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NO. COA01-1181

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

ROYAL OAK APARTMENTS,

Plaintiff,

v.

Cabarrus County
No. 01 CVD 107

MELISSA SOLT,

Defendant.

Appeal by defendant from judgment entered 15 March 2001 by Judge Martin B. McGee in Cabarrus County District Court. Heard in the Court of Appeals 23 May 2002.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by H. Arthur Bolick, II, and Jessica M. Marlies, for plaintiff appellee.

Kilpatrick Stockton LLP, by Kurt E. Lindquist, II, Stephen R. Calkins, Lisa C. Flowers, and Angela D. Seabrooks, for defendant appellant.

TIMMONS-GOODSON, Judge.

Melissa Solt ("defendant") appeals from a judgment by the trial court concluding that Royal Oak Apartments ("plaintiff") properly terminated its lease with defendant and that plaintiff was therefore entitled to possession of the leased premises. For the reasons stated herein, we affirm the judgment of the trial court.

The relevant facts of this appeal are as follows: On 24 September 1999, plaintiff entered into a lease agreement with defendant. Under the lease agreement, defendant's rental payments

were federally subsidized by the United States Department of Housing and Urban Development ("HUD"). The original term of the lease agreement was from 24 September 1999 until 31 August 2000, after which the lease continued under a month-to-month tenancy. Termination provisions in the lease agreement set forth the following grounds for termination of the lease by the landlord:

(1) the Tenant's material non-compliance with the terms of this Agreement;

. . . .

(3) criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control; or

. . . .

(5) other good cause.

The lease defined the term "material non-compliance" in part to include:

(1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that: (a) disrupts the livability 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 and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project[.]

When defendant moved into Royal Oak Apartments, she was married to Travis Eddie ("Eddie"). Eddie, however, did not reside with defendant and was not a party to the lease agreement. Although defendant and Eddie were separated, Eddie occasionally

resided at defendant's apartment and was considered a "guest" under the terms of the lease. On 4 November 2000, Eddie was involved in an altercation with defendant's neighbor on the apartment premises, during which law enforcement officers were summoned. Following the 4 November incident, plaintiff gave defendant a written "Notice of Lease Violation," and verbally warned her that any future misconduct on the part of her guests would result in the termination of her lease. Despite the written and verbal warnings, defendant continued to allow Eddie to frequent her apartment.

On 8 November 2000, defendant and Eddie engaged in a heated argument that escalated into violent action on Eddie's part. According to defendant, Eddie "trashed" the apartment and her personal belongings by, among other things, kicking and punching holes in the walls, ripping a door from its hinges, and destroying electronic equipment. Defendant testified that Eddie "was basically just running wild." When responding law enforcement officers arrived, they were forced to subdue Eddie, who resisted arrest.

Following the 8 November incident, plaintiff terminated the lease with defendant on 20 November 2000 by giving her formal written notice of the termination and granting her a period of thirty days in which to vacate the premises. Defendant disregarded the notice of termination, however, prompting plaintiff to file a complaint for summary ejectment. On 19 February 2001, the matter came before the trial court which, after considering the evidence, made the following pertinent findings of fact:

4. On 4 November 2000, Mr. Eddie got into a fight with another at the apartment complex owned by the Plaintiff. The Defendant was warned that she would be responsible for the future conduct of her guests.

5. The Defendant continued to permit Mr. Eddie to live with her on the Premises "off and on" during the following week.

6. On 8 November 2000, Mr. Eddie got into a confrontation with the Defendant, "trashed" her apartment, created a disturbance at the apartment complex and resisted arrest when the police officers arrived on the scene.

7. On 11 November 2000, the Plaintiff gave to the Defendant notice to quit and notified her that her lease would expire on 20 December 2000.

8. The month-to-month lease expired and the Defendant failed to vacate the Premises.

Based in part on these findings, the trial court concluded that plaintiff properly terminated defendant's lease and that plaintiff was thus entitled to possession of the premises. The trial court further determined that the termination of the lease did not violate public policy. The trial court therefore entered a judgment in favor of plaintiff. From this judgment, defendant appeals.

Defendant argues that the judgment of the trial court must be reversed in that (1) plaintiff failed to establish proper grounds upon which to evict defendant; and (2) the trial court approved eviction of defendant based on mere expiration of the lease and failed to make specific findings regarding defendant's material

non-compliance with the terms of the lease or other grounds constituting "good cause." We examine these issues in turn.

Defendant argues that the trial court erred in upholding her eviction in that she complied with the terms of the lease agreement and plaintiff had no other good cause to terminate the lease. We note initially that the trial court's findings of fact are conclusive on appeal if supported by competent evidence. See *Foster v. Foster Farms, Inc.*, 112 N.C. App. 700, 706, 436 S.E.2d 843, 847 (1993). Conclusions of law drawn from the facts found, however, are fully reviewable *de novo* by the appellate court. See *Mann Contr'rs, Inc. v. Flair With Goldsmith Consultants-II, Inc.*, 135 N.C. App. 772, 775, 522 S.E.2d 118, 121 (1999). With this standard in mind, we review defendant's argument.

"[A] tenant in a federally subsidized housing project has an 'entitlement' to continued occupancy, and to that extent cannot be evicted unless and until certain procedural protections have been afforded him, including notice, confrontation of witnesses, counsel, and a decision by an impartial decision maker based on evidence adduced at a hearing." *Apartments, Inc. v. Williams*, 43 N.C. App. 648, 650, 260 S.E.2d 146, 148 (1979), *disc. review denied*, 299 N.C. 328, 265 S.E.2d 395 (1980). This entitlement to occupancy may not be discontinued until "'there exists a cause to evict other than the mere expiration of the lease.'" *Id.* at 651, 260 S.E.2d at 149 (quoting *Joy v. Daniels*, 479 F.2d 1236, 1241 (4th Cir. 1973)). Thus, a tenant in federally subsidized low-income housing may be evicted where it is established that "good cause"

exists to do so. See *Maxton Housing Authority v. McLean*, 313 N.C. 277, 281, 328 S.E.2d 290, 293 (1985). Grounds establishing "good cause," as set forth in the federal regulations relating to public housing and specifically adopted in defendant's lease include: (1) material non-compliance with the lease; (2) criminal activity threatening the health, safety, or right to peaceful enjoyment of the premises by other residents; and (3) other good cause. See 24 C.F.R. § 880.607 (b)(1) (2002). The term "material non-compliance," as defined by the Code of Federal Regulations and provided in defendant's lease, include "[r]epeated minor violations of the lease that disrupt the livability of the building" or "adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises[.]" 24 C.F.R. § 880.607(b)(3)(i)(B).

In the present case, there was substantial evidence that (1) defendant's guest, Eddie, was involved in an altercation on the apartment premises with defendant's neighbor on 4 November during which law enforcement officers were summoned; (2) defendant received written notice following the incident that Eddie's actions constituted a violation of defendant's lease; (3) plaintiff verbally warned defendant that she would be held responsible for any further misconduct on the part of her guests; (4) defendant allowed Eddie to continue to reside with her despite the 4 November incident; (5) on 8 November, Eddie and defendant were involved in an altercation on the apartment premises in which Eddie inflicted substantial damage on defendant's residence and her personal

property and which required intervention by law enforcement officers. We conclude that the above-stated actions constituted "good cause" to justify termination of defendant's lease.

Defendant argues that no good cause exists to support termination of the lease in that it was Eddie's actions that violated the lease provisions. Defendant notes that "good cause for eviction does not exist when a public housing tenant is not personally at fault for a breach of the criminal activity termination provision of a public housing lease by a member of the tenant's household." *Charlotte Housing Authority v. Patterson*, 120 N.C. App. 552, 557-58, 464 S.E.2d 68, 72 (1995). As such, defendant contends that she cannot be held responsible for Eddie's misconduct, or the lease violations arising therefrom. We disagree.

In *Charlotte Housing Authority*, the plaintiff brought a summary ejectment action against the defendant, who was a tenant of a public housing development managed by the plaintiff. The plaintiff attempted to evict the defendant after the defendant's son, who resided with her and was named in her lease, allegedly shot and killed a person. The trial court rejected the plaintiff's summary ejectment action, concluding that good cause did not support the defendant's eviction. On appeal, this Court affirmed the lower court, noting that the defendant "had no knowledge of the shooting until after it occurred[;]" that "the gun used in the shooting was not kept in [the] defendant's home" and "did not belong to anyone in her household[;]" and that the defendant "had

no reason to know that her son might commit such an act." *Id.* at 558, 464 S.E.2d at 72.

Unlike the tenant in *Charlotte Housing Authority*, defendant in the case at bar had knowledge of the violent propensities of her guest and took no action to prevent further misconduct from occurring on the apartment premises. Defendant was specifically warned, both verbally and in writing, that Eddie's actions constituted a violation of the lease and that any further misconduct would result in termination of the lease. Defendant nevertheless continued to allow Eddie to reside with her. On 8 November 2000, in addition to destroying defendant's apartment, Eddie "fought off six officers" during an arrest, creating a disturbance at the apartment complex and adversely affecting the safety and quiet enjoyment of the premises. Clearly, the repeated violent acts committed by Eddie constituted "material non-compliance" with the terms of the lease and gave plaintiff good cause to terminate the lease.

Defendant nevertheless contends that she had no control over Eddie's actions and therefore could not have prevented the 8 November incident. Defendant overlooks with this argument the fact that Eddie was her guest for whose conduct she was responsible. Under federal regulations, a guest is defined as "a person temporarily staying in the unit with the consent of a tenant[.]" 24 C.F.R. § 5.100 (2002). There was no evidence that defendant did not consent to Eddie's presence in her apartment. Further, the term "other person under the tenant's control" is defined as a

person "on the premises . . . because of an invitation from the tenant[.]" *Id.* Thus, for federal regulation purposes, a tenant exercises "control" over another by virtue of inviting that person onto the leased premises, rather than, as defendant appears to argue, by virtue of actually controlling that person's actions. See *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125, ___, 152 L. Ed. 2d 258, 270 (2002) (holding that, under Title 42, section 1437(d)(1)(6) of the United States Code, local public housing authorities have the discretion to terminate the lease of a tenant when a member of that tenant's household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity). Because defendant continued to allow Eddie to reside with her on the apartment premises, she exercised sufficient control over the situation to be held responsible for the 8 November incident. The trial court therefore did not err in concluding that termination of defendant's lease was proper, and we overrule defendant's argument that good cause did not exist to terminate the lease.

Defendant next argues that the trial court erred when it determined that termination of the lease was proper because the lease had expired. Defendant's argument is based on the fact that, among its other conclusions, the trial court concluded that "[a]t the time of the filing of this action, the lease period had ended and the Defendant was holding over after the expiration of the lease period." Moreover, the trial court never expressly found that defendant was in "material non-compliance" with the lease, or

that "good cause" existed to terminate the lease. Noting that mere expiration of the lease agreement cannot support an eviction, defendant argues that the trial court's decision upholding her eviction cannot stand. We disagree.

Findings of fact and conclusions of law in a final judgment are liberally interpreted, and "[i]f the judgment fails to clearly express the final determination of the court, reference may be had to the pleadings and findings for the purpose of ascertaining what was determined." *Watkins v. Smith*, 40 N.C. App. 506, 510, 253 S.E.2d 354, 356-57 (1979). "Necessary legal implications should be included although not expressed in precise terms." *Id.* at 510, 253 S.E.2d at 357. Although the trial court never specifically employed the terms "good cause" and "material non-compliance" in its findings or conclusions, the judgment and the record clearly reveal that defendant's lease was terminated for cause and not merely because of expiration of her lease. The trial court made specific findings detailing the 4 November and 8 November incidents to support its conclusion that defendant's "termination was not against public policy" and that plaintiff "properly terminated the lease." These findings and conclusions clearly indicate that the trial court considered and ruled favorably for plaintiff on the issue of good cause and sufficiently support its decision that plaintiff was entitled to possession of the premises. We therefore elect to treat those findings and conclusions regarding defendant as a holdover tenant as mere surplusage, *see id.* at 510, 253 S.E.2d at 356, and we overrule this argument.

We recognize that the termination of a lease of a public housing tenant based on the actions of another may seem a harsh result. The decision to terminate a lease, however, rests within the discretionary power of the public housing complex, which is obligated to provide for and ensure the health and safety of all those residing on the premises. See 42 U.S.C. § 1437d (1)(6) (2000) (requiring public housing complexes to utilize leases that permit termination for any activity by a tenant or guest of a tenant that threatens the "health, safety, or right to peaceful enjoyment of the premises by other tenants"). In fact, a public housing agency may disapprove an owner who does not take steps to terminate the lease of a disruptive tenant. See 42 U.S.C. § 1437f (o)(6)(C) (2000). As such, local public housing agencies cannot adequately fulfill their duties to provide for peaceful enjoyment for all of their tenants unless they are allowed to control, through termination, tenants who invite disruptive persons onto the leased premises. We hold that the trial court was correct in determining that termination of defendant's lease was proper, and that plaintiff was entitled to possession of the premises. Accordingly, the judgment of the trial court is hereby

Affirmed.

Judges MARTIN and CAMPBELL concur.

Report per Rule 30(e).