No. 05-CV-00259

DISTRICT OF COLUMBIA COURT OF APPEALS

RAESHEEDA BALL,

Appellant

v.

ARTHUR WINN GEN. PARTNERSHIP/SOUTHERN HILLS APARTMENTS,

Appellee.

ON APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA,
CIVIL DIVISION, LANDLORD AND TENANT BRANCH

REPLY BRIEF OF APPELLANT

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INTRODUCTION

The landlord in this case does not dispute that the trial court's construction of "occupant" in the Residential Drug-Related Evictions Act (RDEA) is at odds with the text, structure, history, and purpose of the RDEA and with the usage of the term in landlord-tenant law generally. The landlord also does not dispute that treating mere visitors as "occupants" would lead to absurd results, such as evicting a tenant based on the activities of, for example, a repairperson admitted into the unit by the landlord. Further, it does not dispute that the trial court's erroneous construction of the RDEA was fatal to Ms. Ball's defenses, and it does not attempt to portray any such error as "harmless."

The landlord's defense of the trial court's ruling rests exclusively on the bare language of the statute – language that is far less clear than the landlord suggests. For the reasons explained below and in our principal brief, the RDEA's language does not support the trial court's interpretation and does not justify its judgment against Ms. Ball.

ARGUMENT

I. THE DEFINITION OF "OCCUPANT" IN THE RDEA DOES NOT SUPPORT EVICTING MS. BALL BASED ON THE ACTIONS OF A VISITOR TO HER HOME.

There is no evidence in this case that Ms. Ball has ever been involved in drug activity, either on the date of the search or at any other time. Indeed, despite its detailed focus on the events surrounding the search of Ms. Ball's apartment, and the items found during the search, the landlord acknowledges that "Ms. Ball was not present at the time of the search and arrest," and does not allege that she was involved in any way. Brief of Appellee, at 3. The landlord also has conceded that unless this Court agrees with the trial court that the term "occupant" includes temporary guests at the home, "the facts presented at trial would not have supported a verdict in

Appellee's favor" and the judgment for possession must be reversed. See Appellee's Supplemental Response to Appellant's Request for Stay of Execution Pending Appeal, at 1.

The landlord's argument for affirmance rests on a single contention: that the statutory definition of "occupant" unambiguously covers a temporary visitor to a rental unit. But the RDEA's definition of "occupant" does not bear the weight that the landlord and trial court place upon it. While the statute defines "occupant" as "a person authorized to be on the premises of the rental unit," it does not include a timeframe. D.C. Code § 42-3601 (16). As a result, the statute is ambiguous as to whether, to qualify as an occupant, an individual need only be "authorized to be on the premises" for any short period of time, or whether the authorization must be extensive or indefinite.

To resolve this ambiguity, as discussed in our principal brief at 11-12 and 16-22, the Court must examine the full text of the RDEA as well as the statute's history and purpose. As the landlord itself acknowledges, "[t]he literal words of [a] statute . . . are not the sole index to legislative intent, but rather, are to be read in the light of the statute taken as a whole." Jeffrey v. United States, ___ A.2d ___, 2005 D.C. App. LEXIS 332, at *9 (June 30, 2005) (citations omitted) (cited in Brief of Appellee, at 4-5). The RDEA, "taken as a whole," uses the term "occupant" to refer to an individual residing on the premises. The statute refers to compensation for the "occupancy" of a rental unit; it speaks of service of the landlord-tenant action on a "tenant or occupant"; and, most importantly, it authorizes eviction of a "tenant or occupant" of the rental unit. These uses of "occupant" make sense only if that term is understood to mean a person living at the unit. See Brief of Appellant, at 19-20. The landlord makes no attempt to explain why – if "occupant" does encompass temporary visitors – the statute would permit "eviction" of a mere visitor to the unit. Nor does the landlord attempt to reconcile these uses of

"occupant" with what it deems the "unambiguous" meaning of the statutory definition as encompassing temporary guests.

Moreover, in interpreting a statute, the Court must construe its words "according to their ordinary sense and within the meaning commonly attributed to them." Jeffrey, 2005 D.C. App LEXIS 332, at *9 (citations omitted) (cited in Brief of Appellee, at 4). The common meaning of "occupant," as explained in our principal brief, is a person who resides in a housing unit. See Brief of Appellant, at 17-18. Indeed, even the landlord understands the term in this way, acknowledging that "the only authorized occupants of the premises were the Appellant, Raesheeda Ball, and her two minor children." Brief of Appellee, at 1. It does not attempt to square that understanding with the trial court's construction of "occupant" as including visitors to the rental unit.

The landlord's reliance on the RDEA's affirmative defenses further undermines, rather than supports, the trial court's construction of the statute. Although the landlord relies on the availability of these defenses to "lessen any harsh effects of the legislation," the defenses are meaningless unless "occupant" is limited to those who live on the premises. The RDEA permits a tenant to avoid eviction by showing that the drug activity at issue "could not reasonably have been known to the tenant or occupant," or "were not part of a pattern or practice of the tenant or occupant." D.C. Code § 42-3604 (c). If, as the trial court concluded, the term "occupant" includes any guest at the premises, then the landlord need only show that the guest knew of his or her own illegal actions – regardless of the tenant's knowledge of or involvement in the activity. Far from mitigating the "harsh effects" of the RDEA, the trial court's interpretation leads directly to the "harsh" outcome of evicting a tenant based on the actions of any momentary visitor, including one admitted by the landlord. For example, under the trial court's construction,

a maintenance worker whom the landlord has authorized to make repairs at the tenant's apartment would qualify as an "occupant"; if that person knowingly or regularly engages in drug activity there, the tenant would be subject to eviction under the RDEA. There is no basis to conclude that the Council intended this absurd result.

To the contrary, although the landlord is correct that a statute might make tenants responsible for the actions of their guests, where the legislature intends this result, it states as much explicitly. See, e.g., 42 U.S.C. § 1437d (*l*)(6) (authorizing eviction from public housing for the criminal activity of the "tenant, any member of the tenant's household, or any guest or other person under the tenant's control"). For this reason, the landlord's reliance on Department of Housing and Urban Dev. v. Rucker, 535 U.S. 125 (2002), is misplaced. See Brief of Appellee, at 7. Rucker involved construction of the federal public housing law that, unlike the RDEA, explicitly included liability for the actions of guests. See 535 U.S. at 131 (finding that the "plain language" of the federal housing statute permits eviction based on the actions of visitors regardless of the tenant's knowledge or involvement). That the Council declined to include such language in the RDEA compels the conclusion that it intended the statute only to apply to residents of the rental unit, and not to their guests.

II. A SINGLE INCIDENT OF DRUG ACTIVITY IS NOT ENOUGH TO JUSTIFY EVICTION UNDER THE RDEA.

The landlord makes no attempt to defend the trial court's conclusion that a single instance of drug activity is enough to render Ms. Ball's unit a "drug haven." In its brief, the landlord erroneously asserts that in Cook v. Edgewood Management, 825 A.2d. 939 (D.C. 2003), this Court found that proof of any one of the seven factors listed in the drug haven statute is sufficient to support a drug haven finding. Brief of Appellee, at 5-6. In fact, Cook found that the landlord

had met three of the seven factors and that such evidence supported eviction under the RDEA; it declined to address whether proof of a single factor would be sufficient. See 825 A.2d at 946-47.

Moreover, Cook, unlike this case, involved multiple incidents of drug activity. See Brief of Appellant, at 26-27 & n.10. In addition, although the landlord is correct that the named tenant in Cook disclaimed knowledge of the illegal activity, Brief of Appellee at 6, her adult daughter – also a resident of the apartment – was arrested in connection with drug investigation and was shown to have a history of illegal drug activity. Id. at 943, 952 n.10. Here, by contrast, no resident of Ms. Ball's apartment, including Ms. Ball herself, was ever arrested or otherwise accused of involvement in illegal activity.

III. THE TRIAL COURT ERRED IN PERMITTING THE TESTIMONY OF OFFICER BOTELER.

The trial court erred in allowing Officer James Boteler to testify, over Ms. Ball's objection, because he was not a proper impeachment witness and because the landlord failed to disclose his identity as a substantive witness prior to trial.

The landlord does not dispute that it violated its discovery obligations in failing to disclose the identity of Officer Boteler.[1] Instead, it attempts to paint the officer as an impeachment witness, whom it need not have disclosed before trial. But the landlord cannot point to any portion of Ms. Ball's testimony that the officer "impeached." While asserting vaguely that Ms. Ball "put her credibility at issue" when she took the stand, the landlord declines

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[1] The landlord's obligation to disclose information requested in discovery is entirely separate from whether it must reveal impeachment witnesses. Regarding the discovery obligations, the issue is not when the landlord determined that Officer Boteler's testimony was "relevant for impeachment purposes," Brief of Appellee, at 9, but when it first became aware that the officer possessed information that was responsive to Ms. Ball's discovery requests. Even if, as the landlord claims, it only decided in the midst of trial to use the officer as an impeachment witness, it knew of the officer's identity and the information he possessed long before that time. See Brief of Appellant, at 32-33. The landlord had an obligation to disclose that information – whether it deemed it relevant to its own case or not – as soon as it became available. See Super. Ct. R. 26(f)(2).

to cite to any specific portion of Ms. Ball's testimony, and fails to identify any contradiction between her testimony and that of Officer Boteler. This failure is unsurprising, given that Officer Boteler's actual role in the trial was not as an impeachment witness, but rather to offer additional last-minute substantive evidence to support the landlord's claim under the RDEA.

As a substantive witness, Officer Boteler's testimony caused substantial prejudice to Ms. Ball. By alluding vaguely to "known drug dealers" in or near her apartment, the officer's testimony inflamed the jury while adding nothing to the analysis of the relevant factors under the RDEA. Requesting a continuance would have done little if anything to mitigate this harm, as the jury had already heard the damaging material.[2] Moreover, precisely because the testimony came as a mid-trial surprise, Ms. Ball had no way of knowing whether a continuance would have served any purpose. Without a firm basis for the request, there is little reason to believe that the trial court – particularly given its determination to conclude the trial in short order – would have granted any continuance.

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[2] In addition, to the extent that any party had the burden of addressing the consequences to the "'efficient and economical'" trial process of adding a new witness, that burden should have fallen not on Ms. Ball, but on the party seeking to supplement its pretrial disclosures – the landlord. See Corley v. BP Oil Corp., 402 A.2d 1258, 1262 (D.C. 1979) (quoting Tabatchnick v. G. D. Searle & Co., 67 F.R.D. 49, 54 (D.N.J. 1975)).

CONCLUSION

For the reasons stated above and in Ms. Ball's principal brief, the trial court's order granting judgment for possession to the landlord should be reversed.

Respectfully submitted.

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