Housing Justice Network - National Meeting, Challenging Trespass and Guest Policies in Federal Housing: A Minnesota Perspective

October 22, 2006

by

Paul Birnberg
HOME Line
3455 Bloomington Avenue South
Minneapolis, MN 55407
612/728-5770, ext. 101, FAX 728-5761

I. Brief Summary of the Law

Minnesota follows the general American rule[1] on trespassing tenants. *State v. Hoyt,* 304 N.W.2d 884 (Minn. 1981)[2] (adopting the reasoning of *Commonwealth v. Richardson,* 48 N.E.2d 678 [Mass. 1943][3] and applying it to a visitor of a nursing-home resident). In summary, the tenant has the right to give a license to other persons to visit. It is the tenant, not the landlord, who gives or revokes this license. This can be done orally or in writing. A visitor with a license is not trespassing. The license confers the right to visit with the tenant plus an easement across common areas to effectuate this visit (e.g. to walk to the vestibule of the apartment building to ring the tenant s unit).

These rights apply to both subsidized and unsubsidized tenants. There is one appellate case analyzing trespass issues in Public Housing. In State v. Holiday, 585 N.W.2d 68 (Minn. Ct. App. 1998), the police gave the defendant a trespass warning form for trespassing on a Public Housing Authority property. The defendant signed the warning which stated that it applied to all property of the Public Housing Authority. Four days later, the defendant was charged with violating the warning by his presence on another public housing authority property. The Court concluded that the trespass warning could not apply to all of the public housing authority's property, and could apply only to a specific property. The court noted that the ordinance allows a lawful possessor of the property or the possessor's agent to issue a demand to depart. Since the tenant is the lawful possessor of the property, the police or the housing authority can only serve as agents for the tenant, and since the tenant could not exclude a person from all properties of the public housing authority, neither could the police or the public housing authority as an agent for the tenant. This decision underscores that a guest of a tenant cannot be a trespasser unless the tenant asks the guest to leave and the guest refuses. If a person is on the property and is not a

---

[1] 49 Am.Jur.2d § 629; RESTATEMENT (SECOND) OF TORTS § 189 cmt b. E.g. see, *In re Jason Allen,* 733 A.2d 351 (Md.App.1999). *State v. Dixon*, 725 A.2d 920 (Vt.1999). *City of Kent v. Hermann*, 1996 WL 210780 (Ohio App. 11 Dist.). *State of Ohio v. Hites*, 2000 WL 1114809 (Ohio App. 3 Dist.). *Branish v. NHP Property Management*, 694 A.2d 1106 (Pa.Super.1997). *Souza v. Fall River Housing Authority*, 699 N.E.2d 30 (Mass.App.Ct.1998). *Reed v. Commonwealth*, 366 S.E.2d 274 (Va.App.1988). *Jones v. Commonwealth*, 443 S.E.2d 189 (Va.App.1994). *Diggs v. Housing Authority of the City of Frederick*, 67 F.Supp.2d 522 (D.Md.1999). An excellent law review summarizing the law is Note (Elena Goldstein), Kept Out: Responding to Public Housing No-Trespass Policies 38 Harvard Civil Rights-Civil Liberties Law Review 215 (2003), available at <http://www.law.harvard.edu/students/orgs/crcl/v.38/goldstein.pdf>

[2] In *Hoyt*, a woman visited a patient at a nursing home daily for almost two years. The hospital sent her a notice that she was not to return to the home. She did return and was arrested for trespassing. The court found that because the woman had a reasonable ground for her belief of a claim of right to visit, she was not trespassing.

[3] In *Richardson,* a Massachusetts case, the defendants were Jehovah s Witnesses and were in the main corridor of an apartment building ringing buzzers for apartments so they could talk to the tenants about their mission. The property manager found them there and told them to get out of the building. The defendants refused to leave and were eventually let in by an elderly tenant. Meanwhile, the property manager called the police. The police asked the defendants to leave, but the defendants went back to the corridor to ring more buzzers and upon doing so were arrested by the officers for trespassing. The court found that when a tenant unleashes the lock to the front door, it constitutes a license or permission for the defendants to enter, identify themselves, and disclose the purpose of the visit. The court found that the Jehovah s Witnesses were not trespassing and their convictions were reversed.

guest of a tenant or the public housing authority, the public housing authority could exclude the person as an agent for all of the tenants.

II. Two Approaches to Enhancing Tenants Rights to Visitors

Our office has used two approaches to helping tenants in this area. The first is education of police, see Part III. The other is litigation on behalf of a tenant, not the visitor, see Part IV.

III. Police Education

Minnesota police officers are required to take P.O.S.T. classes. P.O.S.T. classes, or Peace-Officer-Standards-and-Training classes, are the police-officer equivalent of attorney CLE classes. Each officer must take 48 hours [4] of accredited P.O.S.T. classes per three years.

We developed a training manual, Minnesota Landlord/Tenant Law: Training Manual for the Police,[5] and got a course approved. We have given the class, lasting a bit under three P.O.S.T. hours, a couple of times a year for the past few years. The topics covered are criminal-law issues faced by beat police in dealing with landlords and tenants (related to landlord-tenant law). One of the issues covered is the rights of tenants to have visitors and the rights of their visitors. While not all the police who attend the seminars are thrilled with the law on trespassing, virtually all seem to be willing to follow the law and most actually seem to support the underlying logic of the law. I don t have any follow up studies, but I think our seminars do increase the number of police who enforce trespass law correctly.

IV. Litigation

We are not presenting ourselves as leaders in litigating this issue. I was asked to be on this panel and agreed to present one approach we have taken. Available online is a set of pleadings in the one case we ve taken the furthest, Gilmore v. Centerpointe.[6] It settled favorably at the initial hearing (refund of some rent and a commitment to obey the law henceforth.)

The pleadings are the Affidavit for Escrow of Rent, the equivalent of a Complaint, along with an exhibit, a letter to the landlord asking the landlord to honor our client s right to have her son visit. The other is a pre-trial memorandum which discusses the law of trespass and the application of the Rent Escrow remedy to the situation.

---

[4] A "hour" is defined as 50 minutes of teaching time. Apparently, cops are either like psychiatrists who practice in 50-minute hours or cops learn 6/5 as fast as non police!

[5] A complete hard-copy of the manual, with all the appendices, is available for $10, including shipping and handling, by writing me a note asking for the manual and enclosing a $10 check payable to "HOME Line". An electronic copy of the manual, without appendices, is available from our website, which also has electronic copies of or links to the appendices. See www.homelinemn.org , clicking on "Resources for Police."

[6] See www.homelinemn.org , clicking on "Other Publications" then on the HJN materials.

The underlying law is not unique to Minnesota but the procedure is. Other states may have similar procedures. The Rent Escrow action is typically used for lack of repairs, but it can be used to seek equitable relief for both lack of repairs and breach of lease by landlord. Two breaches of lease were alleged. One was the breach of the covenant quiet enjoyment, a provision found in every lease by operation of law. This covenant includes a bundle of rights, including the right to give licenses to visit. The other was breach of the covenants of habitability, including the obligation to make the unit fit for the use intended ; these covenants are implied in every residential lease by Minn. Stat. § 504B.161. One use intended by a resident is to have friends and relatives visit.

The Rent Escrow (RE) statute requires the tenant to first give the landlord notice of the breach (e.g. my sink leaks) and an opportunity to cure. If the problem is not cured in 14 days, the tenant can file the RE. If rent is owed on the day of filing, the tenant pays the rent owed into court. After hearing/trial, the court has equitable jurisdiction to order repairs, other cure, rent abatement, and, at the tenant s request, the discretion to terminate the lease. We gave notice to the landlord of the breach (the trespassing of the tenant s son and the fact that the son was licensed to visit.) We asked for the landlord to allow the visits. Although not required, we warned the landlord of court action if the request was not honored. More than 14 days later, the son came to visit his mother and was seized by private security and then arrested by the city police for trespassing . Shortly thereafter, we filed the RE.

As indicated, the RE settled favorably at the initial hearing. I then worked with the son s public defender to explain the situation, to the prosecutor. The prosecutor dismissed the criminal case.

One case does not make a pattern. I do not offer these papers as proof that this is a sure-fire way to proceed, but as an example of one way to proceed under our law. This approach, if nothing else, has the advantage of asserting the rights of the tenant, not the visitor. In our case, mother and son had similar interests, but if they had diverged, we would not have been put in a box of trying to help the mother/tenant indirectly while representing the son in a criminal matter or perhaps in a civil matter with possible conflicts of interest. Also, the RE, unlike an equitable action in the non-Housing-Court part of district court, uses a simplified pleading and provides an initial hearing 10-14 days after filing.