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Recent Developments: HUD v. Rucker: Title 42 U.S.C. § 1437d(1)(6)'s Plain Language of Lease Terms Affords Local Housing Authorities the Discretion to Evict Tenants for Drug-Related Activities of Household Members or Guests, Regardless of Whether the Tenant Knew of Such Activity

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HUD v. Rucker:**Title 42 U.S.C. § 1437d(I)(6)'s Plain Language of Lease Terms Affords Local Housing Authorities the Discretion to Evict Tenants for Drug-Related Activities of Household Members or Guests, Regardless of Whether the Tenant Knew of Such Activity**

By: Mollie Shuman

Title 42 U.S.C. § 1437d(I)(6)'s plain language of lease terms affords local housing authorities discretion to evict tenants for drug-related activities of household members or guests, regardless of whether tenants knew of such activity. *Dept. of Hous. and Urban Dev. v. Rucker*, 122 S.Ct. 1230, 1236 (2002). The Supreme Court opined the Anti-Drug Act of 1988 ("the Act") was a response to the presence of drug dealers who "increasingly impos[ed] a reign of terror on public and other federally assisted low-income housing tenants." *Id.* at 1232. Consistent with Congressional intent, the Court afforded the United States Department of Housing and Urban Development ("HUD") and the Oakland Housing Authority ("OHA") enormous discretion to evict "innocent" tenants for any drug-related activities of inhabitants under their control. *Id.* at 1233.

Respondents, four tenants of the OHA, signed a lease containing a provision that required tenant, household member, guest, or person under the tenant's control to avoid any drug-related criminal activity on or near the premises. *Id.* at 1232. In addition to this adherence

term, each lease contained a consent provision to emphasize that the tenant must "understand that if I or any member of my household or guests should violate this lease provision, my tenancy may be terminated and I may be evicted." *Id.* None of the respondents participated in drug-related activity. *Id.* Instead, their relatives and caregivers were involved in drug consumption as well as possessing drug paraphernalia within the apartment complex. *Rucker*, 122 S.Ct. at 1232.

Although these activities violated the lease terms Respondents filed federal actions against HUD, OHA, and OHA's director, arguing the Act did not authorize the eviction of "innocent" tenants, and if it did, the statute was unconstitutional. *Id.* at 1233. The United States District Court for the Northern District of California entered a preliminary injunction prohibiting the tenants' evictions. *Id.* A panel of the court of appeals reversed and permitted the eviction of tenants who violated the lease provision. *Id.* A court of appeals en banc panel of the court of appeals affirmed the preliminary injunction, reversing the holding that authorized the eviction of "innocent"

tenants. *Id.* The Supreme Court granted certiorari and held that section 1437d(I)(6) required lease terms that afforded HUD the ability to terminate the lease of a tenant when a household member or guest engaged in a drug-related activity, regardless of the tenant's knowledge. *Id.*

The Court carefully dissected the plain language of the statute and opined section 1437d(I)(6) unambiguously held tenants accountable for not only their own drug-related criminal activity, but for another class of people as well. *Rucker*, 122 S.Ct. at 1233. The en banc court of appeals opined the statute failed to define the level of personal knowledge required for an eviction. *Id.* However, Congress's use of the word "any" to modify "drug-related criminal activity" illustrated its intention to discard a knowledge requirement. *Id.* In fact, the grammatical interpretation provided by HUD convinced the Court that "under the tenant's control" modified not only "other person," but also "member of the tenant's household" and "guest." *Id.* at 1233-34. Therefore, the criminal acts of temporary or permanent guests endangered a tenant of losing residency.

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Moreover, the court distinguished 21 U.S.C. § 881 (a)(7), which expressly exempted tenants who lacked knowledge of criminal drug-related activity from forfeiture, from the statutory history of section 1437d(l)(6) in illustrating Congress's intention to preclude any knowledge requirement. *Id.* at 1234. Absent an innocent owner defense, Congress purposefully held tenants accountable for the criminal activity of household members or guests by stating these individuals were under the tenant's control. *Id.*

Moreover, the Court supported Congress' permission given to local public housing authorities to conduct no-fault evictions based on public policy reasons. *Rucker*, 122 S. Ct. at 1235. Congress posited that regardless of knowledge, a tenant is a threat to other residents and the housing complex without an ability to control the drug activities committed by a household member. *Id.* (citing 56 Fed. Reg. 51560, 51567 (1991)). Therefore, the Court stated HUD and OHA are most capable of assessing the degree to which a housing project suffers from drug-related crime and the extent to which the tenant may reasonably prevent or mitigate the offending action. *Id.* at 1235.

Furthermore, a balancing test illustrated that although "no-fault" evictions exemplified strict liability, its deterrence on crime ultimately held the greatest weight. *Id.* The absence of such strict liability led to the deterioration of the physical environment of housing developments, which ultimately resulted in substantial governmental

expenditures. *Id.* By implementing a secondary communal policing system, the lease terms facilitated a safe and decent federally assisted low-income housing community, whereby all members may feel at ease to walk within its boundaries. *Id.*

The strict housing policy of HUD and OHA serves as a paradigm for federally assisted low-income housing in Baltimore City. In a drug-infested city that produces widespread violence, Baltimore will benefit greatly from the harsh, yet constitutional Supreme Court interpretation of Section 1437d(l)(6). Though unaware tenants may be punished by illegal actions of their household members or temporary guests, the strict housing policy ultimately benefits residents of housing communities who live among the presence of drug dealers and their omnipresent reign of terror.

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