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11 Fla. L. Weekly Supp. 449a

Landlord-tenant -- Eviction -- Public housing -- Noncompliance with lease -- Notice -- Defects -- Notice to terminate public housing tenancy is insufficient for failing to state date on which tenancy terminates, failing to notify tenant that she is asked to defend against allegation that she left trash outside near back door in violation of house rules, and failing to inform tenant that landlord will seek eviction through judicial process if she fails to vacate -- Complaint for eviction denied with prejudice

GARDENIA GARDENS APARTMENTS, INC., Plaintiff, vs. IRAFIMY LEE, Defendant.
County Court, 8th Judicial Circuit in and for Alachua County. Case No. 01-2003-CC-6274.
Division V. March 15, 2004. Phyllis D. Kotey, Judge. Counsel: Katherine Smaha, Gainesville.
Mary C. O'Rourke, Three Rivers Legal Services, Inc., Gainesville, for Defendant.

FINAL JUDGMENT DENYING COMPLAINT FOR EVICTION

THIS CAUSE came on to be heard on Plaintiff Gardenia Gardens Apartments, Inc.'s Complaint for Eviction and having heard the evidence and being fully advised in the premises, the Court finds:

1. Plaintiff, Gardenia Gardens Apartments, Inc., sought to evict Defendant, Irafimy Lee, for (1) a material noncompliance, to wit: an physical incident on November 24, 2003 and also (2) alleged repeated violations of a non-material noncompliance with house rules, to wit: not disposing of trash properly.

2. Evictions from Gardenia Gardens are governed by Florida Statute Chapter 83 and 24 C.F.R. Section 247.3 which addresses the termination of Section 8 housing benefits. Courts have found that Florida Statute Section 83.56 requires a notice to provide the tenant with "what, when, and to whom, and where." *Broward Community Development Corp. v. Shirley*, 9 Fla. L. Weekly Supp. 488a (Broward Co. 2002). 24 C.F.R. requires that termination of a tenancy must 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 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 a judicial action, at which time the tenant may present a defense; and (4) be served on the tenant in a manner prescribed by paragraph (b) of this section."

To terminate a tenancy, the notice must be sufficient and even if the notice is sufficient, the landlord must prove, by a preponderance of the evidence, that the violative conduct occurred.

3. The November 19th Notice fails to state the date upon which the tenancy terminates, in violation of 24 C.F.R. Section 247.3(a)(1).

4. There is nothing in the November 19th Notice that would put Ms. Lee on notice that she is being asked to defend against a new allegation that she has left trash outside near her back door. Again, as a matter of law, the notice was insufficient pursuant to 24 C.F.R. Section 247.3(a)(2).

5. The Notice fails to inform Ms. Lee that if she fails to vacate, Gardenia Gardens will seek an eviction through the judicial process, in violation of 24 C.F.R. Section 247.3(a)(3).

WHEREFORE, it is

ORDERED and ADJUDGED that Plaintiff's Complaint for Eviction is DENIED, with prejudice. The Clerk of the Court is hereby directed to release any funds in the Court Registry and mail them to JOHN F. HAYTER Trust Account, 704 NE First Street, Gainesville, Florida 32601.