



Maryland law applies in Section 8 evictions, appellate court rules

By: [Steve Lash](#) Daily Record Legal Affairs Writer September 6, 2016

Tenants found with illegal drugs in federally subsidized Maryland apartments do not face automatic eviction, the state's second-highest court has ruled.

In its 3-0 decision, the Court of Special Appeals said the federal law permitting landlords to evict drug-possessing tenants in subsidized housing does not trump Maryland's statute permitting eviction only upon a showing that the terms of the lease were substantially breached.

The appellate court's ruling enables a disabled 27-year tenant of Ruscombe Gardens, a subsidized apartment complex near Pimlico Race Course in Baltimore, to challenge landlord Chateau Foghorn LP's effort to evict him after less than 10 grams of marijuana was found in his apartment two years ago.

Baltimore City Circuit Judge Lawrence P. Fletcher-Hill [had granted the eviction motion last year](#), citing the federal law giving landlords discretion to evict tenants found with illegal drugs in subsidized housing units for the indigent or disabled.

Fletcher-Hill rejected tenant Wesley Hosford's argument, through counsel, that Maryland law controls and requires landlords seeking eviction to show that a breach of the lease was "substantial."

But the Court of Special Appeals reversed, saying that the landlords' discretion to evict under the federal statute governing subsidized, or "Section 8," housing is not absolute and may be exercised "only by recourse to state or local landlord-tenant law" when it, like Maryland's Real Property Article, is more equitable for the tenant.

"To be sure, had it wished to do so, Congress could have required state courts to order evictions upon a finding of a breach of the lease due to drug-related activity." Judge Christopher B. Kehoe wrote in the court's reported opinion filed Thursday.

"Congress did not do so and the reason is not difficult to discern," Kehoe added in sending the eviction proceeding back for trial. "A congressional mandate that state courts rubber-stamp a

landlord's decision, without considering otherwise applicable equitable factors arising from state law, would intrude not only the concept of comity that is the cornerstone of our federal system of government but also upon the functioning of the judiciary as an independent branch of government."

Chateau Foghorn will be appealing the decision to the Maryland Court of Appeals, said the landlord's attorney, Avery B. Strachan, of Silverman Thompson Slutkin White LLC in Baltimore. Strachan declined further comment.

Maryland Legal Aid, which represented Hosford, said in a statement Tuesday that it was "pleased" with the Court of Special Appeals' decision.

"The Court has preserved the equity powers of Maryland trial judges, provided in Real Property Article §8-402.1, to determine if a breach of lease is substantial and that it warrants eviction of a tenant," the statement read.

Substantial breach?

The marijuana in Hosford's bathtub was found in 2014 by an exterminator the landlord sent to the apartment to remove bedbugs.

The apartment's management notified police, who confiscated the marijuana and issued Hosford a criminal citation for possession. Prosecutors chose not to pursue the case but Chateau Foghorn initiated an eviction proceeding in July 2014 against Hosford, who uses a wheelchair due to limited use of his arms and legs and has been a Ruscombe Gardens tenant since 1989

Chateau Foghorn claimed Hosford breached a provision of the lease by having engaged in "drug-related criminal activity" on the premises.

The landlord moved for summary judgment based on the federal law giving landlords broad discretion.

Hosford countered that the federal statute does not apply because Maryland law no longer treats possession of less than 10 grams of marijuana as a crime but as a civil offense punishable of a fine of up to \$100. But even if federal law did apply, the drug offense would not amount to a substantial breach of the lease warranting eviction under Maryland law, Hosford argued.

Fletcher-Hill agreed with the landlord that the federal law controls, noting that possession of up to 10 grams of marijuana was a criminal offense when the drug was found. Hosford appealed.

The Court of Special Appeals said Hosford's case illustrates why Congress could not have intended automatic evictions from federally subsidized housing without permitting tenants recourse under state law.

"[A] state law that allows the court to consider equitable factors is, in our view, consistent with the basic purpose of the Section 8 program itself, that is, providing decent housing for a class of people who otherwise would not have it," Kehoe wrote. "To require a state court, as a matter of law, to evict a disabled member of that class out of the home he had resided in for 24-25 years for having one marijuana plant in his bathtub, for his own medical use, with no evidence of distribution or attempted distribution, furthers no congressional intent that we have been able to identify."

Judges Dan Friedman and Alan M. Wilner joined Kehoe's opinion in *Wesley Hosford v. Chateau Foghorn LP*, No. 852 September Term 2015.

Wilner, a retired judge, was sitting by special assignment.