

Opinion in Chambers

FLAMM *v.* REAL-BLT, INC., DBA PONDEROSA
ACRES

ON APPLICATION FOR STAY

No. A-731 (75-6263). Decided February 25, 1976

Application to stay Montana Supreme Court's judgment reversing trial court's judgment that applicant tenant was entitled to certain rights under the Due Process Clause of the Fifth Amendment before being evicted from respondent landlord's federally subsidized low-income housing project, is denied in view of lease provision that either party to lease may terminate it by giving 30 days' written notice to other party, thus making it unnecessary to reach any due process issue.

MR. JUSTICE REHNQUIST, Circuit Justice.

Applicant requests that I stay the judgment of the Supreme Court of Montana in this proceeding contesting her eviction. As matters currently stand, that court has denied a stay and applicant will be evicted on February 29.

Applicant lives in federally subsidized low-income housing which was built and is operated by respondent. On September 26, 1974, respondent sent to applicant a notice to quit, pursuant to the lease which provided that "[e]ither party may terminate this lease . . . by giving 30 days written notice in advance to the other party."

Applicant sued in the Montana state trial court claiming that respondent's project was so intertwined with the Federal Government that its action in evicting her was subject to the limitations of the Due Process Clause of the Fifth Amendment. She further contended that these limitations entitled her to a statement of reasons amounting to a showing of "good cause," and to a hearing before she could be evicted.

The state trial court agreed. The Supreme Court of Montana reversed, holding that the project was suffi-

ciently independent of the Federal Government as to make it subject only to those laws regulating private landlords. The Supreme Court described the above-quoted lease provision, but did not rely upon it in its decision.

In view of the express provision of the lease, it seems to me that this Court, if it were to hear and decide the case, would find it unnecessary to reach the question of whether respondent's activities are subject to the Due Process Clause of the Fifth Amendment. I conclude, therefore, that four Justices of this Court would not vote to grant certiorari in this case. Accordingly, I deny the stay.