

FILE COPY

IN THE COURT OF COMMON PLEAS ENTERED & FILED
OF LEBANON COUNTY, PENNSYLVANIA

2012 FEB - 7 P 2: 17

CIVIL ACTION

PROTHONOTARY OFFICE
LEBANON, PA

**BROOKSIDE APARTMENTS
REALTY, LLC,
Plaintiff**

v.

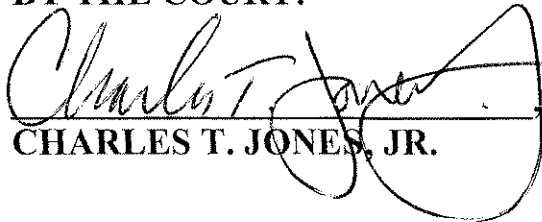
**JAZMINE BERRIOS,
Defendant**

NO. 2011-01746

ORDER

AND NOW, this 7th day of February, 2012, upon careful consideration of the record, Defendant's Preliminary Objections shall be sustained and Plaintiff's Complaint shall be dismissed.

BY THE COURT:


CHARLES T. JONES, JR.

Cc: Magdalene Zeppos, Esquire
Matthew Rich, Esquire

RSU. ... TO RULE 236
You are hereby notified
that this order has been
entered in this case.

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v.

**JAZMINE BERRIOS,
Defendant**

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NO. 2011-01746

APPEARANCES:

**Magdalene Zeppos, Esquire
Reilly, Wolfson, Sheffey, Schrum and Lundberg**

For Plaintiff

**Matthew Rich, Esquire
MidPenn Legal Services**

For Defendant

OPINION BY JONES, JR., J.:

Before this Court are Defendant's Preliminary Objections to Plaintiff's Complaint. For the following reasons, Defendant's Motion to Dismiss Plaintiff's Complaint is granted.

Plaintiff seeks to evict Defendant from the federally-subsidized unit in which she resides in Lebanon County. Plaintiff receives a subsidy from the Department of Housing and Urban Development ("HUD") and on December 1, 2008, Plaintiff entered into a lease agreement¹ with Defendant to reside at 132 Brookside Apartments. The agreement provides, among other things, that Defendant is responsible for paying all utilities and a portion of the monthly rent.

¹ The lease agreement incorporates Plaintiff's House Rules, which we will refer to collectively as the "agreement."

On June 29, 2011, Plaintiff served Defendant with a Notice to Quit/Vacate for Defendant's alleged repeated late payment of rent and utility bills and other conduct in violation of the agreement. The Notice to Vacate required Defendant to vacate and surrender the premises on or before July 29, 2011.

On August 17, 2011, Plaintiff filed an ejectment action and judgment was entered on August 25, 2011, by Magisterial District Judge Maria Dissinger in favor of Plaintiff. On September 1, 2011, Defendant filed a timely Notice of Appeal. On September 20, 2011, Plaintiff filed a Complaint in ejectment with the Court. Preliminary Objections in the form of a Motion to Dismiss the Complaint were filed on October 7, 2011. The matter was listed for Argument Court, to be disposed of by briefs, on December 30, 2011. Both parties have filed briefs, and the matter is ripe for disposition.

DISCUSSION

Defendant objects to Plaintiff's Complaint pursuant to Rule 1028(a)(2), (3) and (4). Specifically, Defendant alleges that Plaintiff has failed to set forth a legally sufficient cause of action as the Notice to Vacate sent to Defendant fails to state the factual basis for the proposed termination as required by law.

Preliminary objections should be sustained only in cases that are clear and free from doubt. *Baker v. Brennan*, 213 A.2d 362 (Pa. 1965). The test for preliminary objections is whether it is clear and free from doubt from all of the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish his right to relief. *Firing v. Kephart*, 353 A.2d 833 (Pa. 1976). To determine whether preliminary objections have been properly sustained, the court must consider as true all of the well-pleaded material facts set forth in the complaint and all reasonable inferences that may be drawn from those facts.

Feingold v. Bell of Penn., 383 A.2d 791 (Pa. 1977). The applicable rule reads as follows:

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds . . .

(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a pleading;

(4) legal insufficiency of a pleading (demurrer).

Pa. R. Civ. P. 1028(a)(2), (3) and (4).

Under federal law, a federally-subsidized landlord is required to provide a tenant with a written notice of termination that provides the termination date and the reasons for the landlord's action with enough detail to enable the tenant to prepare a defense. 24 C.F.R. § 247.4(a). "The purpose of requiring that notice be given to the tenant before the hearing is to insure that the tenant is adequately informed of the nature of the evidence against him so that he can effectively rebut that evidence." *Escalera v. New York City Housing Auth.*, 425 F.2d 853, 862 (2d Cir. 1970) (finding that a one sentence summary notice was inadequate).

Defendant cites *Pheasant Hill Estates Assocs. v. Milovich*, 33 Pa. D. & C.4th 74 (Pa.Com.Pl. 1996), a Dauphin County case, where a similar issue was presented. In that case, the defendant tenant requested a demurrer, contending that the plaintiff's complaint violated the defendant's due process rights when it failed to comply with HUD regulations by providing only general descriptions of the alleged lease violations. In particular, the notice to vacate alleged that the defendants "created and permitted loud and disturbing noises in or about their apartment at all hours of the day and night." *Milovich*, 33 Pa. D. & C.4th at 78. The court concluded that the allegations did not provide the requisite detail under

HUD because it was unreasonable to expect a person to adequately defend themselves against “such bare assertions.” *Milovich*, 33 Pa. D. & C.4th at 78.

In the case at hand, we hold that Defendant’s due process rights were violated because the Notice to Vacate fails to provide adequate detail of the landlord’s reasons as HUD requires. The Notice to Vacate sent to Defendant provides the following as to the reason(s) for eviction:

Lease:

10. Maintenance

b. The Tenant agrees to:

- (1) keep the unit clean
- (2) use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended
- (4) not destroy, deface, damage or remove any part of the unit, common areas or project grounds
- (5) give the landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating and cooling equipment or any part of the unit or related facilities and
- (6) remove garbage and other waste from the unit in a clean and safe manner

23. Termination of Tenancy:

d. The Term material noncompliance with the lease includes:

1. one or more substantial violations of the lease
Late payments of rent and electric bills.

(Pl. Compl., Ex. D).

The Notice to Vacate merely recites provisions in the lease agreement, and it does not provide detail as to Defendant’s alleged behavior so that she may adequately prepare a defense. Similar to the bare assertion in *Milovich*, each provision listed above is a general description of prohibited behavior. It cannot be said that a general description listed in every lease agreement constitutes “adequate detail” for due process purposes.

Plaintiff argues that even if the Notice to Vacate is vague, Defendant possessed actual knowledge of the reasons for the termination of her lease; thus, Defendant suffered no prejudice and Defendant's Preliminary Objections should be dismissed. Plaintiff cites two non-precedential cases² in support of its contention that the HUD regulations will be satisfied since Defendant was afforded an opportunity to discuss the basis of the lease termination with the landlord and Defendant is represented by counsel and will have the opportunity to obtain additional information through discovery. We find both cases cited by Plaintiff inapplicable to the case at hand because in those cases, the appellate courts utilized the "harmless error" standard to determine whether inadequate notice resulted in a lack of due process. Moreover, neither case is binding on this Court, and we find no precedential decisions that bolster Plaintiff's argument. Accordingly, we grant Defendant's Preliminary Objections and Plaintiff's Complaint shall be dismissed. An Order will be entered consistent with the foregoing.

² Plaintiff cites *Hill v. Paradise Apartments, Inc.*, 357 S.E.2d 288 (Ga. Ct. App. 1987) and *Nealy v. Southlawn Palms Apartments*, 196 S.W.3d 386 (Tex. Ct. App. 2006).