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Landlord-tenant -- Public housing -- Eviction -- Noncompliance with lease -- Notice -- Defects -- Ten-day notice of noncompliance with opportunity to cure that is devoid of facts and mandates abatement of undescribed conduct of third parties is fatally vague -- Tenant's perceived knowledge of unacceptable conduct of guests is insufficient to cure notice deficiencies -- Subsequent ten-day notice of noncompliance without opportunity to cure that lacks names of guests, dates of noncompliance, reference to provisions of lease or rules violated and complete descriptions of misconduct is also insufficient -- No merit to argument that defects in second notice are irrelevant because conduct cited therein constitutes material violation for which no opportunity for cure should be permitted and, therefore, no notice is needed where notices characterized conduct as conduct tenant should be given opportunity to cure -- Case dismissed with prejudice

ENTERPRISE HOUSING LAKE WALES, INC. D/B/A LAKE WALES GARDEN APTS., Plaintiff, vs. CHELSEA WOODARD, Defendant. County Court, 10th Judicial Circuit in and for Polk County. Case No. 2011CC-0090. April 18, 2011. Robert G. Fegers, Judge. Counsel: Robert A. Kerr, New Port Richey, for Plaintiff. James R. Carr, Florida Rural Legal Services, Inc., Lakeland, for Defendant.

FINAL JUDGMENT OF DISMISSAL

The relationship between the parties began on or about August 13, 2010 when the Plaintiff/Landlord LAKE WALES GARDEN APTS. and Defendant/Tenant CHELSEA WOODARD, a 19 year old single mother, entered into an “Apartment Lease for HUD Section 8 Housing Programs” (hereinafter Lease). Plaintiff complains that since Defendant became a resident at Plaintiff's residential community, Defendant has invited under aged guests onto the premises and that the under aged guests have engaged in unacceptable conduct, which this Court generally describes as, loitering, boisterous conduct, disruptively knocking on apartment doors, starting fires, improperly discharging fire extinguishers, fighting, verbal and physical harassment and the like (hereinafter “Unacceptable Conduct”). To reign in the Unacceptable Conduct, on November 9, 2010 Plaintiff served Defendant with a “Ten Day Notice of Non Compliance With Opportunity to Cure” (hereinafter “November 9th Notice”). The November 9th Notice provides, in relevant part:

> Pursuant to Section 83.51 of the Florida Statutes, you are hereby notified that you have materially breached the terms and conditions of our Lease Agreement.
>
> You are hereby notified that the following noncompliance(s) with the terms and conditions of the Lease Agreement have occurred: This action is taken because Residents will be held directly responsible for the actions of their family or guest. No one is to play or loiter in the stairways, entrances or the parking lot. Excessive noise disorderly conduct, or any activity, which interferes with the other residents right to a quiet peaceful enjoyment of the community.
>
> Demand is hereby made that you remedy the noncompliance(s) within ten (10) days from the receipt of this notice, that is, *November 19th 2010*, or your lease shall be deemed terminated and you shall vacate the premises upon such termination.

Allegedly, the conduct complained of in the November 9th Notice largely reoccurred on November 22, 2010. On November 24, 2010 the Plaintiff served Defendant with a “Ten Day Notice of Non-Compliance Without Opportunity to Cure” (hereinafter “November 24th Notice”) which, in relevant part, states:

> You are advised that your lease is terminated effective immediately. You shall have TEN (10) days from the delivery of this notice to vacate the premises. You must vacate on or before *December 4, 2010*. This action is taken because you materially breached the terms and conditions of your Lease Agreement and the Rules and Regulations of the community, to-wit,
>
> *You have continued to allow your under-aged guests to engage in conduct that affects the rights of the other residents to the peaceful. quiets and safe enjoyment of their apartments. Your under-aged guests continue to loiter in the stairways, entrances and the parking lot while engaging in boisterous conduct including knocking on apartment doors, starting fires, discharging fire extinguishers, fighting, and verbal and physical harassment of other residents among other things. You have previously received a notice on 11-09-10 for similar types of conduct.* (emphasis in original)

The Defendant did not vacate the premises on or before December 4, 2010 as requested by the Plaintiff. This eviction action followed.

Plaintiff seeks to have Defendant evicted from Plaintiff's apartment complex for violations of: the lease between the parties; and the rules and regulations of the property. The purported violations are as described in the November 9th Notice and the November 24th Notice. Defendant contends there is insufficient evidence the complained of conduct occurred and has further raised as an affirmative defense that the wording of the November 9th Notice and the November 24th Notice violate: Florida Statute 83; 24 C.F.R. §247.4; and fundamental due process. In response Plaintiff argues notice deficiencies, if any, are overcome by the Defendant's actual knowledge of the “Unacceptable Conduct”, and that the conduct described in the November 24th Notice constitutes a material non-compliance so substantial no opportunity to cure predicate is required as a matter of law.

At the Final Hearing Plaintiff proved some of the Unacceptable Conduct occurred and that the November 9th Notice and the November 24th Notice were delivered to Defendant for purposes of abating the Unacceptable Conduct and terminating the lease with the Defendant. Defendant's neighbors testified of Unacceptable Conduct consisting of, *inter alia*, use of profanity, urination in the stairwell, the blocking of stairway ingress/egress, the burning of community landscaping and the spraying of parked vehicles with a fire extinguisher. It is undisputed the Unacceptable Conduct complained of by the Plaintiff is not conduct of the Defendant. Defendant maintains that if the Unacceptable Conduct occurred, she did not observe same. In fact, Plaintiff's manager testified Plaintiff has no problem with Defendant, just Defendant's guests.

The Plaintiff's representative testified the Defendant, through the conduct of her guests, violated paragraphs 23(c)(6)(a), 23(c)(6)(b), 23(c)(10), and 23(d)1, of the Lease, each of which provide as follows:

> 23.(c). The Landlord may terminate this Agreement for the following reasons:
>
> * * *
>
> (6) criminal activity by a tenant, any member of the tenant's household, a guest or another person under the tenant's control;
>
> (a) that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or
>
> (b) that threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises

* * *

> (10) if the Landlord determines that the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest or another person under the tenant's control has been arrested or convicted for such activity.

* * *

> 23(d)(1) one or more substantial violations of the lease;

The "Apartment Rules and Regulations" provide in pertinent part:

* * *

> * **Excessive noise**, odors, **disorderly conduct, or any activity which interferes with other Resident's rights to quiet, peaceful enjoyment of the community** will not be permitted.

* * *

> * Residents will be held directly responsible for the actions of their family and guests. **No one is to play or loiter in stairways**, hallways, **entrances, parking lot**, laundry room or any other common areas except those areas specifically designated by Landlord for such use. Residents should be alert to actions of family and friends that may cause damage or litter to the premises and caution or correct those participating.

* * *

(emphasis added)

The portions in bold above are restated, virtually verbatim, as the sole reference to the offensive conduct set forth in Plaintiff's November 9th Notice.

Due Process Safeguards

As mentioned above the Defendant argues the November 9th Notice and the November 24th Notice fail to set forth sufficient factual information to allow Defendant to prepare a meaningful defense. Moreover, Defendant contends the Plaintiff's evidentiary recitation of specific lease provisions at trial, purportedly violated by Defendant, is the first Defendant learned that all violations set forth in the November 9th Notice and November 24th Notice are asserted as criminal activities. The standard of what should be set forth in notices served for rule based violations begins with the due process provision of the U.S. Constitution and works its way through to the terms and conditions of the Lease.

The Fourteenth Amendment of the United States Constitution provides in relevant part "nor shall any State deprive any person of life, liberty, or property, without due process of law". In language that is substantially similar to the United States Constitution the Florida Constitution provides at Article I, Section 9 "no person shall be deprived of life, liberty or property without due process of law,". Federal regulations have been enacted consistent with the above described fundamental right to due process; the Code of Federal Regulations speaks to the requirements of a lease termination notice at Title 24-Housing and Urban Development, Section 247.4:

> Sec. 247.4 *Termination notice*.
>
> (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*; (3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing judicial action, at which time the tenant may present a defense; and (4) be served on the tenant in the manner prescribed by paragraph (b) of this section.[1] (emphasis added)

In an eviction action for possession the aforementioned fundamental rights are preserved in Florida Statute 83; specifically F.S. 83.56 provides, in instances of "curable" events of noncompliance:

> (2)(b) 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 pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. 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. (emphasis added)

The subject Section 8 housing lease, at paragraph 23, sets forth the standard for lease termination notices, again consistent with due process, and further provides the grounds asserted in litigation cannot deviate from the predicate notice to wit:

> (e) If the Landlord proposed to terminate this Agreement, the Landlord agrees to give the Tenant written notice and the grounds for the proposed termination. . . . All termination notices must:
>
> (1) specify the date this Agreement will be terminated.
>
> (2) *state the grounds for termination with enough detail for the Tenant to prepare a defense*;
>
> (3) advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and
>
> (4) advise the Tenant of his/her right to defend the action in court.
>
> (f) *If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the*

termination notice required in subparagraph e above.[2]

The relationship sought to be terminated by this action was created with public assistance provided pursuant to Section 8 [42U.S.C.1437] of the United States Housing Act of 1937, as amended.[3] In review of the literal wording of the due process clause the Supreme Court opined "cryptic and abstract words of the Due Process Clause . . . at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Goss v. Lopez.* 419 U.S. 565, 95 S. Ct. 729 (1975) As recently as 2009, in *Falkowski v. North Fork Housing Alliance, Inc.*, 2009 WL 3174029 (E. D. N. Y.; 2009) the federal district court, in outlining due process requirements, specifically stated "timely and adequate notice, including the reasons for the proposed termination" is a must. In Florida the Legislature has enacted procedural due process safeguards within the eviction statute. These due process safeguards stand shoulder to shoulder with the specific requirements set forth in the Code of Federal Regulations. But perhaps most importantly, the terms and conditions of the Lease entered into between the parties in this action sets forth fundamental notice requirements to which both parties expressly committed and to which both parties can rely on as a matter of right, contractually and constitutionally. In this regard the relevant safeguard agreed upon by the parties and to which the Defendant is entitled as a matter of due process is that the notice must "state the grounds for termination with enough detail for the Tenant to prepare a defense". (See Lease paragraph 23(e))

The November 9th Notice

The November 9th Notice is riddled with conflict exacerbated by an insufficiency of expressed facts. At the forefront, a misdirection; the Tenant is being notified pursuant to Florida Statute 83.51; the section of the Landlord/Tenant law that embodies the "Landlord's obligation to maintain premises".[4] Obviously, the Landlord's obligation to maintain premises has no relation to the purpose of the notice served. Second, the November 9th Notice states the Tenant is not in compliance with the terms and conditions of the Lease, but parrots only the precise language, not of the Lease, but of the rules and regulations. Finally, the notice contains no reference to specific lease provisions or rule provisions violated: nor does the notice set forth specific facts of violations. The November 9th Notice makes no reference of when the violation occurred, who committed the violation and what the violation consists of.

In the instant case it became apparent at trial that the complained of conduct was largely, if not entirely, single momentary events which are not continuing in nature. In such an event, notwithstanding the script of the statute, it is a labor indeed to determine how to cure a noncompliance in seven (7) days, as required by Florida Statute 83.56, or ten (10) days, as required by the Lease, when the unidentified noncompliance is not continuing in nature. The Court suspects if specific facts of the alleged offensive conduct were recited in the notice a tenant could exercise reason whether the offensive conduct continues. In other words a factually devoid notice mandating the abatement of undescribed conduct is substantively no notice at all. The problem is heightened when the complained of conduct is not Defendant's conduct but is conduct of a third party -- Defendant's guest.[5] This problem is compounded when Defendant appears for trial to learn the identified conduct not only violates the Lease but that the identified conduct of Defendant's guests is argued to be criminal activity. The November 9th Notice is most properly aligned with the body of law which supports construing the notice as fatally vague.[6] In March of 2011 the Federal District Court in *Boykins v. Community Development Corp. of Long Island*, 2011 WL 1059183 (E.D.N.Y. Mar. 21, 2011) provided a comprehensive discussion of the issue presented to this Court:

A pre-termination notice must "adequately inform[ ]" a recipient "of the nature of the evidence

> against him so that [s]he can effectively rebut that evidence." Escalera v. New York City Housing Authority, 425 F.2d 853, 862 (2d Cir. 1970). "[O]ne-sentence summary notices are inadequate for this purpose." Id. Likewise, "[a] notice which merely parrot[s] the broad language of the regulations is insufficient." *Edgecomb v. Housing Authority of Town of Vernon*, 824 F. Supp. 312, 315 (D. Conn. 1993) (internal citations and quotations omitted). But, as far as this Court can tell, neither the Supreme Court nor the Second Circuit has ever articulated a specific minimum standard for what a notice must contain.
>
> Here, the notice was more than just a one-sentence summary. And it did more than "merely parrot[ ] the broad language of the regulations." Id. But the notice was much vaguer than the kinds of notices that other Second Circuit district courts have found compliant, and more resembles notices held non-compliant. The notice did not identify the "unauthorized individual," did not specify whether the individual allegedly resided "in [Ms. Boykins'] unit," or was just present there, and did not indicate when the alleged violation took place. Compare *Edgecomb*, 824 F. Supp. at 315 (notice insufficient because it "[did] not indicate which family member committed proscribed acts, what the nature of the alleged crime was, or when the relevant acts were committed") with *Lawrence v. Town of Brookhaven Dept. of Housing, Community Development & Intergovernmental Affairs*, 07-CV-2243, 2007 WL 4591845, at *15 (E.D.N.Y. 2007) (notice sufficient because it "stated the particular crime," "the person who allegedly committed it," "the date of the charge," and "the county in which it occurred").

(See also *Housing Authority of King County v. Saylors*, 19 Wash. App. 871, 578 P.2d 76 (1978)).

Several County Courts in Florida have dismissed eviction actions when notices lacked sufficient detail, to wit: *Broward Community Development Corporation v. Shirley*, 9 Fla. L. Weekly Supp. 488a (Broward County 2002), notice vague and conclusory; *Hialeah Housing Authority v. Lawren*, 12 Fla. L. Weekly Supp. 1177a (Miami-Dade County, 2005), notice lacked description of activity, name of parties involved and charges; *Oakridge Apartment Complex, Inc. v. Perry*, 13 Fla. L. Weekly Supp 839c (Alachua County, 2006) failure to include date of violation and identity of unauthorized person; *A & M Properties, Inc. v. Miller*, 14 Fla. L. Weekly Supp. 382a (Polk County, 2006) notice without facts or date of fight is defective and vague.

As in the cases cited above, the Defendant in this case was not sufficiently noticed in writing of details regarding the Unacceptable Conduct. The November 9th Notice is simply deficient.

Curability of Deficient Notice

The Defendant met briefly with the Plaintiff after the November 9th Notice. This informal conference was, by all accounts, short and consisted of uninvolved dialogue and certainly devoid of any suggestion the Unacceptable Conduct consisted of criminal activities. The Plaintiff in *Housing Authority of King County v. Saylors*, cited *supra*, suggested a vague notice is cured by the "prehearing conference" with management. The Saylors Court disagreed and added "Even if this could have corrected the defect, the record is silent as to what notice, if any, was provided at the conference."

When confronted with supplementing a deficient notice with subsequent oral notices, at least one Florida County Court ruled

> there are sound reasons for answering the question in the negative. Many recipients of public housing do not have the education, sophistication, or practical skills to take the necessary action to defend their legal rights. If a vague notice were held to be adequate, only aggressive persons

requesting a hearing would receive their due process rights. See *Vargas v. Trainor,* 508 F.2d 485 (7th Cir., 1974), cert. denied, 95 S.Ct. 1454 (1975). (See (*Dade County v. Malloy*, 27 Fla. Supp. 1 (County Court, Dade County, 1988))

Consistent with the above case law this Court determines the Defendant's perceived knowledge of the Unacceptable Conduct is insufficient to mollify or cure notice deficiencies.

November 29th Notice

The November 29th Notice was given to terminate the Lease because of the second occurrence within a twelve (12) month period of an initially curable material noncompliance. Interestingly this notice has a different “look” and doesn't mention Florida Statute 83.51 as authority. And though the November 29th Notice is much more informative than the November 9th Notice, in aggregate, it is insufficient. Guided by the analysis of the law set forth above, the November 24th Notice lacks the following information, to wit: names of guests; dates of noncompliance; reference to provisions of Lease/Rules violated; and complete descriptions of misconduct. To be understood, this Court is not now determining that all notices must contain all of the aforestated detail; on a continuum, perhaps less than all of the above details may allow a notice to pass judicial muster. Recalling the words of the United States Supreme Court in *Goss v. Lopez,* 419 U.S. 565, 95 S. Ct. 729 (1975) “notice and opportunity for hearing appropriate to the nature of the case” is required -- logically, a matter to be determined on a case by case basis.

Finally, Plaintiff suggests the conduct cited in the November 24th Notice constitutes material violations whereby no opportunity to cure should be permitted, therefore negating the need for a valid predicate notice. This Court disagrees. The Plaintiff characterized the November 24th Notice as the subsequent noncompliance notice required by law to maintain this eviction. Specifically the Plaintiff stated in the November 24th Notice at the beginning of paragraph 2 “You have continued”; in the middle “Your underaged guests continue”; and at the conclusion “You have previously received a notice on 11-09-10 for similar types of conduct.” It would be improper to allow the Plaintiff, for the first time at trial, to unilaterally recharacterize the conduct from conduct the tenant should be given an opportunity to cure to conduct the tenant should not be given an opportunity to cure.

Conclusion

For all of the foregoing reasons this Court rules the notices provided to Defendant, even if capable of being supplemented with oral discussions, are fatally deficient of the necessary information to satisfy the protections afforded by the United States Constitution, Florida Constitution, Federal Regulations, Florida Statutes and the terms of the Lease.

Accordingly, this case is hereby dismissed with prejudice and Plaintiff shall take nothing by this action. The Court determines the Defendant is the prevailing party and awards Defendant her costs and attorney fees pursuant to Florida Statute 83.48 and reserves jurisdiction to determine the amount thereof.

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[1]Upon request of Defendant, after Defendant satisfied Plaintiff's initial objection, this Court took judicial notice of Title 24 -- Housing and Urban Development, Part 247 Evictions from Certain Subsidized and HUD-Owned Projects.

[2]This language is consistent with Title 24 -- Housing and Urban Development, Section 247.6(b) Limitations

on allegations of new grounds, precluding the assertion of known acts of noncompliance beyond those identified in the notice.

[3]Section 8 assistance is "for the purpose of aiding lower-income families in obtaining a decent place to live." (Sec. 8 [42 U.S.C. 1437f](a)) Pursuant to Section 8, cited *supra*, a lease shall not be terminated "except for serious or repeated violation of the terms and conditions of the lease, . . . any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants . . . engaged in by a tenant . . . or any guest . . . shall be cause for termination of tenancy." It is further stated in Section 8 that "any termination of tenancy shall be preceded by the owners provision of written notice to the tenant specifying the grounds for such action."

[4]Notably the inclusion of a statutory citation is a deviation of the form suggested by statute.

[5]Florida Statute 83.56 provides examples of noncompliance which include "having or permitting unauthorized pets, guests, or vehicles". This is not a case whereby the Landlord has determined or designated any of tenant's guests as "unauthorized".

[6]Mindful the cases cited *infra* mostly involve the termination of public assistance as opposed to an eviction action, these cases are instructive because in many of the cases cited the underlying dispute is grounded in eviction and the cases provide decisional insight based on a variety of notice deficiencies.

* * *