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HH NORTHRIDGE LLC,	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION ATLANTIC COUNTY
Plaintiff/ Appellant	
vs.	DOCKET NO.: A-000883-24
ISAIAH ALEXANDER,	CIVIL ACTION
Defendant/ Respondent	LETTER BRIEF IN SUPPORT OF APPEAL FROM ORDER DISMISSING PLAINTIFF'S EVICTION COMPLAINT IN THE SUPERIOR COURT OF NEW JERSEY, SPECIAL PART, LANDLORD/TENANT DIVISION ATLANTIC COUNTY
	Sat Below: James P. McClain, J.S.C.

TO THE HONORABLE JUSTICES OF THE APPELLATE DIVISION:

Pursuant to R. 2:6-2(b), please accept this letter brief submitted on behalf of the plaintiff/appellant, HH Northridge LLC, in support of Plaintiff's appeal from an Order entered on October 11, 2024, dismissing Plaintiff's eviction complaint in the Superior Court of New Jersey, Special Civil Part, Landlord/Tenant Division, Atlantic County.

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LIST OF PARTIES

Party Name	Appellate Party Designation	Trial Court/ Party Role	Trial Court/ Party Status
HH Northridge LLC	Appellant	Plaintiff	Participated Below
Izaiah Alexander	Respondent	Defendant	Participated Below

TABLE OF TRANSCRIPTS

PRELIMINARY STATEMENT

The trial Court erred in dismissing Plaintiff's summary dispossess complaint because as a matter of law a Tenant receiving rental assistance through the Section 8 Voucher program can be evicted for material violation of the lease based on their failure to pay utility bills which are the Tenant's responsibility under the lease, and Defendant acknowledged that he is obligated to pay gas bills/charges under the lease and that he failed to do so.

PROCEDURAL HISTORY

1. On August 6, 2024, Plaintiff filed a summary dispossess complaint against Defendant alleging two grounds for eviction: one for violation of the parties' lease by failing to pay utilities, and the other for non-payment of rent. (Pa1-9).

2. On September 18, 2024, the Court entered a Management Order for an In-Person Trial on September 30, 2024, at 11 am. (Pa32)

3. On September 30, 2024, the matter came before the Court for trial. The Court reserved its decision pending Plaintiff's submission of a copy of a letter Plaintiff received on October 3, 2022, from the DCA granting final approval of its submetering system for gas utility charges, and informal legal memoranda from both parties supporting their respective legal positions. (1T66)

4. On October 1, 2024, Plaintiff filed the aforesaid final approval letter

from the DCA for its submetering system for gas utility charges. (Pa33)

5. On October 2, 2024, Plaintiff and Defendant filed informal memoranda with the Court supporting their respective legal positions. (Pa42-44) (Pa45-54).

6. On October 11, 2024, the Court entered an Order entering Judgment for Defendant and Dismissing the Complaint. (Pa55). (T2).

7. On November 26, 2024, Plaintiff filed a Notice of Appeal.

STATEMENT OF FACTS

The plaintiff, HH Northridge LLC, is the owner of a residential apartment/townhome located at 216-A W. Ridgewood Ave., Pleasantville, NJ. (hereinafter referred to as "the property"). The defendant, Isaiah Alexander, is a tenant at the property pursuant to a written lease agreement with the Plaintiff dated October 1, 2023. (Pa10-21). The lease provides for a term beginning on October 1, 2023, and ending on September 30, 2024, at a monthly rental rate of. $1,485.

Under the terms of the Lease, the tenant is responsible for the payment of heat/gas bills. Specifically, paragraph 8 of the Lease Rules and Regulations states that gas and electric bills, if applicable, must be paid by the tenant in a timely manner and the failure to do so is considered a material breach of the lease". Additionally, paragraph 27 of the lease rules and regulations states that "Any violation of the rules and regulations is considered a material breach of the Lease and shall entitle the landlord to terminate the lease and tenant's possession of the premises in accordance with law". There is also a notation on the first page of the Lease stating that heat/gas is payable as rent. (Pa10-21)

A portion of the Defendant's rent is paid by the U.S Department of Housing and Urban Development (HUD's) Section 8 Housing Choice Voucher Program. (1T5-8-10, 15-24; Pa22-31)

Defendant acknowledged that he is responsible for payment of gas charges/ bills under the terms of the lease, and that he chose not to pay them. (1T41-17-25)

Plaintiff served Defendant with a Notice to Cease dated May 29, 2024, warning that he violated the terms and conditions of the Lease by failing to pay gas utility charges of $1,240.52, and that if he failed to reimburse the Landlord within 30 days he would be requested to move out. (Pa6-7). Plaintiff served Defendant with a Notice to Quit dated July 1, 2024, due to his continuing violation of the terms and conditions of the Lease by failing to pay gas charges. (Pa8-9) Copies of the Notice to Cease and Notice to Quit were sent to the Section 8 Voucher program administrator and the Defendant's attorney.

Defendant never contacted the Plaintiff to discuss or attempt to resolve the issue despite receiving gas bills, the notice to cease, and the notice to quit, (1T38-23).

Plaintiff filed a summary dispossess complaint against Defendant on August 6, 2024, alleging two distinct grounds for eviction: one for violation of the parties' lease by failing to pay utilities, and the other for non-payment of rent. (Pa1-9)

The matter came before the Court for trial on September 30, 2024. Regarding Defendant's breach of the Lease, Plaintiff's property manager, Dov Twersky, testified that Defendant failed to pay numerous gas charges/bills totaling $1,370.09.(1T15-20-24, 1T16-1-25). Mr. Twersky further testified that Plaintiff contracted with a company known as Monitor Data Corporation to bill the residents for their gas usage using a submetering system known as the "Allara Monitoring System". (1T16-25, 1T17-15) He further testified that the system went through a rigorous Department of Community Affairs, (DCA), inspection and that they received final approval of the system. (Pa33) The system monitors the resident's gas usage in real time with a monitor on the individual unit valve on the heating system and transmits the data to the office and to the company. They determine the CFU from the South Jersey gas bill. The residents are only charged based on their usage. (1T17-15). He further testified that the Defendant owed outstanding gas charges as of the trial date of $1,370.09, and $2,774.77 in rent for a total amount due of $4,144.86. (1T18-8-23).

Mr. Twersky further testified that the Lease agreement providing that the tenant is responsible for payment of the gas was sent to the DCA and approved. (1T21-21-24)

After listening to the testimony and arguments presented, the trial judge found that there was a substantial legal issue as to whether a charge that could not be considered as additional rent serve as the basis for the eviction of a section 8 recipient citing it as a violation of the lease agreement. The Court reserved its decision to afford counsel an opportunity to submit legal memoranda and the final approval letter for the submetering system used by Plaintiff. (1T66)

On October 11, 2024, the Court issued its decision dismissing the complaint upon finding that there was no rent due and owing. (2T, Pa55)

LEGAL ARGUMENT

THE TRIAL COURT ERRED IN DISMISSING PLAINTIFFS' COMPLAINT BECAUSE A TENANT WHO PARTICIPATES IN THE SECTION 8 VOUCHER PROGRAM CAN BE EVICTED FOR MATERIAL VIOLATION OF THE LEASE ARISING FROM FAILURE TO PAY UTILTY BILLS WHICH THE TENANT IS OBLIGATED TO PAY UNDER THE LEASE.

Raised below (Pa55, 1T5- 15-25, 1T6-1-2,1T17-16-25, 1T18-1-10, Pa38-40,1T55-14-25,1 T56-1-3,1T65-2-19, 1T66-5-25, 2T4-8)

The trial Court erred in dismissing Plaintiff's summary dispossess complaint because as a matter of law a Tenant receiving rental assistance through the Section 8 voucher program can be evicted for material violation of the lease based on the failure to pay utility bills which are the Tenant's responsibility under the lease, and Defendant acknowledged that he is obligated to pay gas bills/charges under the lease and that he chose not to pay them.

The trial Court misinterpreted and misapplied this Court's decisions in Sudersan v. Royal, 386 NJ Super 246 (App. Div. 2005), and 175 Executive House v Miles, 449 NJ Super 197 (NJ App. Div, 2017) in dismissing Plaintiff's complaint. Both Sudersan and 175 Executive House arose from summary dispossess complaints that were filed for non-payment of rent rather than for lease violations against tenants receiving rental assistance, as here in this case.

Iin Suderson , supra., the plaintiff filed a summary dispossess action against defendant for non-payment of rent pursuant to N.J.S.A. 2A:18-61.1a, alleging rent due consisting of outstanding water and sewage charges. On the date of the hearing, the defendant, through counsel, argued that notwithstanding the lease agreement, the utility charges, which she did not dispute, were not "rent" in a Section 8 tenancy, and, therefore, under federal law she could not be evicted for non-payment of rent because her portion of the rent owed was fixed at zero. The Special Civil Part judge disagreed and entered a judgment for possession based on non-payment of rent.

The Appellate Court reversed the decision and vacated the judgment for possession. The Court concluded that the water and sewage charges could not be considered or treated as rent and therefore could not serve as the basis for plaintiff's summary dispossess action for non-payment of rent. The Court noted that allowing such charges to be considered rent collectible in a summary dispossess action would increase tenant rent beyond the limit established by the Brooke Amendment and more than the specific portion fixed by the federal housing subsidy program.

The Court in Suderson, supra noted that:

> "Plaintiff, of course had other avenues of relief available to her, such as initiating an action in the Special Part to collect the other charges, Rule 6:1-2(a)(2), **or for eviction based on violation of the lease**, (emphasis added) N.J/S.A. 2A:18-61.1(e). Her choice of the alternate "good cause" ground of non-payment of rent happened, in this instance, to be precluded by federal law, and thus cannot serve as a viable basis for eviction."

Thus, the Court in Suderson, supra specifically stated that the Plaintiff had other avenues of relief available such as initiating an action for eviction based on violation of the lease under 2A:18-61.1 (e).

This statement is supported by the federal regulations governing termination of tenancies subsidized through the Section 8 Housing Choice Voucher Program. Specifically, 24 C.F.R. 982.310 (a)(1) authorizes owners to terminate tenancies for serious lease violations (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease.

Similarly, HUD Handbook 4350, Chapter 8 Termination, pertaining to section 8 multifamily properties, states that owners may terminate tenancies for material noncompliance with the lease, and that repeated minor violations that interfere with management of the property or have an adverse financial effect are considered material noncompliance. A tenant's failure to pay utilities is given as a specific example of a violation. (Pa57)

N.J.S.A. 2A:18-61.1 (e) authorizes the removal of a tenant where the person has continued after written notice to cease , to substantially violate or breach any of the covenants or agreements contained in the lease for the premises where a right of reentry is reserved to the landlord in the lease for a violation, provided that such covenant is reasonable and was contained in the lease at the beginning of the lease term. Similarly, N.J.S.A. 2A:18-61.1(d), authorizes the eviction of a residential tenant where "the person has continued after written notice to cease , to substantially violate or breach any of the landlord's rules and regulations governing he premises , provided such rules and regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term.

Here, Plaintiff proceeded in accordance with Court's dicta in Sudersan, supra.

by filing a complaint based on violation of the lease arising from the Defendant's refusal to pay his gas utility charges, and for nonpayment of rent. Plaintiff has no other viable remedy to enforce the parties' lease agreement. Defendant's security deposit of $500 is less than half of the amount due for his gas bills, and a monetary judgment in another court would be uncollectable as Defendants only income is a disability payment. (1T33-24-25, 1T34-1-3).

CONCLUSION

Based on the above law, and the testimony and evidence presented at trial, it is respectfully submitted that the Court erred in dismissing Plaintiff's summary dispossess complaint because as a matter of law a Tenant receiving rental assistance through the Section 8 voucher program can be evicted for material violation of the lease based on their failure to pay utility bills which are the Tenant's responsibility under the lease, and Defendant acknowledged that he is responsible for payment of gas bills/charges under the lease and that he chose not to pay the them.

Respectfully submitted,

Dated: February 14, 2025

s/*Lori C. Greenberg.*
Lori C. Greenberg, Esq.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-000883-24

HH NORTHRIDGE LLC, *Plaintiff-Appellant,* *vs.* **ISAIAH ALEXANDER,** *Defendant-Respondent.*	*ON APPEAL FROM:* Final Judgment of the Superior Court, Law Division, Special Civil Part, Landlord-Tenant, Atlantic County Docket No. ATL-LT-2416-24 *CIVIL ACTION* *SAT BELOW:* Hon. James P. McClain, J.S.C.

BRIEF OF DEFENDANT-RESPONDENT ISAIAH ALEXANDER

FILING FEES WAIVED *R.* 1:13-2
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[1] "2T" herein refers to the transcript of the decision given on October 11, 2024. A copy has been uploaded into the eCourts Appellate case file.

[2] "1T" herein refers to the transcript of the trial held on September 30, 2024. A copy has been uploaded into the eCourts Appellate case file.

[3] "Pa" herein refers to Plaintiff-Appellant's Appendix.

Statutes

Regulations

Court Rules

Miscellaneous Authorities

PRELIMINARY STATEMENT

Defendant-Respondent Izaiah Alexander is requesting that the Appellate Division affirm the trial court's dismissal of Plaintiff-Appellant's eviction complaint. First, the trial court properly held that Plaintiff's attempt to evict Mr. Alexander for nonpayment of gas charges violated federal law governing the Section 8 Housing Choice Voucher Program. Specifically, the Plaintiff's lease provision, which stated that gas services were "billed as rent," directly conflicted with the Brooke Amendment and HUD regulations limiting a Section 8 tenant's rental portion.

Second, the trial court also properly rejected Plaintiff's effort to proceed under N.J.S.A 2A:18-61.1(d) and N.J.S.A 2A:18-61.1(e)(1) for a breach of the lease. The record demonstrated that Plaintiff's attempt to shift responsibility for gas service to Mr. Alexander through the rules and regulations of the lease violated the same federal framework governing rent calculations under the Housing Choice Voucher Program.

Lastly, even assuming Plaintiff could have proceeded under N.J.S.A 2A:18-61.1(d) and N.J.S.A 2A:18-61.1(e)(1) for a breach of the lease, Plaintiff failed to present credible or consistent evidence of any lease violation. The amounts allegedly owed varied across notices, the complaint, and trial testimony, and Plaintiff failed to support its claim with reliable, admissible proof.

PROCEDURAL HISTROY AND STATEMENT OF FACTS[4]

Defendant-Respondent, Mr. Izaiah Alexander[5], is a tenant located at 216-A W. Ridgewood Ave., Pleasantville, NJ, pursuant to a written lease with Plaintiff-Appellant, HH Northridge, LLC. Pa10-21. Mr. Alexander is the recipient of Section 8 Tenant-Based Assistance through the Housing Choice Voucher Program, administered by the New Jersey Department of Community Affairs. Pa22-31; 1T5-15. At the time of the filing of this complaint, Mr. Alexander's portion of the rent was $131.00 and his utility allowance was $0.00. Da5. [6]

Mr. Alexander first began experiencing symptoms of multiple sclerosis in the year 2000 and is now supported primarily by Social Security Disability benefits, receiving approximately $900.00 per month. 1T33-22 to 1T34-8. Mr. Alexander has resided at the subject premises since approximately 2015. 1T27-17 to -20. At the time of his move-in, all utilities were included in his rent. 1T27-24 to 1T28-8. Although Mr. Alexander began receiving gas bills from Plaintiff in 2022, he testified that he never received notice from the Section 8 office approving a change in utility responsibilities. 1T31-23 to 1T32-11.

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[4] The procedural history and statement of facts are intertwined and have been combined for the convenience of the Court.

[5] The case caption incorrectly identifies Defendant as "Isaiah Alexander," Defendant's correct name is "Izaiah Alexander."

[6] "Da" refers to Defendant-Respondent's Appendix attached herein.

On May 29, 2024, Plaintiff sent Mr. Alexander a Notice to Cease, advising him that he has failed to pay gas charges and that "per your signed lease, gas charges are billed as additional rent." Pa8-9. The Notice to Cease included a provision from the lease agreement, which states "HEAT/GAS: BILLED AS RENT". Id.; Pa10. The Notice to Cease requested the immediate reimbursement of the gas charges, demanding the payment of $1,240.52 as additional rent. Id.

On July 1, 2024, Plaintiff sent Mr. Alexander a Notice to Quit, advising him that he owed $1,240.52 in gas charges. Pa6-7. The Notice to Quit advised Mr. Alexander that gas charges are billed as additional rent, that heat/gas are billed as rent pursuant to the lease agreement, and that Mr. Alexander must pay $1,138.52 as additional rent with his rent payment when it is due. Id. Both the Notice to Cease and Notice to Quit threatened eviction if Mr. Alexander did not reimburse the Plaintiff for the additional rent. Pa8-9; Pa6-7.

On August 6, 2024, Plaintiff filed a two-count summary dispossess complaint against Mr. Alexander for nonpayment of rent, alleging $8,466.96 was due and owing, and for violation of the lease's rules and regulations. Pa1-5. On September 18, 2024, the Parties were unable to settle the matter at mediation and the Court entered a Management Order for an in-person trial on September 30, 2024. Pa32.

At trial, Plaintiff's property manager, Dov Twersky, testified that Mr. Alexander had an outstanding balance of $4,144.86 on his rent ledger. 1T18-17;

1T18-23. According to the witness, this amount reflected both Mr. Alexander's unpaid rent portion in the amount of $2,774.77 and unpaid gas charges in the amount of $1,370.09. 1T18-8 to -13. These figures were taken from Exhibit P-5, a handwritten ledger prepared by Plaintiff's counsel purportedly based on Exhibit P-1. 1T13-13 to -21; 1T19-8 to -10; Da6. Exhibit P-1 is a computer-generated ledger kept in the tenant file. Pa34-31. The witness acknowledged that he had not reviewed P-5 for accuracy before testifying. 1T19-14 to -16. The Court ultimately found that the handwritten ledger did not qualify as a business record and was inadmissible hearsay. 1T26-2.

Upon the conclusion of testimony and arguments, the Court found that there was a substantial legal issue with regard to this case. 1T66-5. The issue before the trial Judge was whether, in light of the fact that Mr. Alexander is a Section 8 recipient, nonpayment of a utility charge treated in the lease as additional rent could nevertheless serve as grounds for eviction under the lease's rules and regulations. 1T66-7 to -10. The Court afforded the Parties the opportunity to submit legal memorandum in justification of their respective positions. 1T66-22.

On October 11, 2024, after reviewing the submitted legal memorandum and testimony presented at trial, the Court issued its decision. 2T. The Court found in this particular case that the Plaintiff had consistently treated gas charges as part of Mr. Alexander's rent obligation, the Court pointed to language in the lease and the associated notices that referenced gas as "billed as rent" and "additional rent." 2T7-15. The Court explained that:

> "The Court, in addition to relying upon this language from the two cases cited, would also refer to the lease itself, P-4 in evidence. In P-4 as evidence on the face page, it says specifically that 'Landlord agrees to pay for the following service and utilities if checked.' Water is checked as well as air conditioning. And then next to heat and gas it says, 'Billed as rent.'
>
> I would also note that in the notice to cease, P-2 in evidence, it once again stated that heat and gas was billed as rent. Likewise in P-3 in evidence, which is the notice to quit, it refers to heat and gas as billed as rent. The Court finds based on the cases cited and based upon the language in the lease and the language in the notice to cease and the notice to quit, clearly the -- the [sic] gas charges are billed or considered as rent or additional rent. And the amount of rent has already been decided -- [sic] the tenant's portion of the rent has already been decided by the Section 8 program." 2T6-24 to 2T7-18

The Court further found that the Plaintiff's attempts to characterize unpaid gas charges as a breach of the lease's rules and regulations was inconsistent with controlling law. 2T7-19 to -22. Because the lease and related notices consistently treated gas charges as rent, the Court held that enforcing those charges as a separate breach would have the effect of increasing Mr. Alexander's rent beyond the amount approved by the Section 8 program. 2T8-6 to -10. For that reason, the Court concluded that the Plaintiff was prohibited from seeking eviction based on nonpayment of gas charges. 2T8-11 to -14.

The Court then turned to whether any rent remained due. 2T8-15 to -16. The Court reviewed Plaintiff's rent ledger, admitted as P-1, and compared the entries to money order receipts submitted by Mr. Alexander. 2T8-18 to -25; 2T9-1 to -14. Although some receipts did not correspond to specific rent payments, the Court used Plaintiff's own ledger to clarify any discrepancies. 2T9-3 to -5; 2T11-7 to -9. Based on that review, the Court found that Mr. Alexander did not owe any rent, and in fact found that he had a rent credit of $1,449.00 . The Court therefore dismissed the landlord's eviction complaint. 2T13-10 to -13.

LEGAL ARGUMENT

I. APPLICABLE STANDARD OF REVIEW REGARDING LANDLORD-TENANT SUMMARY DISPOSSESS BENCH TRIALS.

Generally, findings of fact in bench trials are considered binding on appeal "when supported by adequate, substantial and credible evidence." Rova Farms Resorts v. Investors Insurance Company, 65 N.J. 474, 484 (1974); Rolnick v. Rolnick, 290 N.J. Super. 35, 42 (App. Div. 1996). Thus factual findings of the trial court "are entitled to great deference and will be overturned only if the court abuses that discretion," Balsamides v. Prodomean Chemical Inc., 160 N.J. 352, 372 (1999). Questions of law on the other hand are reviewed by an appellate court *de novo*. Smith v. Millville Rescue Squad, 225 N.J. 373, 387(2016).

II. THE TRIAL COURT, IN DISMISSING PLAINTIFF LANDLORD'S EVICTION COMPLAINT, PROPERLY RULED THAT THE LANDLORD'S ATTEMPT TO EVICT MR. ALEXANDER FOR GAS BILLS ALLEGED DUE AND OWING VIOLATED FEDERAL LAW GOVERNING THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM. (2T4-13 to 2T13-17; Pa55)

In 1974, the Legislature enacted the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 et seq., amending and superseding the Summary Dispossess Act, N.J.S.A. 2A:18-53 et seq. The Anti-Eviction Act fundamentally altered the common law relationship between landlords and residential tenants in New Jersey by limiting landlords' right to evict residential tenants only for statutorily defined "good cause" grounds set forth in N.J.S.A. 2A:18-61.1. "The purpose of the Anti-Eviction Act is to protect residential tenants from the effects of what the Legislature has deemed to be a severe shortage of rental housing in this state." Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602, 614-15 (1999).

Pursuant to N.J.S.A. 2A:18-61.3(a) of the Anti-Eviction Act, "No landlord may evict or fail to renew any lease of any premises covered by section 2 of this act [N.J.S.A. 2A:18-61.1] except for good cause as defined in section 2." N.J.S.A. 2A:18-61.3(a). "As a matter of jurisdictional prerequisite, one of the enumerated statutory 'good causes' in the Anti–Eviction Act must be pleaded and established" by a landlord seeking to evict residential tenant. Community Realty Management., Inc. v. Harris, 155 N.J. 212, 239 (1998). Thus, "tenants may not be removed from their residential premises except on one of various enumerated grounds constituting 'good cause' set forth under the Anti-Eviction Act." 447 Assocs. v. Miranda, 115 N.J. 522, 529 (1989).

In the present matter, Plaintiff landlord sought to evict Mr. Alexander—a Section 8 Housing Choice Voucher recipient—for gas bills the landlord had alleged were owed and unpaid by Mr. Alexander, which the landlord had characterized as "billed as rent" under the lease. Plaintiff asserted grounds for eviction under the Anti-Eviction Act for nonpayment of rent under N.J.S.A. 2A:18-61.1(a), as well as for breach of rules under N.J.S.A. 2A:18-61.1(d) and for breach of lease under N.J.S.A. 2A:18-61.1(e)(1). As argued below, the trial court properly ruled that based on the specific facts of this case, federal law governing Section 8 Housing Choice Vouchers prohibited the landlord from evicting Mr. Alexander for nonpayment of rent, as well as for breach of the landlord's rules or breach of the parties' lease.

A. The Landlord Improperly Sought Eviction For Nonpayment Of Rent Under Subsection 61.1(a) Of The Anti-Eviction Act Because The Landlord's Lease Stating That Gas Service Is To Be "Billed As Rent" Violates Federal Law Under The Brooke Amendment And Implementing HUD Regulations. (2T4-13 to 2T8-14; Pa55)

The federal Section 8 Housing Choice Voucher Program plays an important role in addressing the pressing need for affordable housing for the poor throughout the nation and within New Jersey. Since the 1980's, Congress has shifted primary funding away from "supply-side" construction of public and privately-owned, government-assisted multifamily housing, to that of "demand-side" Section 8 "tenant-based" portable rental subsidies that allow low-income tenants to enter the existing private housing market. See generally, Laura Bacon, Godinez v. Sullivan-Lackey: Creating A Meaningful Choice For Housing Choice Voucher Holders, 55 DePaul L. Rev. 1273, 1275-76 (2006). As such, the Section 8 Program has become one of the principle means that the federal government utilizes to assist low-income families, seniors and the disabled in the country to obtain decent rental housing that they can afford. Id.

Congress established the Section 8 Housing Assistance Program in 1974 under the Housing and Community Development Act of 1974, codified at 42 U.S.C. 1437f, amending the United States Housing Act of 1937. See Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602, 608 (1999); Bouie v. N.J. Dep't of Community Affairs, 407 N.J. Super 518, 521 (App. Div. 2009). The Section 8 Program was created "[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C. 1437f(a); Franklin, at 608.

Under the Section 8 Program, the U.S. Department of Housing and Urban Development ("HUD") provides funding to state and local governmental public housing agencies entities to administer the Section 8 Program and pay rental subsidies on behalf of eligible low-income families to landlords in the private rental market. 42 U.S.C. 1437f(b); 24 C.F.R. § 982.1(a). It is the participating families' responsibility to search for a landlord willing to rent a suitable apartment and accept the Section 8 voucher. 24 C.F.R. § 982.302. The Section 8 household generally pays as rent 30% of its adjusted gross monthly income, up to a maximum of 40%, with the local entity administering the program subsidizing the balance of the monthly rent by entering into a Housing Assistance Payment ("HAP") contract with the landlord. 24 C.F.R. § 982.508.

Tenancies subsidized under the Section 8 Housing Choice Voucher Program are subject to a federal statutory framework that limits the portion of rent a tenant is required to pay. In Hous. Auth. & Urb. Redevelopment Agency of City of Atlantic City v. Taylor, 171 N.J. 580, 593 (2002), the New Jersey Supreme Court held that in the context of government owned public housing, federal law preempted a housing authority's attempt to characterize additional charges as "additional rent" in order to support an eviction for nonpayment of rent under N.J.S.A. 2A:18-61.1(a). The Court in Taylor ruled that state contract law—which allows landlords to define other charges as "additional rent" in leases—conflicted with the Brooke Amendment, 42 U.S.C. § 1437a(a)(1), which imposes a ceiling on the amount of rent payable by public housing tenants. Id. at 594.

In Sudersan v. Royal, 386 N.J. Super. 246 (App. Div. 2005) the Appellate Division extended the holding in Taylor regarding public housing tenants to apply to tenants renting in the private market with rental subsidies under the Section 8

Housing Choice Vouchers. Program. The Appellate Division in Sudersan reasoned that "both [programs] share the same principle of assisting low income families with affordable housing; both set an income limit on the amount of rent collectable by a landlord; and both apply to federally funded providers of housing of last resort." Sudersan, at 253.

Thus in in Sudersan, the Appellate Division held that a private landlord receiving Section 8 voucher payments could not evict a Section 8 tenant in a nonpayment of rent action for unpaid utility bills labeled in the lease as "additional rent." Sudersan, at 250, 254. "Indeed, allowing such charges to be considered rent collectible in a summary dispossess action would increase tenant rent beyond the limit established by the Brooke Amendment and in excess of the specific portion fixed by the housing subsidy program." Sudersan, at 254. See also, 175 Executive House, L.L.C. v. Miles, 449 N.J. Super. 197, 207 (App. Div. 2017)(applying Sudersan to the New Jersey state funded SRAP rental voucher program patterned on the federal Section 8 Housing Choice Voucher Program).

In the present case, the trial court correctly applied this settled law in declining to treat the gas charges as a valid basis for eviction based upon nonpayment of rent under N.J.S.A. 2A:18-61.1(a). The lease presented at trial stated that heat and gas were "billed as rent." 2T7-6; Pa10. The Notice to Cease and Notice to Quit used the same language. Pa6; Pa8. The Plaintiff repeatedly framed these charges as rent and demanded payment as though the charges were part of the rent. Id. The trial court correctly held that Plaintiff's billing gas service as "rent" violated federal law under the Brooke Amendment as applied to the Section 8 Housing Choice Voucher Program in accordance with holdings in Taylor, Sudersan, and Miles. 2T8-5 to -14

B. The Landlord Improperly Sought Eviction For Breach Of The Landlord's Rules And For Breach Of Lease Under Subsections 61.1(d) & 61.1(e)(1) Of The Anti-Eviction Act Because, Based On The Evidence At Trial, The Landlord's Shifting Responsibility Of Paying For Gas Service To Mr. Alexander Violated Federal Law Under The Brooke Amendment And Implementing HUD Regulations. (2T4-13 to 2T8-14; Pa55)

In its Appellant's brief, Plaintiff landlord argues that the trial court erred as a matter of law in dismissing its eviction case for breach of lease under N.J.S.A. 2A:18-61.1(d) or N.J.S.A. 2A:18-61.1(e)(1) because "the Court in Suderson (sic), supra specifically stated that the Plaintiff had other avenues of relief available such as initiating an action for eviction based on violation of the lease under 2A:18-61.1(e)" against a Section 8 tenant for unpaid utilities. Pb6.

However, Plaintiff's reliance on a single sentence at the end of the Sudersan decision, id. at 246, is misplaced since it is dicta that did not fully analyze the interplay between federally subsidized tenants' rents and payment of utilities under the Brooke Amendment. In Wright v. Roanoke Redevelopment & Hous. Auth., 479 U.S. 418 (1987), in allowing public housing tenants to bring suit under 42 U.S.C. § 1983 to enforce utility allowances, the U.S. Supreme Court acknowledged that

"HUD has consistently considered 'rent' to include a reasonable amount for the use of utilities. . . ." Wright, at 421. Thus, as the Third Circuit explained in McDowell v. Philadelphia Housing Authority, 423 F.3d 233 (3d Cir. 2005), since "HUD has interpreted 'rent' to include the reasonable cost of utilities. . .housing authorities must issue rebates to tenants who purchase service directly from a utility company. . . . These rebates take the form of monthly allowances credited toward the tenant's rent." McDowell, at 236 (citing Wright, supra, at 420; other citations omitted).

In the context of the Section 8 Housing Choice Voucher Program, when Section 8 tenants are responsible for paying for their utilities, HUD has defined such "utility allowances" to be credited towards tenants' rents at 24 C.F.R. § 5.603(b):

> Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

24 C.F.R. § 5.603(b). See also, 24 C.F.R. § 982.517 (Utility allowance schedule); *HUD Housing Choice Voucher Program Guidebook - Utility Allowances*, May 2020 (HUD guidance for calculating utility allowances). Da7-14.

Thus, when Section 8 tenants are responsible for paying for utilities separate from their share of the Section 8 rent to landlords, it is essential that they receive a utility allowance to reduce their actual rent payments so that their rent and utilities costs come within the Brooke Amendment rent ceilings. This is reflected in the *HUD Housing Choice Voucher Program Guidebook - Calculating Rent and Housing Assistance Payments (HAP)*, November 2019. (Da15-27). Under Section "2.1 Total Tenant Payment," pp. 2-3, Da16-17, HUD states:

> Total tenant payment (TTP) is the minimum amount the family will *pay toward rent and utilities* and is calculated using a statutory formula and family income information….*The TTP is the greater of*:
> • 30 percent of monthly adjusted income;
> • 10 percent of monthly income;
> • welfare rent from a public agency. . .; or
> • the PHA minimum rent….(Emphasis added)

Further, under Section "3.3 Family Rent to Owner," p. 9, Da23, HUD states:

> The family rent to owner is the portion of the rent to owner that is paid by the family. Family rent to owner is calculated by subtracting the HAP from the rent to the owner. If the family is not responsible for paying any utilities under the lease, family rent to owner will equal family share. *Where families are responsible for directly paying some or all of the utilities, family rent to owner will be less than the family share.* (Emphasis added)

In the present case, the evidence at trial demonstrated that despite Plaintiff landlord having required Mr. Alexander to start paying gas under the 2023 lease, Mr. Alexander was not receiving a utility allowance credited towards his rent for gas service, thereby making his "rent to owner" higher than allowed under the Brooke Amendment.

Importantly, when Plaintiff filed its eviction complaint in this matter, it had attached a copy of a 2018 Housing Assistance Payment ("HAP") Contract that it had executed with DCA to receive Section 8 rental subsidy payments on behalf of Mr. Alexander. Pa22-31. Under "Part B of HAP Contract: Body of Contract," Page 5 of 12, paragraph 5(c), it states that "Part A of the HAP Contract specifies what utilities and appliances are to be provided or paid by the owner or the tenant. *The lease shall be consistent with the HAP Contract.*" (Emphasis added). Pa24. Interestingly, "Page 3 of 12" in Part A of the HAP Contract submitted by Plaintiff is missing—*the very page that is supposed to specify what utilities, if any, are to be paid by Mr. Alexande*r. Instead, the HAP Contract skips from "Page 2 of 12" to "Page 4 of 12." Pa22-23.[7]

However, there is no dispute based on the record at trial that Plaintiff landlord—not Mr. Alexander—was responsible for the gas at time of Plaintiff had executed the HAP Contract with DCA in 2018. Plaintiff's own Exhibit P-1, a computer-generated tenant ledger, shows that Plaintiff did not start charging Mr. Alexander for gas until December 2021. Pa36. Moreover, Plaintiff at trial did not submit in evidence any subsequent HAP Contract executed with DCA when Plaintiff shifted responsibility for gas to Mr. Alexander under the 2023 lease—despite the 2018 HAP Contract under Part C, Page 12 of 12, paragraph 15(b)(1) expressly

[7] A copy of a complete blank HUD HAP Contract form from 2018—the same form used for the 2018 HAP Contract Plaintiff executed with DCA—is included for reference in Defendant-Respondent's Appendix attached hereto. Da29-39. The missing "Page 3 of 12" is at Da30.

requiring a new HAP Contract "[i]f there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances." See also, 24 C.F.R. § 982.308(g)(2)(i)(same).

As a result, since the 2018 HAP Contract has remained in effect, and Mr. Alexander in 2018 was not responsible for paying for gas, Plaintiff landlord cannot enforce the 2023 lease provision shifting responsibility for gas to Mr. Alexander since the "lease shall be consistent with the HAP Contract." Pa24. Further, because no new HAP Contract was executed, Mr. Alexander has not been provided with a utility allowance by DCA reducing his Section 8 rental share for the landlord's gas charges, causing him to pay more for rent than allowed under the Brooke Amendment. See also Da5 (Notice of Housing Assistance Payment and Family Contribution, April 30, 2024).

Therefore, the 2023 lease violates federal law not only by Plaintiff impermissibly deeming the gas charges as "rent," but also by charging Mr. Alexander for gas contrary to the 2018 HAP Contract and with no corresponding utility allowance reduction in his share of the rent. In this regard, Plaintiff's reliance on the dicta in Sudersan, as well as the regulation at 24 C.F.R. § 982.310(a)(1), Pb6,[8]

[8] Plaintiff also incorrectly cites to HUD Handbook 4350, Chapter 8 Termination, which governs a different Section 8 program regarding project-based multifamily subsidized apartments and does not apply to tenants receiving rental assistance under the Section 8 Housing Choice Voucher Program such as Mr. Alexander.

is incorrect since those authorities assumes valid lease provisions in compliance with federal law – which is not the case in this matter.

III. EVEN IF UNDER FEDERAL LAW THE LANDLORD COULD LAWFULLY SUE FOR EVICTION FOR BREACH OF LEASE UNDER SUBSECTIONS 61.1(D) OR 61.1(E) OF THE ANTI-EVICTION ACT, THE LANDLORD FAILED TO PRODUCE CREDIBLE EVIDENCE AT TRIAL THAT MR. ALEXANDER WAS IN BREACH FOR FAILING TO PAY FOR GAS USAGE. (2T8-15 to 2T13-10; Pa55)

Assuming *arguendo* that under federal law Plaintiff could lawfully seek to evict Mr. Alexander under N.J.S.A. 2A:18-61.1(d) or N.J.S.A. 2A:18-61.1(e)(1), Plaintiff nonetheless failed to establish by credible evidence that Mr. Alexander had breached the lease by failing to pay gas charges. Plaintiff produced multiple, differing, inconsistent and unreliable evidence of what amount of gas arrears was allegedly due, when it accrued, or how it was related to Defendant's lease obligations.

First, on May 29, 2024, Plaintiff sent Mr. Alexander a Notice to Cease alleging that he owed $1,240.52 in gas charges. Pa8-9. On July 2, 2024, Plaintiff sent Mr. Alexander a Notice to Quit, which initially repeated the $1,240.52 figure, but then immediately demanded payment of a different amount, $1,138.52. Pa6-7.

Next, on August 5, 2024, Plaintiff alleged in its eviction complaint a vastly different amount: $8,466.96 due and owing. Pa3. The complaint did not provide a breakdown of this figure nor did it identify how much of the amount, if any, was attributable to gas charges.

Then at trial, Plaintiff attempted to establish the amount due through the testimony of its property manager, using a handwritten ledger marked as Exhibit P-5. Da1; 1T15-9 to -16. The witness testified that the total outstanding amount of gas charges was $1,370.09 and the total unpaid was $2,774.77, for a total amount of $4,144.86. 1T18-8 to -13. This amount was taken directly from the handwritten ledger. Da6. Mr. Alexander's attorney objected to the handwritten ledger being admitted into evidence, since it was prepared by Plaintiff's counsel and not reviewed for accuracy by the witness. The trial court agreed and excluded it as inadmissible hearsay since it did not qualify as a business record within the hearsay exception under N.J.R.E. 803(b)(6), but was merely prepared to aid the trial court in its analysis of Exhibit P-1, a computer generated tenant ledger, Pa34-41. The trial court did not rely upon on the handwritten ledger Exhibit P-5 in reaching its decision. 1T25-20 to -23; 1T26-2.

Nevertheless, Plaintiff in its Appellant brief relies upon this very same excluded evidence. Plaintiff states that its property manager testified that Mr. Alexander owed $1,370.09 in unpaid gas charges. Pb4. However, this amount appears nowhere in the admitted trial exhibits and was derived entirely from the excluded handwritten ledger, Exhibit P-5. Da6. Plaintiff cannot revive inadmissible hearsay on appeal to retroactively justify a claim that lacked any support at trial.

Moreover, Plaintiff submitted a lease as Exhibit P-4, which is included in their Appendix at Pa10-21, to establish that Mr. Alexander was responsible for paying for gas service. That lease is dated effective October 1, 2023. Pa10. Plaintiff submitted no other lease at trial. However, Plaintiff's tenant ledger, admitted at trial as Exhibit P-1 and included in their appendix at Pa34-41, reflects that gas charges began accruing *nearly two years earlier*, starting on December 21, 2021. Pa36. Plaintiff offered no lease or amendment at trial authorizing the gas charges in 2021, nor did Plaintiff provide any evidence or testimony explaining why such charges were assessed well before the only lease admitted into evidence. Plaintiff thus failed to present the trial court with any competent factual basis to support the Plaintiff's authority to charge Mr. Alexander for gas prior to October 2023.

In light of this, the trial court found that Mr. Alexander had not underpaid his portion of the rent, but had instead overpaid. The trial court reviewed Plaintiff's own ledger, Exhibit P-1, Pa34-41, and compared it to various money order receipted admitted into evidence as Exhibit C-1. 2T9-3 to -5. The trial court found that Mr. Alexander had actually overpaid his portion of the Section 8 rent and had a rent credit of $1,449.00. 2T13-9. Plaintiff has not challenged that finding on appeal and it should be conclusive.

Plaintiff's "evidence" at trial of any breach by Mr. Alexander was thus a hodgepodge of shifting figures and unexplained inconsistencies. No discovery is permitted in Landlord-Tenant summary dispossess actions. R. 6:4-3(a); see also, Fargo Realty, Inc. v. Harris, 173 N.J. Super. 262, 267 (App. Div. 1980), As such, a landlord seeking to terminate a tenancy for breach of lease bears the burden of presenting a clear claim supported by competent evidence. A tenant cannot be expected to defend against ever-changing allegations. At a minimum, Mr. Alexander should have been advised of the exact amount alleged owed as early as the initial Notice to Cease. Plaintiff's failure to clearly state and prove the amount allegedly due makes it impossible for Plaintiff to sustain a claim for any breach under N.J.S.A. 2A:18-61.1(d) or N.J.S.A. 2A:18-61.1(e)(1).

CONCLUSION

For the foregoing reasons, Defendant-Respondent Izaiah Alexander respectfully requests that the Appellate Division affirm the trial court's dismissal of the Plaintiff-Appellant's Landlord-Tenant eviction complaint.

Dated: May 7, 2025

Respectfully submitted,
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