Defendant followed the procedures outlined in the Notice of Lease Termination, and a grievance hearing was held on 6 March 2018. On 10 March 2018, the Hearing Officer affirmed Plaintiff's decision to terminate Defendant's Lease Agreement. Plaintiff then filed a Complaint in Summary Ejectment, which was heard before the Honorable Michael Denning in Wake County District Court. By order entered 26 June 2018, Judge Denning affirmed Plaintiff's decision to terminate the Lease Agreement and granted Plaintiff immediate possession of the Leased Premises. Defendant timely filed notice of appeal to this Court.

On appeal, Defendant argues that the trial court erred in granting Plaintiff immediate possession of the Leased Premises because (1) there was insufficient evidence that Defendant breached her lease so as to warrant its termination, and (2) the Notice of Lease Termination did not satisfy Defendant's due process right to notice of her alleged violations.

Standard of Review

"The standard of review on appeal from a judgment entered after a non-jury trial is whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment."

Cartin v. Harrison, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (quotation marks omitted), *disc. review denied*, 356 N.C. 434, 572 S.E.2d 428 (2002). It is well-settled law that "the appellate courts are bound by the trial courts' findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary." *Chicago Title Ins. Co. v. Wetherington*, 127 N.C. App. 457, 460, 490 S.E.2d 593, 596 (1997) (quotation marks omitted), *disc. review denied*, 347 N.C. 574, 498 S.E.2d 380 (1998).

Discussion

We first address Defendant's argument that Plaintiff's Notice of Lease Termination violated Defendant's due process right to notice. Defendant maintains that the Notice's reference to Paragraph 9(f) of the Lease Agreement was insufficient, in that it failed to delineate the particular conduct that she allegedly committed in violation of that provision of the Agreement. We disagree that due process required the initial Notice of Lease Termination to describe the specific conduct at issue.

"A tenant in a publicly subsidized housing project is entitled to due process protection," including adequate notice of lease termination. *Roanoke Chowan Reg'l Hous. Auth. v. Vaughan*, 81 N.C. App. 354, 358, 344 S.E.2d 578, 581, *disc. review denied*, 317 N.C. 336, 347 S.E.2d 439 (1986). To that effect, federal regulation provides that a public housing agency's

> notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the

> tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right . . . to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure.

24 C.F.R. § 966.4(l)(3)(C)(ii).

As explained above, Defendant interprets the requirement that a notice of lease termination state the "specific *grounds* for termination" as necessitating a description of the specific *conduct* upon which the termination is based. Not only does this interpretation directly contradict the plain language of the pertinent federal regulation, but this Court has also indicated that a notice of lease termination will satisfy the demands of due process so long as the information provided "is sufficient to put [the tenant] on notice regarding *the specific lease provision* deemed to have been violated." *Vaughan*, 81 N.C. App. at 358, 344 S.E.2d at 581 (emphasis added).

In the instant case, the Notice of Lease Termination identified—and quoted—the specific provision serving as the basis for Defendant's lease termination. The Notice of Lease Termination also advised Defendant of her right to examine the pertinent materials and documentation prior to the holding of her initial grievance hearing. Thus, the Notice of Lease Termination to Defendant was in compliance with the governing federal regulation. The trial court did not err in concluding that "Defendant ha[d] been afforded due process and been given adequate notice of her

violations of Paragraph 9(f) of the Lease." *See id.* at 359, 344 S.E.2d at 581 ("*Before an eviction determination is administratively made*, due process requires, succinctly stated: (1) timely and adequate notice detailing the reasons for a proposed termination, (2) an opportunity on the part of the tenant to confront and cross-examine adverse witnesses, (3) the right of a tenant to be represented by counsel, provided by him to delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination and generally to safeguard his interests, (4) a decision, based on evidence adduced at the hearing, in which the reasons for decision and the evidence relied on are set forth, and (5) an impartial decision maker." (emphasis added)). Accordingly, the trial court's order cannot be disturbed on grounds of improper notice.

We next address Defendant's argument that the trial court erred in concluding that Plaintiff was entitled to immediate possession of the Leased Premises. Specifically, Defendant argues that (1) the 2017 complaints were the result of domestic violence, and, therefore, could not serve as the basis for a lease termination, and (2) the February 2018 complaint, on its own, does not support a conclusion that Defendant breached a material term of the Lease Agreement as to warrant termination of the Lease.

Federal law provides that a "public housing agency may not terminate [a] tenancy except for serious or repeated violation of the terms or conditions of the

lease." 42 U.S.C. § 1437d(l)(5). In addition, for termination to be appropriate, the serious or repeated violation must be of a "material term[ ] of the lease." 24 C.F.R. § 966.4(l)(2)(i).

"Material terms" of a lease include terms requiring a tenant "[t]o act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations." *See* 24 C.F.R. § 966.4(l)(2)(i)(B) & (f)(11). Thus, Paragraph 9(f) of the Lease Agreement in the instant case constitutes a "material term" as defined in the applicable regulations.

Substantial evidence in the record supports Defendant's repeated violation of Paragraph 9(f), thus supporting the trial court's decision to affirm the termination of Defendant's tenancy and order that Plaintiff be granted immediate possession of the Leased Premises.

Though the parties concede that several of the 2017 noise complaints were the result of domestic violence, and therefore may not serve as the basis of a lease termination, *see* 34 U.S.C. § 12491(b)(2),[1] Plaintiff presented substantial evidence of repeated incidents that were *not* the result of domestic violence. This evidence included (1) the early-morning altercation on 6 February 2018, which Defendant admitted "was caused entirely by me";[2] (2) Defendant's acknowledgment of "others

[1] *Accord* N.C. Gen. Stat. § 42-42.2 (2017).

[2] Defendant's 17 February 2018 letter accepting responsibility referenced an incident that occurred on 11 February 2018. However, at trial, defense counsel noted that "there's only one incident,"

who visit me who make too much noise"; (3) Defendant's conduct later in the day on 6 February 2018, in which she approached her neighbor "from her balcony, yelling saying that I'm trying to get her put out, . . . [and] that if I continue reporting this to the office, they will evict both she and I"; and (4) the November 2017 complaint[3] referencing "loud music" and that it "look[ed] like drug exchanges [were] going on." These acts continuously impeded Defendant's neighbors' ability to peacefully enjoy their accommodations. The record therefore contains substantial evidence of repeated violations of Paragraph 9(f) of the Lease Agreement to support the trial court's conclusion that Plaintiff was entitled to immediate possession of the property.

Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges BRYANT and TYSON concur.

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and that Defendant was actually "referring to the incident that occurred on February [6th]." Thus, Defendant either admitted to the 6 February 2018 incident, or she admitted to yet *another* incident constituting a violation of Paragraph 9(f) of the Lease Agreement.

[3] We reject Defendant's argument that the written complaints submitted to Plaintiff in the fall and winter of 2017 did not fall under the "business record" exception to the hearsay rule and were therefore inadmissible. Not only did Defendant effectively admit to the conduct described therein, but the property manager's testimony sufficiently established that Plaintiff kept records of such complaints submitted by its tenants in the course of Plaintiff's regularly conducted business activity. *See* N.C. Gen. Stat. § 8C-1, Rule 803(6).