

### 3 Fla. L. Weekly Supp. 69a

**Landlord-tenant -- Eviction -- Notice of intent to terminate -- Allegations that tenant did not report income of unauthorized persons living in unit and allowed unauthorized guest to reside in unit fall within type of noncompliance for which tenant should have been given 7 days to cure -- Notice giving tenant fifteen days to vacate, without providing opportunity to cure noncompliance, was defective -- ``Serious or repeated damage to unit'' not sufficiently specific to satisfy federal notice requirements**

ABI ASSET PARTNERS LP, II, Plaintiff, vs. JUANITA ROLLE, Defendant. In the County Court of the 11th Judicial Circuit in and for Dade County. Case No. 94-15612-CC 23. January 3, 1995. Linda Singer Stein, Judge. Counsel: Robert Edwards, for Plaintiff. Robert Hornstein, for Defendant.

#### ORDER OF DISMISSAL

THIS CAUSE came before the Court on Defendant's Motion to Dismiss. After careful consideration of the motion, argument, legal authorities and being fully advised, this Court's findings are set forth below.

Plaintiff filed this action for eviction based upon three alleged violations of the Lease Agreement. Defendant moved to dismiss pursuant to §83.56, governing landlord-tenant disputes and 24 C.F.R. §247.4, governing actions under section 8 subsidized housing.

Plaintiff served Defendant with a 15 day notice containing the following grounds for termination;

1. You did not report the income of the unauthorized persons living in your unit.
2. You allowed unauthorized guest to reside in your unit.
3. Serious or repeated damage to your unit.

Notice of Intent to Terminate Tenancy, dated October 25, 1994.

Section 83.56(2)(b), Fla. Stat., states in pertinent part:

If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized...guests....The notice shall be adequate if it is in substantially the following form:

You are hereby notified that (cite the noncompliance). Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without your being given an opportunity to cure the noncompliance.

This Court finds that Plaintiff's Notice of Intent to Terminate Tenancy is not in substantial compliance with §83.56. The allegations numbered 1 and 2 in the Notice fall within the type of noncompliance for which Defendant should have been given 7 days to cure. Instead, the Notice provided Defendant with 15 days to vacate the apartment. Plaintiff's failure to provide Defendant with the opportunity to cure the two alleged violations renders the notice defective. In addition, this Court finds that the Notice is insufficient to constitute the required 7 days notice pursuant to §83, as it is clearly a notice of termination and not a notice to cure.

24 C.F.R. §247.4 must also be complied with by the landlord in a section 8 case. That regulation states in pertinent part:

(a) Requisites of Termination Notice. The landlord's determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated on a date specified therein; (2) state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense;....

This Court finds that the allegation number 3 in the Notice, which states: "Serious or repeated damage to your unit" is defective under the federal regulations, as this reason is not stated with "enough specificity so as to enable the tenant to prepare a defense."

Based upon the foregoing, Defendant's Motion to Dismiss is GRANTED.<sup>1</sup>