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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1503-21**

**BAYONNE HOUSING
AUTHORITY,**

Plaintiff-Respondent,

v.

ORASHA WILKES,

Defendant-Appellant.

Submitted April 26, 2023 – Decided May 22, 2023

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket No. LT-000099-21.

The Waterfront Project, Inc., attorneys for appellant
(Brian Rans, on the briefs).

Law Office of Kathleen A. Walrod, attorneys for
respondent (Kathleen A. Walrod, of counsel and on the
brief).

PER CURIAM

Defendant Orasha Wilkes appeals from the following: (1) a December 8, 2021 order denying her motion to vacate a default judgment for possession; and (2) a January 10, 2022 order denying her motion for reconsideration. We affirm.

Plaintiff Bayonne Housing Authority (Authority) provides public housing under the auspices of the United States Department of Housing and Development (HUD). Defendant was the sole tenant in an apartment unit provided through the Authority. The terms and conditions of defendant's tenancy were governed by a written lease with the Authority and in accordance with HUD regulations.

Section 9(L) of defendant's lease provided:

(L) To assure that any Tenant, any member of Tenant's Household, any guest . . . or any other person under Tenant's control, shall not engage in:

(1) Any criminal activity, on or off the Authority's premises, that threatens the health, safety, or right to peaceful enjoyment of the Authority's public housing premises by other residents . . .¹

(4) Not to display, use, or possess or allow members of Tenant's household or guests to display, use or possess

¹ All public housing leases are required to include a provision that "any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants . . . shall be cause for termination of tenancy." 42 U.S.C. § 1437d(l)(6).

any firearms, (operable or inoperable) or other offensive weapons as defined by the laws and courts of the State of New Jersey anywhere on the property of the Authority.

On August 1, 2020, defendant and her then-boyfriend, Calvin Baskerville, were involved in an altercation with other individuals. Later that night, the Bayonne Police Department contacted the Authority's Director of Security, advising that the Hudson County Sheriff's Office planned to arrest defendant for armed robbery, aggravated assault with a weapon, possession of a firearm, theft, and criminal restraint. The police contacted the Authority to gain entry to the apartment building to serve defendant with an arrest warrant. In connection with defendant's arrest, the police found a handgun in her apartment.

On August 27, 2020, the Authority issued a notice terminating defendant's tenancy for criminal activity and served a notice to quit (NTQ). The NTQ informed defendant that her tenancy was terminated, effective October 1, 2020, based on violations of the lease, including her August 1 arrest and possession of a firearm. On August 31, 2020, the Authority received a signed certified mail green card evidencing defendant's receipt of the NTQ.

On December 8, 2020, the Authority filed an eviction action against defendant under N.J.S.A. 2A:18-61.1(d) and (e)(1) for violations of the lease.

The complaint cited the pending criminal charges against defendant as grounds for eviction.

The tenancy court twice scheduled case management conferences. However, defendant failed to appear at the conferences. The court scheduled a tenancy trial for November 10, 2021, and sent a trial notice to defendant.

On October 18, 2021, the Hudson County Prosecutor's Office dismissed the criminal charges against defendant. It also expunged all records related to defendant's August 1, 2020 arrest.

The tenancy trial proceeded on November 10, 2021, but defendant failed to appear. The judge took testimony in support of the Authority's eviction complaint during a default hearing.

At trial, the judge heard testimony from the Authority's Director of Security. He confirmed that criminal charges were filed against defendant in August 2020. He also testified defendant's lease prohibited tenants from engaging in criminal activity, including possession of a firearm.

Based on the testimony, the trial judge found the following: "there was a lease agreement between the parties"; "[defendant] was not to engage in any criminal activity on the premise"; and "[defendant] failed to abide by that term of the agreement and breached that agreement and . . . received the required

notices to seize and to quit, and she still remain[ed] [on] the premises." The judge granted a default judgment for possession to the Authority.

The court clerk filed the judgment for possession on November 15, 2021. The Authority applied for a warrant of removal the same day. The warrant issued two days later.

On December 2, 2021, defendant filed an order to show cause to prevent her from being locked out of her apartment on December 3. During the order to show cause hearing, defendant argued the tenancy action should be dismissed because the criminal charges against her "were dropped and the case was close[d]." Defendant also claimed she never received notice of the November 10 trial date.

The judge scheduled another hearing on defendant's order to show cause for December 8, 2021. At the follow-up hearing, the Authority's Director of Security testified regarding defendant's August 1, 2020 arrest and possession of a handgun.

After hearing the testimony, the judge denied defendant's order to show cause. The judge determined defendant demonstrated excusable neglect resulting in her failure to appear at trial. However, the judge found defendant

failed to present any meritorious defense in support of vacating the default judgment of possession.

The judge found "the very nature of having an unlawful weapon on the public housing complex without calling the police and relinquishing possession immediately causes threats to the health, safety, and right to peaceful enjoyment of others at the premises." The judge concluded defendant's possession of a gun in her apartment constituted a violation of defendant's lease. The judge further stated that the dismissal of defendant's criminal charges was "not relevant" to finding that defendant participated in criminal activity at the Authority's property. The judge signed the order denying the defendant's application on December 8, but the order was not uploaded to the court's filing system until December 28, 2021.

Thereafter, defendant retained an attorney. On January 5, 2022, counsel filed a new order to show cause, requesting the court vacate the default judgment for possession and reconsider its December 8, 2021 decision. In her certification, defendant claimed the police found her ex-boyfriend in her apartment with the gun and a knife. She further contended that her ex-boyfriend struck her with the gun at that time and asserted she "was a survivor of domestic violence, dating violence, and stalking."

On January 10, 2022, a different judge reviewed defense counsel's application. The judge found defendant's order to show cause was untimely. The judge also denied defendant's application on the merits. The judge explained the judge who reviewed the application to vacate the default judgment for possession conducted a full hearing and there was sufficient evidence in the record supporting that judge's rejection of defendant's request to vacate the judgment.

On appeal, defendant argues the judge erred in denying her motion to vacate the default judgment for possession. Defendant raises the following arguments: the Authority failed to serve a notice to cease under N.J.S.A. 2A:18-61.1(d) and (e)(1); the Authority's complaint failed to plead a claim under N.J.S.A. 2A:18-61.1(e)(2); the NTQf was legally inadequate; the judge failed to evaluate whether she had a valid defense under the Violence Against Women Act (VAWA), 34 U.S.C. §§ 12291 to 12514; and the judge improperly relied on hearsay testimony in finding she engaged in criminal activity. Defendant also contends the judge erred in denying her motion for reconsideration. We reject these arguments.

Pursuant to Rule 6:6-1, a motion to vacate a default judgment of possession may be brought under Rule 4:50-1. "A motion under Rule 4:50-1 is

addressed to the sound discretion of the trial court," and the ruling "will be left undisturbed unless it represents a clear abuse of discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). A court commits "an abuse of discretion when a decision is' made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis.'" U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467-68 (2012) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 173 (2007)). Accordingly, "[c]ourts should use Rule 4:50-1 sparingly, in exceptional situations . . . in which, were it not applied, a grave injustice would occur." Little, 135 N.J. at 289.

We first address the Authority's contention that the appeal is moot because defendant vacated her apartment on January 10, 2022. "Ordinarily, where a tenant no longer resides in the property, an appeal challenging the propriety of an eviction is moot." Sudersan v. Royal, 386 N.J. Super. 246, 251 (App. Div. 2005). However, when the "eviction carries residual legal consequences potentially adverse to [a tenant]," such as the revocation of the tenant's federal subsidy, the matter is justiciable. Ibid.

Here, defendant contends the eviction has potentially adverse legal consequences. She claims her eviction "can be used against her if she applies for future Section 8 and public housing assistance." Because defendant resided

in a public housing unit and the judgment of possession may have residual legal consequences, her matter is not moot.

We next consider defendant's argument that the Authority failed to comply with the requirements of the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 to -61.12, and Rule 6:3-4(c). Specifically, she claims the Authority failed to serve a proper notice to cease. We disagree.

Having reviewed the record, we are satisfied that the Authority complied with the requirements of the Anti-Eviction Act. N.J.S.A. 2A:18-61.1(e)(2) governs the removal of residential tenants who live in public housing. Under this statute, a public housing tenant may be removed for violation of a lease based on illegal activities, "provided . . . the [lease] agreement conforms to federal guidelines regarding such lease provisions and was contained in the lease at the beginning of the lease term." Ibid. The Authority's lease with defendant complied with these requirements.

Where a public housing authority seeks possession of a unit pursuant to N.J.S.A. 2A:18-61.1(e)(2), based on illegal activities that already occurred, no notice to cease is required. See, e.g., Muros v. Morales, 268 N.J. Super. 590, 596 (App. Div. 1993) ("The law does not require a warning to cease such [criminal activity] because it is so clearly improper and antithetical to the

landlord-tenant relationship, and because repetition is not an element of the impropriety of the behavior."). Under such circumstances, "the period of notice required prior to the institution of an action for possession shall be in accordance with federal regulations pertaining to public housing leases." N.J.S.A. 2A:18-61.2(h).

We are satisfied that the Authority complied with the Anti-Eviction Act and federal public housing regulations in terminating defendant's lease. "The lease termination notice requirements are dependent on the grounds for termination." Hous. Auth. of City of Newark v. Raindrop, 287 N.J. Super. 222, 228 (App. Div. 1996). The Authority terminated defendant's lease due to criminal activity that threatened the health, safety, or right to peaceful enjoyment of the premises by other residents. Additionally, the Anti-Eviction Act provides that the NTQ must "specify the cause of the termination of the tenancy." Carteret Properties v. Variety Donuts, Inc., 49 N.J. 116, 123 (1967) (quoting N.J.S.A. 2A:18-56). The term "'[s]pecify' means to name in a specific or explicit manner; to state precisely or in detail, to point out, to particularize, or to designate by words one thing from another." Id. at 124.

Here, the NTQ stated the following: (1) the provisions under which the Authority sought to terminate the lease; (2) the date of defendant's criminal

activity; (3) that defendant was "taken into custody by members of the Bayonne Police Department"; (4) it identified the pending criminal charges against defendant; (5) it advised that defendant's criminal activity violated Section 9(L) of her lease; and (5) that defendant's criminal activity impacted the safety, health, or right to peaceful enjoyment of the housing premises by other residents. Because the foregoing information was provided to defendant, we are satisfied the Authority complied with federal regulations and the Anti-Eviction Act in terminating defendant's lease.

For the same reasons, we reject defendant's argument that the Authority failed to terminate the lease under N.J.S.A. 2A:18-61.1(e)(2) because the complaint only cited lease violations under N.J.S.A. 2A:18-61.1(d) and (e)(1). The Authority's NTQ properly informed defendant that she violated N.J.S.A. 2A:18-61.1(e)(2) by including specific details regarding her lease violations. We are satisfied that the Authority's failure to include N.J.S.A. 2A:18-61.1(e)(2) as a basis for eviction in its complaint was harmless error based on the detailed information contained in the Authority's duly served NTQ. See R. 2:10-2.

Defendant next argues an arrest is insufficient evidence of criminal activity under HUD guidelines to evict a tenant from public housing. Under the HUD guidelines, a public housing authority "has a right to manage an apartment

free of violent behavior [and] tenants have a right to live in a building free of violence." Hous. Auth. of Newark v. Jones, 204 N.J. Super. 600, 604 (App. Div. 1985). Additionally, 24 C.F.R. § 966.4(1)(5)(iii)(A) provides that a public housing authority may evict a tenant if it determines the tenant or other covered person has engaged in criminal activity, "regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction."

Here, the judge concluded defendant's possession of an illegal weapon in her apartment constituted "criminal activity." The judge found:

[T]he very nature of having an unlawful weapon on the public housing complex without calling the police and relinquishing possession immediately causes threats to the health, safety, and right to peaceful enjoyment of others at the premises. An unlawful possession of weapons is governed by N.J.S.A. 2C:39-5. That statute sets forth that it is unlawful for any person to knowingly have in their possession any gun and the various types of guns are defined under that criminal statute. So, the [c]ourt finds that the very terms of the lease agreement were violated based upon the activities as set forth by [the Authority] under oath.

Having reviewed the evidence, we are satisfied that defendant's possession of a weapon in her apartment constituted criminal activity in violation of her lease, justifying termination of her tenancy. While defendant is correct that an arrest record itself is insufficient to find disqualifying criminal

activity, she admitted under oath that she engaged in the criminal activity on the Authority's premises. The Authority did not use defendant's arrest record to disqualify her from public housing. The Authority properly relied on defendant's admission of her possession of a gun in her apartment as the basis for terminating the lease.

We next address defendant's claim that the judge erred in failing to assess her entitlement to protection against eviction as a survivor of domestic violence under the VAWA. The VAWA provides that a tenant may not be evicted from public housing "on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking." 34 U.S.C. § 12491(b)(1); see also 24 C.F.R. § 966.4(a)(1)(vi). However, the regulation provides that the housing provider may nonetheless evict a tenant if it "can demonstrate an actual and imminent threat to other tenants." 24 C.F.R. § 5.2005(d)(3).

Under the VAWA, the tenant is required to notify the public housing authority that the tenant is a victim of domestic violence. While defendant twice mentioned domestic violence during her testimony at the December 2021 hearings, she never told the Authority that she was a victim of domestic violence. Moreover, the judge did not need to follow up on defendant's domestic

violence allegations because the Authority terminated the lease based on defendant's own criminal activity—possession of an illegal gun in her apartment. Additionally, defendant never raised the VAWA until January 2022, after she retained counsel to file a motion for reconsideration.

Because we affirm the judgment of possession, we need not address defendant's argument that the judge erred in denying her motion for reconsideration.

To the extent we have not addressed defendant's remaining arguments, those arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION