

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Housing Authority of the City :
of Pittsburgh :
 : No. 2151 C.D. 2011
 v. :
 : Submitted: June 8, 2012
Lisa Underwood, :
 :
 :
 Appellant :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: August 9, 2012

Lisa Underwood (Appellant) appeals the October 12, 2011 order of the Court of Common Pleas of Allegheny County (trial court) awarding the Housing Authority of the City of Pittsburgh (Housing Authority) possession of a housing unit (Unit) located at 125 Hazlet Street, Pittsburgh, Pennsylvania, pursuant to the Expedited Eviction of Drug Traffickers Act (Act).¹ For the reasons that follow, we affirm.

Appellant leases the Unit from the Housing Authority under a low income housing program, residing there with two of her children, ages 18 and 11. A third child, Darius Underwood, age 19, is named as a tenant on the lease and was arrested for drug activity on August 1, 2011. Thereafter, the Housing Authority

¹ Act of October 11, 1995, P.L. 1066, as amended, 35 P.S. §§780-151—780-179.

served Appellant with a notice of expedited hearing asserting that Appellant had forfeited her right as a tenant because a member of her household had engaged in drug-related criminal activity in the immediate vicinity of her residence.

The trial court held a hearing on the matter, and the Housing Authority offered the testimony of Detective Charles Higgins of the City of Pittsburgh Bureau of Police. Detective Higgins testified that at approximately 9:00 p.m. on August 1, 2011, he and another detective smelled burning marijuana and approached three males in front of a vacant house on the 700 block of Mount Pleasant Road. (N.T. at 11.) One of the three males was Darius Underwood, who, when searched, was found to have ten “knotted baggie corners” of marijuana in his pocket. (N.T. at 12.) Darius Underwood gave his address as 125 Hazlet Street. (N.T. at 14.) The officers arrested him there on Mount Pleasant Road. (N.T. at 12.) Detective Higgins testified that he did not go to 125 Hazlet Street. (N.T. at 15).

The Housing Authority also offered the testimony of Dana Dawkins, an employee. Ms. Dawkins testified that Darius Underwood was “on the lease” of the Unit and had never been “removed” from the lease. (N.T. at 16-17.) According to Ms. Dawkins, a person has to show proof of a new address in order to be removed from a lease. (N.T. at 16-17.)

Appellant testified that, although Darius Underwood had been living with her at the beginning of 2011, he was no longer part of her household in August 2011. (N.T. at 19.) According to Appellant, she first asked him to leave her household in July because he was unwilling to contribute to the household. (N.T. at 19.) Appellant further testified that she then went to the “rent office” and obtained new keys in order to keep Darius Underwood out of her house. (N.T. at 20.) Appellant stated that at 9:00 a.m. on August 1, 2011, she “[p]acked his clothes and

put him out and put his clothes out.” (N.T. at 20.) According to Appellant, Darius Underwood left the Unit, has never returned, and is not permitted to return because “he doesn’t want to contribute to the household, he doesn’t want to follow rules.” (N.T. at 21.) Appellant testified that there were no drugs in her home and that she does not allow drugs in her home because drugs are grounds for eviction and she has an eleven-year-old daughter. (N.T. at 21.) Appellant testified that she raised her children to avoid drugs and that she lacked any knowledge of any drug related activities. (N.T. at 23-24, 26-27.) Appellant stated that she did not attempt to remove her son’s name from the lease because she did not know where he had gone and did not have any proof of a new address. (N.T. at 27.)

Appellant also presented the testimony of her eighteen-year-old daughter, L’Nise Rouse, who resides with Appellant. Ms. Rouse testified that on August 1, 2011, around 9:00 a.m., Appellant asked Darius to “please get out because he didn’t have his share of the rent. He didn’t want to leave, so she packed up his stuff. She put his stuff on the porch.” (N.T. at 28.) According to Ms. Rouse, Darius carried his belongings “up the street and went wherever he went.” (N.T. at 29.) Ms. Rouse testified that Darius has never returned to the Unit and that there never have been drugs there. (N.T. at 29.)

The trial court awarded possession of the Unit to the Housing Authority, noting that it did not find Appellant’s testimony to be credible.

On appeal to this Court,² Appellant first argues that the trial court abused its discretion in rejecting Appellant’s affirmative defense to the Housing Authority’s complaint. We disagree.

² Our scope of review is limited to determining whether the trial court committed an error of law or an abuse of discretion. Philadelphia Housing Authority v. Snyder, 816 A.2d 377 (Pa. Cmwlth. 2003).

Section 3 of the Act defines “complete eviction” as “[t]he eviction and removal of a tenant and all members of the tenant's household.” 35 P.S. §780-153.

Section 6 of the Act sets forth the grounds for a complete eviction:

(a) Grounds for complete eviction.—Subject to the provisions of sections 7 [affirmative defense or exemption to a complete eviction] and 25 [probationary tenancy], the court shall order the immediate eviction, as set forth in sections 12(b) [expedited hearings] and 14 [expedited proceedings], of a tenant if it finds any of the following:

(1) Drug-related criminal activity has occurred on or within the individual rental unit leased to the tenant.

(2) The individual rental unit leased to the tenant was used in any way in furtherance of or to promote drug-related criminal activity.

(3) The tenant, any member of the tenant's household or any guest has engaged in drug-related criminal activity on or in the immediate vicinity of the leased residential premises.^[3]

(4) The tenant, with knowledge that a person has been removed and barred from the leased residential premises under this act, has given permission to or invited a person to return or reenter any portion of the leased residential premises.

³ Appellant testified that Mount Pleasant Road was not in the immediate vicinity of 125 Hazlet St., but rather “up the street and around the corner” in the same community. (N.T. at 26.) However, under the terms of the lease, “immediate vicinity” is defined as “anywhere in Allegheny County.” (Certified Record, Lease Agreement Paragraph 2(J).)

(5) The tenant has failed to notify law enforcement or public housing authorities immediately upon learning that a person who has been removed and barred from the tenant's individual rental unit under this act has returned to or reentered the tenant's individual rental unit.

35 P.S. §780-156.

Section 7 of the Act provides for affirmative defenses and an exemption to a complete eviction:

Affirmative defense or exemption to a complete eviction.

(a) Affirmative defense.—The court may refrain from ordering the complete eviction of a tenant under section 6(a), if the tenant has established that the tenant was not involved in the drug-related criminal activity and that the tenant:

(1) did not know or have reason to know that drug-related criminal activity was occurring on or within the individual rental unit, that the individual rental unit was used in any way in furtherance of or to promote drug-related criminal activity or that any member of the tenant's household or any guest has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the leased residential premises;

(2) had done everything that could reasonably be expected in the circumstances to prevent the commission of the drug-related criminal activity; or

(3) had promptly reported the drug-related criminal activity to appropriate law enforcement authorities.

(b) Exemption.—If the grounds for a complete eviction have been established, the court shall order the eviction

of the tenant unless, having regard to the circumstances of the criminal activity and the condition of the tenant, the court is clearly convinced that immediate eviction or removal would effect a serious injustice the prevention of which overrides the need to protect the rights, safety and health of the other tenants and residents of the leased residential premises.

(c) Burden of proof.—The burden of proof for the affirmative defense set forth in subsection (a) shall be by a preponderance of the evidence. The burden of proof for the exemption set forth in subsection (b) shall be by clear and convincing evidence.

35 P.S. §780-157.

Here, Appellant testified that she had no knowledge of any drug-related criminal activity and that her son Darius was no longer welcome at the Unit. (N.T. at 23-24, 26-27.) However, the trial court found that Appellant’s testimony lacked credibility. (Trial court op. at 2-3). It is not within this Court’s authority to disturb the trial court’s credibility decisions or findings of fact. Philadelphia Housing Authority v. Snyder, 816 A.2d 377 (Pa. Cmwlth. 2003). Thus, Appellant did not satisfy her burden of proof under section 7(c) of the Act. Furthermore, according to section 13 of the Act, it “shall not be a defense ... that the person who actually engaged in the drug-related criminal activity no longer resides in the tenant’s individual rental unit.” 35 P.S. §780-163.

Appellant next argues that the trial court erred in failing to find that she falls within the exemption from eviction under section 7(b) of the Act. Section 7(b) of the Act requires a defendant to prove that eviction would “effect a serious injustice, the prevention of which overrides the need to protect the rights, safety and health of other tenants and residents of the leased residential property.” 35 P.S. §780-157(b). Here, although we are sympathetic to Appellant’s situation, Appellant

presented no credible evidence establishing that her eviction would result in serious injustice overriding the need to protect others. Thus, we discern no error by the trial court.

Appellant's final argument is that the trial court erred as a matter of law by refusing to order a partial eviction of Darius Underwood, rather than a complete eviction of the Unit.

Section 6(b) of the Act sets forth the grounds for a partial eviction:

(b) Grounds for partial eviction and issuance of removal orders.—

The court shall, subject to the provisions of sections 7(b) and 25 [pertaining to civil immunity], order the immediate removal from the leased residential premises of any person other than the tenant, including, but not limited to, an adult or minor member of the tenant's household, if the court finds that person has engaged in drug-related criminal activity on or in the immediate vicinity of the leased residential premises. Persons removed under this section shall be barred from returning to or reentering any portion of the leased residential premises.

35 P.S. §780-156(b).

However, in order to demonstrate grounds for a partial eviction, Appellant had to establish that she is entitled to the exemption provided by section 7(b) of the Act. As discussed above, the trial court specifically found that Appellant's testimony lacked credibility and did not find that Appellant's complete eviction would result in a serious injustice. (Trial court op. at 3.) Thus, the trial court properly found Appellant's argument for a partial eviction to be moot. (Trial court op. at 4.)

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

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ORDER

AND NOW, this 9th day of August, 2012, the October 12, 2011, order of the Court of Common Pleas of Allegheny County is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge