



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION
PROVIDENCE INSURING OFFICE
300 POST OFFICE ANNEX
PROVIDENCE, RHODE ISLAND 02903

REGION I
Room 800
John F. Kennedy Federal Building
Boston, Massachusetts 02203

October 12, 1976

IN REPLY REFER TO:

1.5HH

Mr. Robert M. Sabel
Rhode Island Legal Services, Inc.
14 Catherine Street
Newport, Rhode Island 02840

Dear Mr. Sabel:

This letter is in reply to certain questions raised by you in a letter sent to HUD dated July 19, 1976, in which you represent Mrs. Carol Ogilvie, a tenant of the Newport Housing Authority, who was assessed \$10.00 in "sundry charges," in addition to rent due when rent was in arrears over 15 days.

This practice has apparently been followed by the Authority in the case of other tenants as well. Your letter states that the \$10.00 charge is for a form letter that is sent by the Authority's Attorney to a tenant when rent is more than 15 days overdue. The Authority has confirmed that this charge is for the cost of legal notice sent to tenants. Since Mrs. Ogilvie did not pay her arrearage or the \$10.00 fee on time, she was also assessed legal fees (\$46.00) for the preparation of a summons and complaint against her, even though they allegedly were not filed with the court or served by the Sheriff.

Questions are raised by you concerning the legality of legal fee assessments prior to court determination of tenant fault; the amounts of such fees; and the necessity of a first "legal" notice to tenants.

As a fee charged to tenants for legal costs, the \$10.00 fee is impermissible under HUD regulations. The regulations on lease and grievance procedures for Low-Income Housing, Part 866, published at 40 FR 33402 et seq. (August 7, 1975), list as a prohibited lease provision, any provision that the lessor may charge a tenant attorney fees or other legal cost when it decides to take action against the tenant even though the tenant ultimately prevails in the action.

(Section 866.6(h)). This provision prohibits the practice of assessing legal fees or costs¹ against a tenant unless the tenant is the subject of a court judgment which is adverse. We note that the standard form lease currently used by the Authority, which we understand is in the process of revision to conform with the federal regulations at Part 866, provides for payment of attorney fees and court costs in the event that "any action is instituted" for rent collection (para 1(i)). This lease provision is improper and should be redrafted to limit such charges to situations where there is an adverse judgment against the tenant.

Since the \$10.00 legal fee charged to Mrs. Ogilvie was not followed by an adverse court determination and in fact was assessed independent of any action whatsoever by a court, it is impermissible.²

On the same basis, the legal costs charged to Mrs. Ogilvie for the preparation of a court summons and complaint are impermissible unless the court proceeds to make a determination in a legal action that she is at fault.

You also raised questions concerning the necessity of "legal" notice to tenants and the amount charged for legal services concerning tenants.

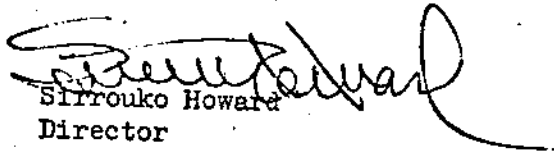
There is a requirement under the federal regulations for written notices to tenants by a landlord (Section 866.4(k)(1)) and for notice by a landlord to a tenant, for the termination of a lease, which contains contents including the reasons for the proposed termination and statements of the tenants's right to reply and to request a hearing (Section 866.4(1)(3)). This notice may be a form letter as long as it includes the necessary information. It is within the administrative discretion of an Authority to have such letters prepared and signed by its attorney.

As a general rule, a late payment charge directed at the administrative expense caused by tenant late rental payments as opposed to any legal cost incurred thereby would have been permissible; however, under the regulations, such a charge is not due and collectible before the first day of the second month following the month in which the charge is made (Part 866, Section 866.4 (b)(3)(i) and (4)).

We note that the Rhode Island statute providing that in an action for trespass and ejectment by a landlord a court may award judgment plus costs to a plaintiff, R.I.G.L. Ch. 34, Section 18-9, also suggests that legal costs may not be awarded prior to an adverse judgment against a tenant.

In summary, we find that the legal costs charged to a tenant by an Authority without a court determination adverse to the tenant are not legally permissible, although the Authority has the prerogative of using its attorney to send a first notice to tenants.

Sincerely,


Sirrouko Howard
Director

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