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No-fault Eviction of Public Housing Tenants for Illegal Drug Use: A Legal Analysis of Department of Housing and Urban Development v. Rucker

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Summary

In *Department of Housing and Urban Development v. Rucker*, the Supreme Court unanimously approved provisions of the 1988 Drug Abuse Act enacted by Congress in response to "rampant drug-related or violent crime" in public housing projects. Specifically, the law allows for no-fault evictions of public housing tenants by mandating the use of lease provisions, which state that "any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." While public housing authorities have discretion under HUD regulations to evict or not based on the totality of circumstances in any individual case, agency rules also make clear that evictions are permitted even when the "tenant did not know, could not foresee, or could not control behavior by other occupants of the unit." The Supreme Court relied on the plain language of the provision to uphold the statute and perceived no unreasonableness in this interpretation nor any constitutional problems raised as a consequence. "[T]here is an obvious reason why Congress would have permitted local public housing authorities to conduct no-fault evictions," wrote the Chief Justice of the HUD regulations, since "[r]egardless of knowledge, a tenant who 'cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project.'"

To combat the destructive impact of illegal drugs on public housing communities, Congress enacted the Anti-Drug Abuse Act of 1988. Among other things, the law as amended requires local housing authorities to include lease provisions making violent or drug-related criminal activity grounds for termination of housing benefits. The relevant statutory language, codified at 42 U.S.C. § 1437d(l)(6), states that a "public housing agency shall utilize leases which . . . provide that . . . drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of

the tenancy."[1] HUD regulations elaborating the statute make clear that the public housing agencies have discretion whether to evict and direct them to consider all the circumstances of the case. Further, the regulations specify that the housing authorities may evict even when the "tenant did not know, could not foresee, or could not control behavior by other occupants of the unit."

The controversy in *Department of Housing and Urban Development v. Rucker*[2] arose when Oakland Housing Authority sought to evict four tenants. They included two whose resident grandchildren were caught smoking marijuana in a housing project parking lot, one whose daughter was found with cocaine three blocks from the apartment, and a disabled 75-year-old man whose caretaker was found with cocaine in his apartment. There was no claim by the Housing Authority that the elder tenants had in any way facilitated, condoned, or even had reason to know about the drug activity. Because the statute itself was silent on the culpability question, the *Rucker* plaintiffs argued that HUD was unjustified, when it adopted its formal policy, in assuming that Congress intended evictions for completely innocent tenants – those who "did not know, could not foresee, or could not control" the drug activity for which they were to be evicted. A federal district court agreed, enjoining the housing authority from evicting tenants for off-premises drug activity of which they had no knowledge or control, a conclusion which was affirmed by the en banc Ninth Circuit appeals court.

Prior to this Term's ruling in *Rucker*, the federal courts were divided on the issue. Two distinct approaches had emerged since the statute was enacted in 1988. Presaging the Supreme Court's own conclusions, several decisions had affirmed that the statute and related HUD regulations permit no-fault evictions and impose strict liability on public housing tenants. Thus, drug use or criminal activity by a household member, guest, or other person under the tenant's control "is cause per se for termination of a [tenant's] lease."[3] In cases where evictions were allowed, the courts typically characterized the lease provisions as "unambiguous contract language" that "must be given its plain meaning" and held that neither the lease provisions nor § 1437 (d)(l)(6) has knowledge requirements.[4] A contrary approach was taken by other courts, like the Ninth Circuit in *Rucker,* holding that evictions for third party criminal activity under 1437d(l)(6) are generally appropriate

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[1] The statute was also relied upon by President Clinton when, in his 1996 State of the Union Address, he announced a "one strike and you're out policy" to govern evictions from public housing for alleged criminal activities. Several months later, President Clinton elaborated: "If you break the law, you no longer have a home in public housing, one strike and you're out. That should be the law everywhere in America." The President directed the HUD Secretary to "issue guidelines to public housing and law enforcement officials to spell out with unmistakable clarity how to enforce [the policy]." Remarks announcing the "One Strike and You're Out" Initiative in Public Housing," in 32 Weekly Comp. Pres. Doc. 582, 584 (April 1, 1996). HUD initially published the guidelines for the one-strike initiative in April of 1996. PIH 96-16. Though the initiative was presented as new policy, it relied on existing legislation and regulations. As President Clinton noted, "Believe it or not, the Federal law has actually authorized 'one strike' eviction since 1988."

[2] 122 S.Ct. 1230 (2002).

[3] City of San Francisco v. Guillory, 49 Cal. Rptr. 2d 367 (Cal.Ct. App. 1995).

[4] Minneapolis Public Housing Authority v. Lor, 591 N.W.2d 700, 704 (Minn. 1999).

only when fault, knowledge, or foreseeability by the tenant is established.[5] A "no-fault" approach was deemed inappropriate since the statute "does not clearly address the level of personal knowledge or fault that is required for eviction, or even make it clear who can be evicted." Nor was it clear, in the Ninth Circuit's view, what the statute meant by drug activity by individuals "under the tenant's control" or in the case of multiple tenants, whether it "authorize[s] eviction of the offending party only, or all persons on the lease."[6]

Unanimously, the Supreme Court reversed the Ninth Circuit in *Rucker* and sided with the judicial view that approves of no-fault evictions. First, the Justices denied that the statute was silent on a culpability standard; rather, by not specifying personal knowledge or fault for eviction, it simply required none. The statute thus permits eviction regardless of the tenant's knowledge or intention with respect to illegal drug use by third parties. Second, the Court interpreted the statutory phrase "under the tenant's control" to apply only to the immediately preceding "another person," rather than household members or guests, and only required that the tenant have admitted the "other person" to the apartment. Thus, a "person under the tenant's control" simply meant a person who, like a guest, had been permitted onto the premises by the tenant. The third party did not have to be subject to physical control such that the tenant could have actually prevented the other person's illegal drug use. Third, noting that no-fault evictions are a common feature of landlord-tenant law, the Court found an "obvious reason" for adopting that approach here. That is, by holding tenants strictly accountable, the HUD policy provides tenants a strong incentive to actively prevent their relatives and guests from engaging in illegal drug activity. This, in turn, promoted the congressional objective to "provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs."

A final important aspect of *Rucker* was the manner by which the Court rejected possible due process objections to the eviction of blameless tenants raised by the Ninth Circuit. Any claim that the HUD policy operated to deny due process in a particular case, the Justices noted, could be addressed by the state court eviction proceeding. Not content to let the issue rest there, however, the opinion then proceeds to undermine the merits of the due process argument. For constitutional purposes, the Court distinguished situations where the government as "sovereign" acts to criminally punish or civilly regulate the general populace from *Rucker* where '[i]t is instead acting as a landlord of property it owns, invoking a clause to which respondents have agreed," pursuant to congressional directive. And while any property interest that evicted tenants have in their leasehold may not be constitutionally terminated without proper notice and right to hearing, the opinion suggests that where such deprivations of procedural rights occur, they are properly a matter for case-by-case determination in state court and do not vitiate the substance of the underlying no-fault eviction policy. Consequently, after *Rucker*, any relief from enforcement of no-fault or "one-strike" eviction procedures for public housing tenants may require administrative changes in HUD regulations or congressional action, judicial intervention being unlikely in most cases.

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[5] See, e.g. Allegeny County Housing Authority v. Hibbler, 748 A.2d 786 (Pa. 2000)(housing authority must consider all mitigating factors before deciding to evict tenant and her family for drug-relative activity of minor son); Housing Authority v. Thomas, 723 A.2d 119 (N.J. Sup. Ct. App. Div. 1999); Charlotte Housing Authority v. Fleming, 473 S.E.2d 373 (N.C. Ct. App. 1996).

[6] Rucker v. Davis, 237 F.3d113, 1116 (9th Cir 2001).