JEFFERSON COUNTY COURT
DISTRICT #1
TORONTO, OHIO

PK MANAGEMENT, LLC MANAGING AGENT FOR KB PORTFOLIO, LLC HERITAGE PLACE APARTMENTS	)	**ENTRY**
Plaintiff	)	Case No.
-vs-	)	
	)	Judge Joseph M. Corabi
DEE DEE McGEE	)	
Defendant	)	

This cause came for hearing before this Court upon the Plaintiff's Complaint for Forcible Entry and Detainer. Plaintiff has requested the eviction of Defendant under the terms of the Lease and Federal law for drug abuse, drug related activity and/or other criminal activity. Defendant argues that Plaintiff has not shown drug related criminal activity.

FACTS

Defendant, Dee Dee McGee, resides at Ridgewood Place Apartments, Wintersville, Ohio, which is subsidized housing. Plaintiff manages the apartments and the rules and regulations as promulgated by Housing and Urban Development (HUD) and the U.S.C. The terms of the Lease are enforced by Plaintiff as a Public Housing Authority (PHA).

Defendant was residing at Ridgewood Place Apartments, Wintersville, Ohio, on Saturday, November 1, 2014. Defendant was in the apartment sleeping and not feeling well so her relative was taking care of her and permitted three juveniles to enter the apartment. The relative had Defendant's permission to allow the juveniles to enter the apartment because they stated they were cold after attending a football game. The juveniles were apparently missing and the police eventually came to the apartment and found the juveniles - one was sick and passed out and had to be removed by ambulance. Wintersville Police Patrolman Fowler who came to the residence testified that he noticed a strong smell of marijuana inside the apartment. No arrests were made nor was any drugs or contraband located within the apartments or on any of the juveniles.

The facts appear to be uncontroverted and Plaintiff argues:

Under 42 U.S.C. 1437d(I)(6), the owners and operators of public housing must use a lease that provides:

> "any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member or the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." See also HUD handbook: 4350.3; 8-14 Drug Abuse and Other Criminal Activity."

Since the prohibition against drug-related activity applies both to the tenant and their guests and those under the tenant's control, the HUD rules provide guidance as to whose conduct may give rise to the termination. The definition of a "covered person" is set forth in 24 CFR 5.100, which provides the following definitions:

> Guest: is defined a "person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant."

While the termination provisions of 24 USC 1437d(I)(6) and 24 C.R.F. 5.859 prohibit "criminal" activity, the owner of the PHA need not have evidence of an arrest or conviction in order to deem the conduct "criminal" , 24 C.F.R. 5.861 provides:

> You may terminate tenancy and evict the tenant through judicial action for criminal activity by a covered person in accordance with this subpart if you determine that the covered person has engaged in the criminal activity, **regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity.**

Plaintiff further argues that the Supreme Court of the United States upheld 42 U.S.C. 1437(d)(I)(6), noting that the statute "requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, **regardless of whether the tenant knew, or should have known, of the drug-related activity**."

The code of Federal Regulations and Federal Register clearly confer upon the housing authority the decision-making authority to terminate the lease, regardless of the tenant's knowledge or participation in the underlying activity.

Plaintiff urges that the Defendant by making her apartment open and available to the juveniles as she testified she did (she consented to have them come in and "get warm"), she furthered her guest's criminal purpose to use that location to engage in drug-related criminal activity.

Defendant argues that Plaintiff has not shown drug-related criminal activity occurred in Defendant's unit. Defendant further argues that:

An activity may be related to a drug crime and still not be "drug related criminal activity." In fact, what is considered a "drug crime" may not meet the definition of "drug related criminal activity." Although possession of drug paraphernalia is a crime in Pennsylvania, the court in *Degelman v. Housing Authority of the City of Pittsburgh* found that, although the tenant was convicted of disorderly conduct for having 6 empty heroin stamp bags, a rubber tie band, nine cotton balls, two crack pipes, and a used hypodermic needle, there was no "drug related criminal activity" in which to evict the tenant. *Degelman v. Hous. Auth. of City of Pittsburgh*, 67 A.3d 1287, 1288 (Pa. Commonw. Ct. 2013). If all of the drug paraphernalia found in *Degelman,* did not suggest an intent to distribute thereby falling under the definition of "drug related criminal activity," then the smell of marijuana alone cannot suggest drug use.

Having your unit "smell like" marijuana is not in and of itself a crime. In fact, the lowest marijuana crime in Ohio is minor misdemeanor possession. R.C. 2925.11(A), (C)(3)(a). As no drugs were found, Defendant did not even commit the lowest possible marijuana offense. *See also, Beautiful Vill. Assoc. Redev. Co. V. Gomez*, 2012 NY Slip Op. 50550[U], 35 Misc. 3d 1204[A] (N.Y. Civ. Ct. March 14, 2012 (evidence of drugs in an apartment does not, by itself, prove that a household member has engaged in drug-related criminal activity).

The standard for eviction is not probable cause, it is preponderance of the evidence. *Kara v. Floyd*, 2 Ohio App. 3d 4, 4, 440 N.E. 2d 563, 564 (1981). Defendant argues that although there may have been probable cause to believe that drugs were used in Defendant's unit, Plaintiff has not met the burden of proving by a preponderance of the evidence that drugs were used on the unit.

Both Plaintiff and Defendant have clearly stated and briefed well their respective positions and the Court believes this is an issue that existing case law should decide.

The Court has reviewed cases cited by both sides and the Court does believe that the standard of proof for an eviction is a preponderance of the evidence.

The Court further finds that no drugs were found on the juveniles, no drugs were found in the apartment but that clearly the juveniles had smoked marijuana during the course of the evening.

Further, in reviewing the cases cited by Plaintiff and Defendant, it appears that in all the cases in which an eviction was granted, drugs or drug paraphernalia were found either on a Defendant or a guest of the Defendant or located inside the apartment. Even the Cincinnati Metropolitan Housing Authority v. Patterson, (2013), 2013 WL 6409302 (Ohio App. 1 District) (cited by Plaintiff) - drugs were found on the Defendant's grandson as he was coming out of the grandmother's apartment.

The Court believes that law requires proof by a preponderance of the evidence that drugs (marijuana) were located or used in the apartment or found on the juveniles' persons.

Since no drugs (marijuana) were found in the apartment and none were found on the juveniles, the Court feels the only proper decision based on the applicable case law is to **deny the Plaintiff's eviction.**

Case dismissed. Costs to Plaintiff.

JUDGE JOSEPH M. CORABI