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Eviction of Tenants in Public Housing Projects

The Editors

EVICTION OF TENANTS IN PUBLIC HOUSING PROJECTS*

Increasing and intensive criticism[1] of eviction practices in low-rent public housing has prompted a variety of reforms to force changes in eviction procedures. One such recent reform attempt is a newly-enacted Michigan statute which places the following limitations on public housing authority evictions:[2]

> **(1) No tenancy or contract right to occupy housing in a project or facilities operated by any city, village, township or other unit of local government, as provided by this act, shall be terminated by the project management except for just cause. (2) Just cause to terminate a tenancy or contract right to occupy housing includes, but is not limited to: a failure to comply with the obligations of the lease or the lawful rules and regulations of the housing commission, the use of a unit for any unlawful purpose; the maintenance of any unsafe, unsanitary or unhealthful condition in any dwelling unit or in any of the common areas; and ineligibility for continued occupancy by reason of over-income.**

Several problems arising in connection with the Michigan legislation are worthy of comment:

1) On its face, it is not clear whether the legislation is attempting to regulate the content of housing authority regulations governing eviction, the standards to be applied by tenant review and other administrative boards which are authorized to pass on evictions, or the scope of judicial review when courts are asked to review evictions. Because judicial review of eviction is time-consuming and costly, re-

* This comment was prepared by the Urban Law Annual editorial staff.

1. *See* L. FRIEDMAN, GOVERNMENT AND SLUM HOUSING 132-39 (1968); Friedman, *Public Housing and the Poor: An Overview*, 54 CALIF. L. REV. 642 (1966).

2. MICH. STAT. ANN. § 5.3054(1) (Statutes Release No. 9518 (Aug. 14, 1968)).

form of the administrative procedures leading to eviction would appear the more desirable method of dealing with tenant eviction problems. As one comment has indicated,

> "Despite its attractions as a device to establish precedent, judicial review *de novo*—even in state courts—cannot practicably be demanded for every lease termination. If decisions to evict are to be reviewed effectively, fair hearings administered by the housing authority are a desirable, perhaps necessary alternative."[3]

However, cases in New York[4] have held that the summary legal proceeding for eviction is not the proper place to test the propriety of eviction procedures. All the tenant may do is force the housing authority to prove that eviction was in accordance with its regulations. Challenge to the propriety of the regulations, and to the reasonableness of the proceedings, must be made through independent judicial proceedings. The precedent set by these New York cases is especially dangerous to the Michigan statute, as the housing authority is entitled to evict pursuant to its "lawful rules and regulations."

2) Most public housing authority tenancies are month-to-month, a practice that has been subject to much criticism. The Michigan statute does not make it clear whether public housing tenants must now have leases, or whether, in the absence of leases, a periodic tenancy is subject at all times to the limitations on eviction which are contained in the statute.[5] The statute is written as a limitation on evictions, not as a definition of a periodic tenancy. Even if the statute is read as a limitation on a periodic tenancy, a periodic tenant would still be liable to harrassment by the public housing authority. Should the authority lose in one attempt at a "just cause" eviction, it would merely need to try again.

3) The limitation on the rules and regulations of the housing

3. Comment, *Public Landlords and Private Tenants: The Eviction of "Undesirables" From Public Housing Projects,* 77 YALE L.J. 988 (1968).

4. The New York cases are discussed in Rosen, *Tenants' Rights in Public Housing, in Housing for the Poor: Rights and Remedies* 154, 198, 199 (N.Y.U. School of Law Project on Social Welfare, Supp. No. 1 1967).

5. Note also the statutory reference to a "contract right to occupy housing" as well as to a lease. A comment on the statute states that "The effect of the bill would be to make unlawful and void the current [thirty-day] termination clause of the Detroit Housing Commission. . . ." Memorandum accompanying Letter from F. Phillip Colista, Director, University of Detroit Urban Law Program to Legal Services Office, [U.S.] Office of Economic Opportunity, July 8, 1968 (unpaged). The public housing eviction bill is part of a package of housing reform legislation proposed at the same time. But the other legislation does not cure the problems in the eviction law which are discussed in this note.

authority which will justify an eviction is ambiguous. These rules and regulations must be "lawful." Does "lawful" as used in this context mean lawfully adopted through lawful procedures, authorized by state statute, reasonable in the circumstances, or constitutional as applied to the tenant? Also left ambiguous is the relationship between the grounds for eviction under state law and federal regulations governing the same subject.[6] May a public housing authority now evict for "just cause" as defined by the state legislation, even though that eviction is counter to federal policy as expressed in federal regulation?

4) Absent from the statute is any limitation on eviction on the grounds of race, color, or national origin, or for any reason which is linked with such status. For example, many public housing authorities evict mothers of illegitimate children who continue to have illegitimate children. Some critics have contended that this policy is directed only against Negro families.[7]

5) Finally, there are ambiguities in the definition of the "just cause" which will justify a housing authority eviction. Thus, the authority may evict for "the use of a unit for any unlawful purpose." Often the practices or behavior of a public housing tenant which lead to termination of his tenancy are simply indicative of the problems and tensions of life among low-income family groups. Just as often, these practices are technically in violation of the law. What of the son of a public housing tenant who commits a petty crime? If he returns to his public housing unit with the fruits of his petty thievery, is the unit then used for an "unlawful purpose" warranting eviction?[8] Some professionals associated with public housing problems would suggest that a minor crime of this kind points to the need for remedial social services for the family. Eviction would only make the

6. An attempt has been made in recent litigation to make the provisions of federal directives binding on local housing authorities. *See* the cases discussed in Rosen, *supra* note 4, at 209.

7. Presumably, the statute does not and can not bar objections to public housing evictions on the grounds that federal constitutional guarantees have been violated. Evictions based on regulations aimed primarily at Negroes could be challenged under Equal Protection grounds.

8. This example is certainly not far-fetched. *See* Manigo v. New York City Housing Authority, 51 Misc. 2d 829, 273 N.Y.S.2d 1003 (Sup. Ct. 1966), *aff'd without opinion*, 27 App. Div. 2d 803 (1967) (applicant's husband adjudicated juvenile delinquent; denial of admission upheld); Sanders v. Cruise, 10 Misc. 2d 533, 173 N.Y.S.2d 871 (Sup. Ct. 1958) (tenant had narcotic son; eviction set aside).

social services less readily available, and would compound rather than alleviate the family's problem.

While change is needed in the practices surrounding eviction of tenants from low-rent public housing units, it is doubtful whether substantive limitations on grounds for eviction provide the most promising avenue for reform.[9] Changes in the nature of the public housing tenancy, and in the administrative process leading to eviction, would appear to be more fruitful areas for improvement. Nor should the federal role be entirely disregarded. Meaningful and meaningfully enforced changes in federal statutes and regulations governing public housing evictions would not only bring about needed changes in local practice, but would provide a needed Federal base for changes in state law.

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9. Not all of the problems raised by the Michigan statute have been discussed in this comment. Some observers have pointed out that some public housing managers would rather overlook minor violations by tenants than evict. L. FRIEDMAN, GOVERNMENT AND SLUM HOUSING 135-36 (1968). For example, some public housing managers allegedly delay eviction of over-income tenants. If the public housing authority later moves to evict the over-income tenant, are there any possibilities for an assertion of an estoppel against the authority? Is the tenant's case for an estoppel strengthened by the explicit statutory recognition of excess income as ground for an eviction? The statute would appear to view too rigidly the relationships between public housing authorities and their tenants.

CASE COMMENTS