

## **Case Notes – Summer Intern**

### **Table of Contents**

01 –Redacted – S8 termination (unreported family composition/income) – Letter to Redacted (5/21) ....	2
02 – Redacted – Eviction (serious nuisance) – Motion to Strike (5/22) .....	3

## 01 – REDACTED – S8 TERMINATION (UNREPORTED FAMILY COMPOSITION/INCOME) – LETTER TO REDACTED (5/21)

### FACTS:

- Spent 2 years (since June 1, 2010) at Redacted address after housing authority found her apt and gave her section 8 voucher
  - Had previously lived at redacted address (since May 26, 2009) with brother and boyfriend
  - Pays \$138/month in rent (but now being raised because of new income/job)
- Recently victimized by burglars who stole possessions on 3 separate occasions (first is August 2011 break-in)
- 3 sources of income
  - Son's (redacted, age 8) SSI → \$698/month
  - food stamps
  - temporary job (at "redacted"—\$8.25/hr and 40 hrs/wk + overtime)
    - Had been collecting \$141/wk in unemployment from 12/2011 onwards
- Meeting held at redacted with redacted on May 9
  - called redacted's landlord to verify residence
  - redacted claimed redacted was lying b/c redacted was living with her
  - No interpreter provided--redacted served as informal interpreter
    - Is this a due process violation when one doesn't provide a translator and uses an informal translator?

### ASSIGNMENT:

- Write letter asking redacted to drop S8 termination proceedings
  - Focus on standards of evidence for administrative hearings--preponderance of evidence
  - Was it met by hearing officer (redacted)?

### QUESTIONS:

### SOURCES:

- 24 CFR 982.552, 555 (Section 8 provisions)
- Fred Fuchs, Section 8 terminations
- Edgecomb v. Housing Auth. of Vernon (D. Ct.)
- Basco v. Machin (11th Cir.)

### NOTES:

- **Update/meeting with APW and Ms. redacted (6/14)** → LAA received new intent to terminate
  - Only difference is that name (redacted) is specified in the notice
  - APW told redacted that LAA will represent her in hearings
  - redacted reconfirms that redacted does not live with her
  - Someone apparently visited her house to check on this fact while she wasn't there
  - Seems like redacted has a policy of using intimidation tactics against participants
  - redacted appears to be walking a fine line by essentially flipping the burden of proof and production--redacted should have to supply initial evidence upon which it made its decision before a tenant has to respond
- **Chat with APW (6/18)**
  - Goal is to write another email letter in response to the updated notice of intent to terminate
  - Basic points needing conveying:
    - We sent this letter previously but the new notice doesn't address most of these issues
    - Modified termination notice doesn't provide any additional details about evidence
    - Request copies of all evidence used as basis for termination
    - General worries about due process violations in hearings by redacted
    - Cc: to redacted as a way to up the ante (to show that our pleas are falling on deaf ears)

## **02 – REDACTED – EVICTION (SERIOUS NUISANCE) – MOTION TO STRIKE (5/22)**

### **FACTS:**

- Eviction from state-run public housing in redacted because of alleged smoking near oxygen apparatus (“serious nuisance” under CGS 47A.15)
- Not against lease to smoke
- redacted
  - Sleep apnea condition requiring oxygen apparatus
- redacted (husband)
  - Alcoholic (supposed root cause of neighbors’ complaints)
- Suspicion of smoking inside (by neighbors)--but no hard evidence to this end
- Timeline
  - 8/12/2009: letter indicating redacted fire marshal inspection and evidence of “fresh smoke” and “walls and curtains stained with nicotine”--indicated that they are “endangering the entire complex”
  - 3/2/2012: letter notifying D about lease violations (lease 11.c, 14.d)
  - 4/2/2012: notice to quit given (with quit date of 4/9/2012)

### **PH:**

- APW made request to revise to separate complaint into 2 counts and to specify whether they allege that the nuisance only exists when machine is on
  - Now waiting to see if they either fix complaint or object to it
    - LAA’s response will be to file response to pleading

### **ASSIGNMENT:**

- Draft a motion to strike--on grounds that smoking near oxygen machine of this nature isn’t “serious nuisance”
  - Goal is to avoid trial!
- Do preliminary research on the issue
  - Blow up the “urban myth” that smoking near oxygen machine is serious nuisance
- Research possible expert witness options

### **QUESTIONS:**

- Could redacted bring some sort of FHA failure to make reasonable accommodations claim?
  - She has “dual” disability of apnea and smoking addiction
- What exactly are redacted’s smoking rights? Prohibited indoors? Where is the source/authority of such prohibition(s)?
- Is there a difference in fire hazard between cylinder and concentrator?
- What constitutes “immediate” danger?

### **SOURCES:**

- **CT case law**
  - Including Tom Ford’s (Waterbury) MTS memo in Housing Authority of the City of Danbury v. Cynthia Curtis (2006 WL 1074680).
- **CGS 47a-11** (tenant’s responsibilities)
  - (g) → “...conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors’ peaceful enjoyment of the premises or constitute a nuisance, as defined in section 47a-32, or a serious nuisance, as defined in section 47a-15...”
  - (h) → “if judgment has entered against a member of the tenant’s household pursuant to subsection (c) of section 47a-26h for serious nuisance by using the premises for the illegal sale of drugs, not permit such person to resume occupancy of the dwelling unit, except with the consent of the landlord.”

- **CGS 47a-15** (“serious nuisance”—e.g. drug use)
  - (C) → “conduct which presents an immediate and serious danger to the safety of other tenants or the landlord”
  - Tenant given no opportunity to fix/cure situation
- **CGS 47a-32** (nuisance)
  - “...include, but shall not be limited to, any conduct which interferes substantially with the comfort or safety of other tenants or occupants of the same or adjacent buildings or structures.”
- **CGS 47a-9** (landlord rules and regulations)
  - (a) → can make rule from time to time “only if (1) the purpose of the rule or regulation is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for all the tenants generally; (2) the rule or regulation is reasonably related to the purpose for which it is adopted; (3) the rule or regulation applies to all tenants in the premises in a fair manner; (4) the rule or regulation is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he shall or shall not do to comply; and (5) the tenant has notice of the rule or regulation at the time he enters into the rental agreement or when the rule or regulation is adopted”
  - (b) → “If a rule or regulation that would result in a substantial modification of the terms of the rental agreement is adopted after the tenant enters into the rental agreement, such rule or regulation is not valid unless the tenant consents to such rule or regulation in writing.”