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SC Court of Appeals

Conway Summary Court

Shady Moss Apartments,

Plaintiff,

Vs.

Jeffrey Rush,

Defendant,

Civil Case No.:2021CV261070730

Order on Rule to Vacate

This matter came before me, The Honorable William N. Hutson in the Conway Summary Court, on April 18, 2022, in a non-jury proceeding as a Rule to Vacate Action. Present was the plaintiff, Shady Moss Apartments represented by Attorney Luther McCutchen, IV and the defendant, Jeffrey Rush, represented by Attorney Bronte Anelli.

After careful review of the facts presented by both sides and information given during testimony, this court finds that it must consider Code of Federal Regulations (CFR) Title 7 Subtitle B Chapter XXXV Part 3560 Subpart D in this matter. This is solely based on the fact that the property in question is subsidized federally by the United States Department of Agriculture (USDA) and is thus subject to the CFR 3560.159 and further USDA regulations such as the provisions of 24 CFR 5.858 associated with this type of subsidized housing. Also, the court has taken time to review all the case law presented by counsel and have given appropriate weight and consideration to the information contained in the cases. As stated by defense counsel, the USDA CFR should be considered along with the South

Carolina Landlord Tenant Act when determining the outcome of the case at bar.

Herein, the court finds that the plaintiff and defendant are subject to the 7 CFR 3560.159 related to this case. The court also finds that paragraph (d) of the 7 CFR 3560.159 which is titled "Criminal Activity" states, "Borrowers may terminate tenancy for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.858, 5.859, 5.860, and 5.861".

Further, this court finds that the provisions of 24 CFR 5.858 states, "The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for you to terminate tenancy." The Court was provided the lease and such language was found therein.

In this particular case, the defendant, Jeffrey Rush testified that Terrence Lamount Melvin was a guest in his home when he was taken into custody for warrants for attempted murder. There was further testimony that Mr. Melvin was also charged with possession of illicit narcotics and weapon possession. The court also finds that paragraph D stands alone, and contains no option or opportunity to cure in this particular paragraph as outlined in paragraph (a) of 24 CFR 3560.159 for violations of the lease. Also, the court determined from research into the Housing and Urban Development handbook on this same issue that "Owners may terminate tenancy and evict tenants for criminal activity by a covered person if they determine that the covered person has engaged in the criminal activity,

regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity."

Therefore, this court finds by the preponderance of the evidence for the plaintiffs in this matter, and so further orders that a 24 hour Writ of Ejectment shall be issued on April 25, 2022 in accordance with 7 CFR 3560.159 and 24 CFR 5.858 and South Carolina Landlord Tenant Act.

IT IS SO ORDERED

Dated this 20th day of April, 2022

Respectfully submitted



Judge William N. Hutson