Section 8

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High Court Rules:
Once a Landlord Takes a Section 8 Tenant the Landlord is Bound Forever

The New York Court of Appeals, on July 2, 2007, in the matter of Rosario, et al., respondents and Gumanovsky, et al., plaintiffs v. Diagonal Realty, LLC, et al., appellants, et al., defendants, ruled that a landlord's acceptance of federal Section 8 rent subsidy payments is a "term and condition" of a lease executed with a rent stabilized tenant. As such the rent stabilized tenant must be offered a renewal lease containing the same terms and conditions as in prior leases. The landlord thus may not "opt-out" of the Section 8 program upon a lease's termination.

What is Section 8?

The Section 8 program is a Federal Housing Certificate program which authorizes a local housing authority to subsidize the rent paid by eligible families. Those families pay 30% of their income toward their rent while the Voucher Program requires the local housing authority to pay the owner the remaining rent subject to a cap referred to as "Fair Market Rent" (FMR) as determined by HUD (The United States Department of Housing and Urban Development). A landlord cannot charge a Section 8 tenant more than the FMR even if the landlord charges higher rents to non-Section 8 tenants in similar units.

The unique Section 8 program was created as an alternative to public housing. The law was rooted in the Great Depression and was amended in 1974 to specifically create the Section 8 program. The revision to the law resulted from the realization that the problem with low income housing was no longer substandard accommodations, but rather the high percentage of income that low income individuals were spending on their rentals. The Voucher Program gave the federal government the ability to subsidize a family's rent without having to build new housing projects.

Federal Law v. State Law

No landlord is required to accept a Section 8 tenant. If, however, a landlord does accept a Section 8 tenant it was generally presumed that a landlord could "opt-out" of the program and terminate the Section 8 tenancy when the lease came to an end. Various community agencies and housing authorities took a contrary position. Their view has been that although the Section 8 program is a federal subsidy program, it did not override state and city rent stabilization programs which generally require that, at the end of the lease term, the tenant be offered an opportunity to renew the lease on substantially the same terms and conditions as the expiring lease.

What Happened in Rosario v. Diagonal

In this case, a tenant, Sonia Rosario, lived for thirty years in a rent stabilized apartment in New York City owned by Diagonal Realty, LLC. During most of that time she received Section 8 benefits from the New York City Housing Authority.

When a landlord accepts a Section 8 tenant through the New York City Housing Authority, the landlord is required to enter into a Housing Assistance Payment contract ("HAP contract") pursuant to New York City Ordinance 24 CFR 982.451. The HAP contract specifies the terms of the landlords' participation in the Section 8 program and the Housing Authority subsidizes the payments to cover the balance of the agreed upon rent.

In February of 2003, Diagonal decided that it no longer wished to participate in the Section 8 program with respect to Rosario and a number of other tenants in their apartment complex. After refusing to take the vouchers for payment of the subsidies, Diagonal commenced eviction proceedings in the Civil Court of the City of New York. In July of 2005, a Manhattan Supreme Court Justice enjoined Diagonal from refusing to accept Section 8 benefits and consolidated Rosario's case with claims filed by six other tenants. The landlords asserted in the consolidated action that federal law preempted New York City and New York State law. Because Section 8 was a federal program the landlord could choose to opt-out of the program if such right was granted to them under federal law. The New York State Supreme Court found in favor of the tenants as did the Supreme Court's Appellate Division.

Federal Preemption v. State Statute

In determining whether a federal statute supersedes various state and city laws the Court of Appeals had to address whether there were specific inconsistencies between the federal, state and city laws and the intent of Congress concerning those inconsistencies. The Court determined that the federal government's "legislative intent" was to remove federal obstacles to participation by landlords in the Section 8 program. HUD thereafter introduced regulations clarifying that nothing in the Federal Regulations regarding the Section 8 program "is intended to preempt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder." Thus the Court of Appeals concluded that there was "no intent to preempt state law."

The Court's View

In a unanimous opinion, the Court of Appeals affirmed the lower Courts' rulings. Writing for the Court of Appeals, Judge Eugene F. Pigott, Jr. stated "(I)t is clear that federal law does not so occupy the field of housing law that there is no room for state regulation." He quoted a prior case: "(S)tates 'have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular.'" "In this area, federal and state law depend on each other; neither excludes the other."

Is there Any Way to Remove a Section 8 Tenant?

Landlords are not without rights even when a tenant is receiving subsidies under Section 8. Families who participate in the Section 8 program must abide by a series of rules and regulations referred to as "family obligations". For example, they must report all changes in household income so that their subsidy can be updated regularly. Moreover, Section 8 does not preclude a landlord from seeking to remove a tenant for good cause. However, if good cause does not exist, New York State's Rent Stabilization Code requires that a tenant's Section 8 lease be renewed with the same terms and conditions as the expired lease. Therefore, if a rent stabilized tenant legitimately enters into a Section 8 subsidized lease with a landlord in the State of New York, and complies fully with the terms and conditions of the lease agreement, the rent stabilized tenant must be offered a right to renew under the Section 8 program and the landlord is bound for as long as the tenant continues in occupancy and abides by the terms of the Section 8 lease.