

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

KENNETH HOWARD, DOROTHY HOWARD,
WAYNE STONE, JANICE STONE,
FRANK LEMAIRE, JOANNE LEMAIRE
DAVID ECCLESTON, SALLY ECCLESTON,
TAMMY VINCENT, RAY LOVELACE,
FLORENCE LOVELACE, MARGARET FRANKLIN,
JAMES FRANKLIN, VERNA DEAN,
CHERYL WILLIAMS, MARGARET KIRK,
ANTONETTE DAVIS

v.

Civil Action No. 96-064-T

STATE OF RHODE ISLAND
WATER RESOURCES BOARD

MEMORANDUM AND ORDER

This case is before the Court for consideration of the defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and the plaintiffs' motion for leave to amend their complaint. Because the allegations are insufficient to state a claim under any of the theories set forth in either the original complaint or the proposed amended complaint, the motion to dismiss is granted and the motion to amend is denied.

Background Facts

In the 1960s the State of Rhode Island, Water Resources Board (the Board) acquired title, by eminent domain, to land comprising the Big River Management Area (Big River) for the purpose of creating a reservoir. Approximately thirty years later, the

reservoir project was abandoned and Big River was classified as an open-space area in order to prevent future development. R.I. Gen. Laws § 37-20-1 (1995).

Until recently, the Board leased the homes in Big River to various individuals, including the plaintiffs. The leases provided for month-to-month tenancies at relatively low rental rates. However, the tenants were required to bear the responsibility for maintenance.

In 1995, the Board decided to begin charging rents that more closely approximated market rates. Accordingly, it presented all Big River tenants with new leases that contained terms similar to those in the original leases except that the rents were substantially increased.

Many of the tenants executed the new leases but the plaintiffs refused. Consequently, after formally notifying the plaintiffs that their leases were terminated, the Board commenced eviction proceedings in state court. Those proceedings have been stayed pending the outcome of this lawsuit.

The Plaintiffs' Claims

The complaint alleges that the Board terminated the plaintiffs' leases without "good cause" thereby depriving the plaintiffs of a Constitutionally protected property interest in violation of their rights to substantive and procedural due process under the Fifth and Fourteenth Amendments. After the Board moved to dismiss, the plaintiffs filed a motion to amend their complaint by adding allegations that, inter alia:

1. Placing the responsibility of maintenance on the tenants violates Rhode Island law and, therefore, deprives the plaintiffs of their Fourteenth Amendment right to equal protection (i.e., the same protection conferred on other tenants by Rhode Island law).

2. The eviction proceedings violated the plaintiffs' First Amendment rights because they were brought in retaliation for the plaintiffs' expression of opposition to the proposed new leases.

3. The eviction proceedings violated R.I. Gen. Laws § 34-18-46 (1995) which prohibits retaliating against a tenant for the tenant's opposition to unlawful lease provisions.

Standard of Review

A. Motion to Dismiss

In order to survive a motion to dismiss made pursuant to Fed. R. Civ. P. 12(b)(6), a complaint must contain "factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory." Glassman v. Computervision Corp., 90 F.3d 617, 628 (1st Cir. 1996) (quoting Gooley v. Mobil Oil Corp., 851 F.2d 513, 515 (1st Cir. 1988)). In ruling on such a motion, the Court must accept all well-pleaded factual allegations as true and must draw all reasonable inferences in favor of the plaintiff. Barrios v. Asociacion De Empleados Del Estado Libre Asociado De Puerto Rico, 84 F.3d 487, 489-90 (1st Cir. 1996). However, the Court is not required to credit 'bald assertions' or legal conclusions. Glassman, 90 F.3d at 628 (citing Shaw v. Digital Equipment Corp., 82 F.3d 1194, 1216 (1st Cir. 1996)).

Dismissal for failure to state a claim is appropriate only if such a charitable reading of the complaint makes it clear that the plaintiff will be unable to prove any set of facts that would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-48, 78 S.Ct. 99, 101-03 (1957); Gooley, 851 F.2d at 514. To put it another way, a Rule 12(b)(6) motion should be granted only if proof of the facts alleged would be insufficient to warrant a judgment for the plaintiff. Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996).

B. Motion to Amend

Ordinarily, a motion to amend a complaint pursuant to Fed. R. Civ. P. 15(a) should be liberally granted. Glassman, 90 F.3d at 622; Ondis v. Barrows, 538 F.2d 904, 909 (1st Cir. 1976). However, a motion to amend a complaint should be denied as futile if the complaint, as amended, would fail to state a claim upon which relief could be granted. Glassman, 90 F.3d at 623; see also, 3 Moore's Federal Practice ¶ 15.08[4], at 15-80 (2d ed. 1993); Vargas v. McNamara, 608 F.2d 15, 18 (1st Cir. 1979). In determining whether it would be futile to allow the proposed amendment, "the District Court applies the same standard of legal sufficiency as applies to a Rule 12(b)(6) motion." Glassman, 90 F.3d at 623 (citing 3 Moore's, at ¶ 15.08[4], at 15-81).

Discussion

A. Due Process Claims

The 14th Amendment prohibits a State from "depriv[ing] any person of life, liberty or property without due process of law."

U.S. Const. amend. XIV § 1. Therefore, in order to prevail on their due process claims, the plaintiffs must establish that they have a "property" interest in continued occupancy of the leased premises. See Memphis Light Gas & Water Division v. Craft, 436 U.S. 1, 9, 98 S.Ct. 1554, 1560 (1978); Marrero-Garcia v. Irizarry, 33 F.3d 117, 121 (1st Cir. 1994).

A Constitutionally protected property interest is not created unless there is "a legitimate claim of entitlement" to the benefit in question. Board of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709 (1972). An "abstract need or desire" for the benefit or a "unilateral expectation" of receiving it are insufficient. Id.

Ordinarily, the determination as to whether a claim of entitlement rises to the level of a Constitutionally protected property interest is made by reference to state law. Bishop v. Wood, 426 U.S. 341, 344, 96 S.Ct. 2074, 2077 (1976). Thus, an interest may qualify as property if it is created by an enforceable contract or recognized by a state statute. See Marrero-Garcia, 33 F.3d. at 121.

In this case, there is no contractual or statutory basis for any claim that the plaintiffs are entitled to continued occupancy of the leased premises. As already noted, the original leases between the plaintiffs and the Board created nothing more than month-to-month tenancies which, under Rhode Island law may be terminated by either a landlord or a tenant upon 30 days written notice. R.I. Gen. Laws § 34-18-37 (1995). In this case, it is undisputed that the Board complied with the notice requirement.

Indeed, the termination notice sent by the Board was in the form set forth in the statute. R.I. Gen. Laws § 34-18-56(c)(1995).

The plaintiffs argue that, because the Board is a state agency, due process prohibits the Board from evicting them without "good cause." However, the cases cited by the plaintiffs in support of that argument are readily distinguishable. All of those cases dealt with housing occupied pursuant to federally funded programs where a "good cause" requirement for termination was contained in and/or implied from the statutes and/or regulations governing those programs. See, e.g., Brewer v. Madigan, 945 F.2d 449 (1st Cir. 1991) (National Housing Act of 1949, and regulations promulgated pursuant to it, required "good cause" to evict a tenant from federally subsidized housing); Thorpe v. Housing Authority of the City of Durham, 386 U.S. 670, 87 S.Ct. 1244 (1967) (policy of Department of Housing and Urban Development as set forth in circular, entitled tenant in federally subsidized housing project to opportunity to be heard prior to eviction); Joy v. Daniels, 479 F.2d 1236 (4th Cir. 1973) (National Housing Act and Housing and Urban Development Act of 1965 entitled low income tenants in a federally subsidized housing project to continued occupancy absent cause to evict); Rudder v. United States, 226 F.2d 51 (D.C. Cir. 1955) (due process requirements apply to tenants residing in low income housing subsidized by the federal government pursuant to the United States Housing Act of 1937); McQueen v. Druker, 317 F. Supp. 1122 (D. Mass. 1970) aff'd in part 438 F.2d 781 (1st Cir. 1971)(good cause standard for eviction implied from fact that

tenant resided in a federally subsidized low income housing project pursuant to the National Housing Act).

None of those cases suggests that merely because the landlord is a government entity a tenant has a Constitutionally protected right to perpetual occupancy of the leased premises unless there is "good cause" for eviction. In fact, the Third Circuit expressly rejected that notion in United States v. Blumenthal, 315 F.2d 351, 353 (3rd Cir. 1963). The Blumenthal court held that the United States, in its capacity as a landlord, could evict a month-to-month without a showing of cause. The Court stated that:

the plaintiff, which is here acting in its proprietary rather than its governmental capacity, has the same absolute right as any other landlord to terminate a monthly lease by giving appropriate notice and to recover possession of the demised property without being required to give any reason for its action.

Blumenthal, 315 F.2d at 353 (citation omitted).

Since the plaintiffs are unable to demonstrate any claim of entitlement to continued occupancy of the leased premises, they have failed to establish the existence of a property interest sufficient to support their due process claims.

B. Equal Protection Claim

The equal protection clause of the Fourteenth Amendment prohibits states from creating impermissible classifications that result in one group of individuals being treated less favorably than another group similarly situated. Metropolitan Property & Cas. Ins. Co. v. Rhode Island Insurers' Insolvency Fund, 811 F. Supp. 54, 59 (D.R.I. 1993). In order to establish an equal

protection violation, a plaintiff must "identify and relate specific instances where persons similarly situated 'in all relevant aspects' were treated differently, instances which have the capacity to demonstrate that [the plaintiff was] singled out for unlawful oppression." Rabinovitz v. Rogato, 60 F.3d 906, 910 (1st Cir. 1995) (citing Dartmouth Review v. Dartmouth College, 889 F.2d 13, 19 (1st Cir. 1989)).

In this case, the plaintiffs have not alleged that the Board has treated them differently from other Big River tenants. On the contrary, their complaint indicates that the Board has uniformly required all Big River tenants to execute new leases containing identical terms and similar provisions with respect to rent increases. Moreover, there is no allegation that the Board was selective in commencing eviction proceedings against tenants who refused to execute the new leases.

Instead, the plaintiffs claim that they have been treated differently from other tenants in Rhode Island. That claim is premised on the contention that Rhode Island law imposes the responsibility for maintenance on landlords. However, even if that contention is correct, the plaintiffs do not allege that any of those unidentified "other" tenants are tenants of the Board. The absence of any allegation that the Board has created different classifications for treating its own tenants is fatal to the plaintiffs' equal protection claim.

C. First Amendment Claim

The plaintiffs' First Amendment claim that eviction proceedings were brought against them in retaliation for "both their refusal to sign the new lease and for their successful opposition to the first round of evictions" borders on the frivolous. As a threshold matter, it is difficult to see how the plaintiffs' refusal to sign a new lease or their resistance to being evicted can be characterized as Constitutionally protected speech. There is no allegation that the plaintiffs publicly spoke out on any matter of general concern. The fact that they sought to protect their economic interests by resisting the defendant's efforts to alter the terms of their business relationship does not convert that opposition into an exercise of First Amendment rights. See Kenna v. United States Dept. of Justice, 727 F. Supp. 64, 68 (D.R.I. 1989) (when government acts in a non-governmental capacity (e.g., as an employer) statements of an employee must relate to a matter of public concern in order to be deemed protected speech).

Even if the plaintiffs' resistance to eviction amounts to protected speech, it is apparent that the eviction proceedings could not have been in retaliation for the plaintiffs' resistance to those proceedings. Since the eviction actions began before the plaintiffs contested them, it makes little sense to describe those proceedings as being in retaliation for that opposition.

D. Pendent State Law Claim

Having determined that all of the plaintiffs' federal claims should be dismissed, the Court exercises its discretion to dismiss,

without prejudice, the pendent state claims that are based entirely on Rhode Island's landlord-tenant law. 28 U.S.C. § 1367(c)(3); see also, United Mine Workers v. Gibbs, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139 (1966); Roche v. John Hancock Mutual Life Ins. Co., 81 F.3d 249, 257 (1st Cir. 1996); Charron v. Picano, 811 F. Supp. 768, 776 (D.R.I. 1993).

Conclusion

For all of the foregoing reasons, the defendant's motion to dismiss the complaint is hereby granted and the plaintiffs' motion for leave to file an amended complaint is hereby denied.

IT IS SO ORDERED,

Ernest C. Torres
United States District Judge

Date: December , 1996

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