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**12 Fla. L. Weekly Supp. 1177a**

**Landlord-tenant -- Public housing -- Eviction -- Notice -- Vagueness -- First 30-day notice of termination of lease, which states tenancy is terminated due to having unauthorized persons residing in unit and criminal activity, is defective because it lacks sufficient specificity and factual detail to allow tenant to understand allegations and prepare defense -- Second 30-day notice is defective for failing to provide tenant opportunity to cure alleged non-compliance -- Complaint dismissed with prejudice**

HIALEAH HOUSING AUTHORITY, Plaintiff, vs. ANDREA LAWREN, and All Others in Possession, Defendants. County Court, 11th Judicial Circuit in and for Miami-Dade County, Civil Division. Case No. 05-1376 CC 21 (1). September 13, 2005. Ana Maria Pando, Judge. Counsel: Alicia Robles, Hialeah, for Plaintiff. Clare A. Casas, Legal Services of Greater Miami, Inc., Miami, for Defendant Andrea Lawren.

*ORDER GRANTING DEFENDANT'S MOTION TO DISMISS*

THIS CAUSE came on to be heard before the Court, on August 16, 2005, upon Defendant's Motion to Dismiss and the Court, after reviewing the file, hearing argument of the parties, and being otherwise fully advised on the premises, makes the following:

*FINDINGS OF FACT*

1. Defendant, Andrea Lawren, occupies residential real property owned by Plaintiff, Hialeah Housing Authority, under a public housing lease.
2. On January 13, 2005, Plaintiff issued a "Termination/Non-Renewal of Lease 30 Day Notice" (hereinafter "First 30-Day Notice of Termination") to Defendant which demanded that Defendant vacate her unit on February 13, 2005, for alleged non-compliance with the terms of the lease agreement.
3. The First 30-Day Notice of Termination alleged to terminate Defendant's tenancy for the following reason: ". . . you have unauthorized persons residing in your unit, you have misrepresented your household composition and income. You and those under your control have engaged in activity, including but not limited to criminal activity, that not only disturbs residents' peaceful enjoyment of the property but also impairs the social environment of the development."
4. On June 13, 2005, Plaintiff issued a "Termination/Non-Renewal of Lease 30 Day Notice" (hereinafter "Second 30-Day Notice of Termination") to Defendant which demanded that Defendant vacate her unit on July 13, 2005. Plaintiff alleged that Defendant was in non-compliance with the terms of the lease agreement.
5. The Second 30-Day Notice of Termination alleged to terminate Defendant's tenancy for the following reason: "you have unauthorized persons residing in your unit, to wit: Jamall Andre Lawren, Jamall Andre Lawren's infant son, and Tory J. Cooks. Jamall Andre Lawren has beenfound to have a drug related criminal record."

6. Both 30-Day Notices of Termination formed the basis for Plaintiff filing the instant Complaint for Tenant Eviction on May 3, 2005.

#### *CONCLUSION OF LAW*

7. Plaintiff's First 30-Day Notice of Termination is defective as it lacks sufficient specificity and factual detail to allow the Defendant to understand the allegations and prepare a defense.

8. The federal regulations which govern public housing tenancies require a termination notice to "state the specific grounds for the termination." *See* 24 C.F.R. §966.4(1)(3)(ii).

9. Without being provided more information about the alleged activity, such as description of the activity, names of parties involved and the charges, if any, brought against the parties, Defendant cannot adequately prepare a defense to the eviction action.

10. Pursuant to state and federal law, Plaintiff's 30-Day Termination Notice is vague and lacks the required specificity. *See Hialeah Housing Authority v. Iliana Enriquez*, 12 Fla L. Weekly Supp. 244 (Dade Cty. 2005); *Regency Arms, LTD v. Edelen*, 11 Fla. L. Weekly Supp. 335a (Santa Rosa Cty 2004); *Dade County v. Malloy*, 27 Fla. Supp. 2d 1, 2 (Dade Cty. 1988); 24 C.F.R. §966.4(1)(3)(ii).

11. Plaintiff's Second 30-Day Notice of Termination is defective as it failed to provide Defendant with an opportunity to cure the alleged non-compliance pursuant to Section 83.56(2)(b), Florida Statutes.

12. Section 83.56(2)(b) Florida Statutes states in relevant part that:

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 . . .

§ 83.56(2)(b) Fla. Stat. (2004).

13. In accordance with Section 83.56(2)(b) Florida Statutes, allowing an unauthorized person to reside in a subsidized housing unit is the type of non-compliance for which a tenant should be given an opportunity to cure prior to termination. *See ABI Asset Partners LP, II v. Juanita Rolle*, 3 Fla. L. Weekly Supp. 69a (Fla. Dade Cty.Ct. 1995).

14. Plaintiff's 30-Day Notice terminated Defendant's tenancy without providing Defendant an opportunity to cure the alleged non-compliance, and therefore, it is defective and in violation of Section 83.56(2)(b) Florida Statutes.

15. The service of a proper and non-defective termination notice is a statutory condition precedent to the filing of an eviction action, and the landlord's failure to comply with this statutory condition precedent gives the Court no power to grant a landlord affirmative relief. *See Rolling Oaks Homeowner's Ass'n, Inc. v. Dade County*, 492 So.2d 686 (Fla. 3d DCA 1986); *Cook v. Arrowhead Mobile Home Community*, 50 Fla. Supp. 2d 26 (Fla. 3d Jud. Cir. App. 1991); *Metropolitan Dade County v. Dansey*, 39 Fla. Supp. 2d 216 (Fla. Dade Cty. Ct.1990); *Aaron v. Goodwin*, 7 Fla. L. Weekly Supp. 482b (Fla. Broward Cty. Ct. 2000).

16. When less than all the requisite elements of a cause of action exist when the complaint is filed, the complaint must be dismissed.

It is ORDERED and ADJUDGED that:

- a. Defendant's Motion to Dismiss is granted; and
- b. Plaintiff's Complaint for Eviction is dismissed with prejudice.