

**19 Fla. L. Weekly Supp. 844a**

**Online Reference: FLWSUPP 1910HARD**

**Landlord-tenant -- Public housing -- Eviction -- Notice -- Defects -- Landlord failed to satisfy condition precedent to filing eviction action where nonrenewal notice indicating that tenancy would be terminated because tenant failed to complete annual recertification for supportive housing program did not provide tenant with opportunity to present written or oral objections before someone other than the person who made or approved the termination decision, and landlord failed to provide tenant with written final decision after issuance of notice, as required by lease and federal regulations -- Complaint dismissed without leave to amend**

HARDING VILLAGE, LTD. with GP HARDING VILLAGE, INC., Plaintiff, vs. MAYRA PIMENTEL, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County, Civil Division. Case No. 2012-353-CC-24 (01). May 24, 2012. Rodney Smith, Judge. Counsel: Kenneth J. Lowenhaupt, Miami, for Plaintiff. Evian L. White, Legal Services of Greater Miami, Inc., Miami, for Defendant.

ORDER ON DEFENDANT'S MOTION TO DISMISS

This Court having reviewed this matter, and after the hearing on May 15, 2012, on Defendant MAYRA PIMENTEL's Motion to Dismiss, IT IS ORDERED AND ADJUDGED that:

1. Defendant's Motion to Dismiss is GRANTED.
2. Defendant's Lease provides that "any termination of the Lease by the Landlord must be carried out in accordance with HUD regulations, State and Local law, and the terms of the Lease." *See* Complaint for Tenant Eviction, Plaintiff's Exhibit A, Lease Addendum, p. 4, "Termination of Tenancy."
3. Furthermore, pursuant to 24 C.F.R. § 583.300(i), Plaintiff must follow these procedures to terminate participation in a Supportive Housing Program:
  - A. Plaintiff must provide written notice to the participant containing a clear statement of the reasons for termination;
  - B. Plaintiff must provide the participant an opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and,
  - C. Plaintiff must provide prompt written notice of the final decision to the participant. *See also Price v. Rochester Housing Authority*, 2006 WL 2827165 (W.D.N.Y.); *Vance v. Housing Opportunities Commission of Montgomery Cty., Maryland*, 332 F. Supp. 2d 832 (U.S.D.C. of Maryland, 2004).
4. Here, Plaintiff posted a Nonrenewal Notice at the premises on or about December 21, 2011, indicating that Defendant's tenancy would be terminated because she allegedly failed to complete her annual recertification. This notice told Defendant that "if you wish to discuss this with management feel free to make arrangements to meet with management to discuss this termination of your lease . . ."
5. Plaintiff did not provide Defendant with any opportunity to present written or oral objections to the Nonrenewal Notice before a person other than the person (or a subordinate of that person) who made or

approved the termination decision, as required by the Lease and 24 C.F.R. §583.300(i).

6. Plaintiff did not provide Defendant with any written final decision after issuing the Nonrenewal Notice, as required by the Lease and 24 C.F.R. §583.300(i).

7. Plaintiff's Nonrenewal Notice does not comply with the Lease or 24 C.F.R. §583.300(i).

8. Because Plaintiff's Nonrenewal Notice does not comply with the Lease or 24 C.F.R. §583.300(i), the Nonrenewal Notice is defective.

9. The service of a proper, non-defective termination notice is a statutory condition precedent to the filing of an eviction action. *See Investment and Income Realty v. Bentley*, 480 So. 2d 219, 220 (Fla. 5th DCA 1985).

10. A statutory cause of action cannot be commenced until Plaintiff has complied with all conditions precedent. *See Ferry Morse Seed Co. v. Hitchcock*, 426 So. 2d 958 (Fla. 1983).

11. The service of a defective notice by the landlord gives the Court no power to entertain a complaint based on the defective notice. *See Rolling Oaks Homeowners Assn. v. Dade County*, 492 So. 2d 686 (Fla. 3d DCA 1986); *Investment and Income Realty v. Bentley*, 480 So. 2d 219 (Fla. 5th DCA 1985); *Cook v. Arrowhead Mobile Home Community*, 50 Fla. Supp. 2d. 26 (Columbia Cty. 1991) (Opinion Answering Certified Question); *Metropolitan Dade County v. Dansey*, 39 Fla. Supp. 2d 216 (Miami-Dade Cty. 1990); [\*Peninsula Real Estate v. Granizo\*](#), 6 Fla. L. Weekly Supp. 292a (Miami-Dade Cty. 1999); [\*Aaron v. Goodwin\*](#), 7 Fla. L. Weekly Supp. 482b (Broward Cty. 2000).

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