

To: Mike Chapuran, Executive Director Family Promise
From: Chase Haller, Staff Attorney
RE: Existence of Landlord/Tenant Relationship Utilizing Third Party Housing Provider
Date: May 11, 2020

QUESTION PRESENTED

Does Family Promise, as a 501(c)(3) organization leasing and furnishing apartments through a third-party housing provider (Carriage House East Apartments), subject either itself or Carriage House to coverage under Indiana's landlord-tenant statutes I.C. 32-31 et. al., under the following facts and circumstances:

- The apartment is owned and operated by a private landlord (Carriage House)
- Residents sign and acknowledge that they –
 - 1.) Are participants in a shelter program;
 - 2.) Are not subject to the rights of landlord-tenant law
 - 3.) That Carriage House may dismiss a shelter participant's family from the apartment for violations of its program guidelines

And, if so, is an eviction required in order to remove a family that does not leave voluntarily?

ANSWER

A landlord-tenant relationship does not exist so long as Family Promise or their agents do not exchange valid consideration with participants in their program and continue to utilize a clear disclaimer. An eviction is not required if no binding contract exists with program participants.

"Defend the cause of the weak and fatherless; maintain the rights of the poor and oppressed; rescue the weak and needy; deliver them from the hand of the wicked." Psalm 82:3, 4

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ANALYSIS

In order for the landlord-tenant statutes to apply, requiring the filing of an eviction for nonpayment or violation of rules and regulations, the landlord-tenant statutes apply only to **“dwelling units that are let for rent under a rental agreement.”** This requires a two-part analysis: (i) whether the apartment is a “dwelling unit” and (ii) whether the parties’ agreement/disclaimer is a “rental agreement.” One case is primarily instructive for this analysis because it is recent and came from the Indiana Supreme Court – *Rainbow Realty Group, Inc. v. Katrina Carter and Quentin Carter*, 138 N.E.3d 168 (Ind. 2019).

I. **Is shelter housing, through a third-party housing provider, a “dwelling unit”?**

Regardless of who is providing the housing in such an arrangement, the Indiana Supreme Court in *Rainbow* defined “dwelling unit” as “quintessentially a place to live.” *Rainbow* at 175. While their analysis described a single-family house, it of course applies to residential apartments as well. Shelter housing, despite their arguably being no contractual relationship between the parties, would still qualify as a dwelling unit under the Indiana Supreme Court’s broad definition giving plain meaning to the words. The first part of the test is satisfied.

II. **Is there a rental agreement?**

Rainbow is again instructive to this question, indicating that a **“rental agreement”** is **“an agreement together with any modifications, embodying the terms and conditions concerning the use and occupancy of a rental unit.”** *Id.* at 175. This is a broad definition, but the analysis the Court engages in is helpful to this question.

In the *Rainbow* case, the question concerned whether there was a landlord-tenant relationship or that of a buyer and seller with regard to a single-family house. The Court held that “the Agreement was a rental agreement because Plaintiffs and the Couple agreed that the House was promised for the Couple’s use as a single-family dwelling.” The key word in this phrase is “promise,” which borrows from the most basic layout of a contract – a promise in exchange for a promise. The *Rainbow* case is different however, because the couple was paying Rainbow monthly payments in order to inhabit the dwelling according to the terms of a written contract.

In order to be binding, all contracts must contain an offer, acceptance, and consideration (something of value – typically money) in exchange for a promise, goods, or services. In the context of a typical housing arrangement a housing provider “offers” housing, a consumer “accepts” that housing by agreeing to pay a fixed sum of money, “consideration,” over a period of time – most often by tendering monthly payments. Free housing does not include consideration on the part of the occupant – they are occupying the property at the will of the other party. If the free housing provider rejects their status as an invitee on the property, they become a trespasser should they refuse to leave. So long as the occupant is not paying money or offering any promises, goods, or services of value in return, it cannot be said that a contract exists between the occupant and the housing provider (in this case Family Promise).

CONCLUSIONS/RECOMMENDATIONS

Free shelter housing, even in the context of a third-party owning the property, does not necessarily give rise to a landlord-tenant relationship. The “dwelling” test is met, but the “rental agreement” test fails because of the precautions taken by Family Promise or their agents to warn the occupants of the dwellings that they are not tenants. The *Rainbow* Court’s definition of a

“rental agreement” is sufficiently broad to include circumstances where free housing is “promised” to individuals in exchange for something else. The disclaimer is key here. I find it unlikely that a Court would find that a landlord-tenant relationship exists, requiring an eviction in the event that a family’s behavior or noncompliance requires removal from the dwelling. Without a clear disclaimer, it is possible that the definition of “rental agreement” could be construed broadly enough to include free housing in certain circumstances.

In order to fully protect against the risk that an occupant could make the claim that they are leasing the property, I would suggest a review/edit of the disclaimer that is currently provided to occupants of the free housing to ensure there is language included that makes it 100% clear that no consideration is being exchanged in the arrangement.