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11 Fla. L. Weekly Supp. 450a

Landlord-tenant -- Eviction -- Public housing -- Noncompliance with lease -- Eviction of tenant for violation of lease by being arrested for trespassing in location off housing authority property and failing to report arrest to authority within 72 hours -- Where lease that states tenant may be evicted for any criminal activity, whether on or off authority property, exceeds authority's actual "one strike" policy which in conformity to federal law provides that tenant may be evicted for criminal activity occurring on authority property or drug-related criminal activity occurring on or off authority property, actual policy governs and trespass off authority premises is not proper "one strike" offense and not violation of lease -- Lease provision requiring tenant to report all arrests, regardless of whether or not alleged criminal activity would be grounds for eviction, is overly-broad, unreasonable, and violation of federal law -- Moreover, tenant should have been afforded opportunity to cure where failure to report arrest did not threaten health, safety or peaceful enjoyment of premises by other tenants -- Authority waived right to bring eviction action by failing to institute action within 45 days

GAINESVILLE HOUSING AUTHORITY, Plaintiff, vs. CHARLES MILLER, Defendant.
County Court, 8th Judicial Circuit in and for Alachua County. Case No. 03-CC-1559. Division IV. March 25, 2004. Phyllis D. Kotey, Judge. Counsel: Robert K. Groeb, Gainesville, for Plaintiff. Glorimil R. Walker, Three Rivers Legal Services, Inc., Gainesville, for Defendant.

ORDER DENYING PLAINTIFF'S COMPLAINT FOR EVICTION

THIS CAUSE came to be heard on July 16, 2003, on Plaintiff's Complaint for Eviction and Final Hearing for Possession. The Court, having reviewed the pleadings, heard the testimony of witnesses and arguments of counsel, and reviewed Defendant's Memoranda of Law and Fact in opposition to Gainesville Housing Authority's Complaint for Eviction, and being otherwise fully advised in the premises, finds as follows:

1. Defendant resides at a federally subsidized apartment.
2. The Plaintiff, Gainesville Housing Authority, adopted the "One Strike -- You're Out" policy in accordance with federal guidelines.
3. On March 14, 2003, GHA served upon Charles Miller a Notice to Vacate. In its Notice, GHA alleged that Mr. Miller violated his lease agreement in two ways by engaging in:
 - A. "[a]ny criminal activity, whether committed on or off Authority property, as defined by the Authority's "One Strike & You're Out" Policy . . .
 - B. (and by failing) [t]o inform the Authority, in writing within 72 hours of the occurrence, if Tenant or any member of Tenant's household is arrested or otherwise charged by a law enforcement agency with the commission of any act which would constitute a criminal offense under Florida law."

4. Specifically, GHA alleged that Mr. Miller had been arrested for trespassing (on property other than GHA's) and that he failed to report his arrest to GHA. GHA's "One Strike" Policy contains a litany of criminal offenses, including trespass, the offense which GHA alleges that Mr. Miller committed.

5. GHA's lease states that a tenant may be evicted if he engages in "[a]ny criminal activity, *whether committed on or off Authority property*, as defined by the Authority's "One Strike & You're Out" Policy . . ."

6. However, GHA's actual "One Strike" Policy is more narrow and in conformity with federal law. It states:

Accordingly, any person who while a resident of the Authority is found to have engaged in one of (sic) more of the following specified criminal offenses or disruptive behaviors *on any property owned by the Authority*, or in the case of drug-related criminal activity committed any violation of Chapter 983 Florida Statutes (1997) *whether or not such offense was committed on or off Authority property*, the resident, tenant, and/or the entire household shall be evicted from the Authority's dwelling unit.

7. The lease provisions referred to exceed what is permitted under federal law. The actual GHA "One-Strike" Policy is in conformity with federal law and should govern in the instant case.

8. Mr. Miller is accused of trespassing in a location off GHA property. Assuming that GHA could establish that he actually committed this criminal offense, it is a non-drug related crime and, therefore, not a violation of their "One-Strike" Policy nor the federal "One-Strike" Policy. As a result, Mr. Miller cannot be evicted under this Policy.

9. GHA also alleges that Charles Miller did not notify GHA of an arrest for trespassing off GHA property. GHA's lease requires that a tenant notify GHA of any arrest, in writing, within 72 hours of the arrest.

10. 42 U.S.C. Section 1437d(i)(2) requires public housing authorities to use leases which do not contain unreasonable terms and conditions. The GHA lease requires one to report all arrests, regardless of whether or not the alleged criminal activity would be grounds for an eviction. Such a lease provision is overly-broad, unreasonable, and a violation of federal law.

11. Furthermore, Mr. Miller should have been provided with an opportunity to cure the non-compliance.

12. Florida Statute Section 83.56(2) states that a landlord may evict a tenant for a material non-compliance without an opportunity to cure when the offense is of such a nature as destruction, damage or misuse of the landlord's or other tenant's property by intentional act. F.S. section 83.56(2)(a).

13. However, the landlord must provide the tenant with the right to cure a material non-compliance for activities such as unauthorized pets, unauthorized parking, or failing to keep the premises clean. *Id.*

14. Case law suggests that even permitting an unauthorized person to reside in a public housing unit, a material violation of the lease, is a curable offense. *Property Management Services of Broward, Inc. v. Jackson*, 7 Fla. L. Weekly Supp. 65a (Broward County 1999).

15. Miller's alleged criminal act off the premises was that of trespass which is not a proper One Strike offense and, therefore, not a violation of the lease at all.

16. Miller's failure to report the arrest is in the nature of a curable offense and he should have been provided with the right to cure.

17. The court finds that the Plaintiff is barred from terminating Defendant's tenancy for mere failure to report an arrest which does not threaten the health, safety, or peaceful enjoyment of the premises by other tenants.

18. The court held that a non-curable violation of a lease must be of such a nature that curing the violation is not reasonable, possible and/or practical. Failing to report an arrest which does not threaten the health, safety, or peaceful enjoyment of the premises by other tenants is not reasonable, is possible and/or practical.

19. Finally, Plaintiff waived its rights to bring this action pursuant to § 83.56(5), Fla. Stat. since Plaintiff filed its Complaint on or about April 7, 2003, 326 days after the alleged incident on May 16, 2002.

20. § 83.56(5) Fla. Stat. provides that in the event Plaintiff receives a rent subsidy from local, state or national government or an agency of local state or national government, waiver will occur if an action has not been instituted within 45 days of the noncompliance. *Royal American Management, Inc. v. Randolph*, 2 Fla. L. Weekly Supp. 347, 348 (Fla. Volusia Cty. 1994); *Royal American Management, Inc. v. Goodman*, No. 96-316-CC (Fla. 8th Bradford Cty. Ct. January 14, 1997, Hobb, J.) [4 Fla. L. Weekly Supp. 554a].

21. Plaintiff failed to lawfully terminate Defendant's tenancy by (1) using lease provisions which exceed what is permitted under federal law; (2) failing to allow the opportunity to cure for a lease violation that does not threaten the health, safety, or peaceful enjoyment of the premises by other tenants; and (3) failing to bring an action within 45 days of the noncompliance.

ORDERED AND ADJUDGED that the Plaintiff's Motion for Possession is DENIED.