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12 Fla. L. Weekly Supp. 1080a

Landlord-tenant -- Public housing -- Eviction -- Notice -- Thirty-day notice purporting to terminate public housing tenancy because tenant had “been found to have engaged in violent criminal activity and/or criminal activity towards other tenants and visitors” is facially defective because it lacks specificity regarding alleged criminal activity -- Complaint dismissed without prejudice

HIALEAH HOUSING AUTHORITY, Plaintiff, vs. NESTOR VALDES AND ALL OTHERS IN POSSESSION, Defendant(s). County Court, 11th Judicial Circuit in and for Miami-Dade County, Civil Division. Case No. 05-2156-CC-21. August 1, 2005. Ana Maria Pando, Judge. Counsel: Alicia Robles, Hialeah, for Plaintiff. Jeffrey M. Hearne, Legal Services of Greater Miami, Inc., Miami, for Defendant Valdes.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

THIS CAUSE came before the Court on Defendants' Motion to Dismiss. The Court having held a hearing on July 26, 2005, and having been fully advised on the premises, hereby finds that:

1. Defendant, NESTOR VALDES, occupies residential real property in Hialeah, Miami-Dade County, Florida, under a Public Housing Lease. The property is owned by Plaintiff, HIALEAH HOUSING AUTHORITY.
2. On May 11, 2005, Plaintiff served Defendant with a 30-Day Termination Notice which alleged to terminate Defendant's tenancy because “you have been found to have been found to have engaged in violent criminal activity and/or criminal activity towards other tenant(s) and visitors.”
3. The 30-Day Termination Notice provides no other information about the alleged criminal activity.
4. The 30-Day Termination Notice formed the basis for Plaintiff filing the instant Complaint for Tenant Eviction on June 23, 2005.
5. 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).
6. Without being provided with more information about the alleged criminal activity, Defendant cannot adequately prepare a defense to the eviction.
7. Pursuant to state and federal law, Plaintiff's 30-Day Termination Notice is vague and lacks the required specificity. *See Hialeah Housing Authority v. Enriquez*, 12 Fla. L. Weekly Supp. 244a (Dade Cty. 2004); *Dade County v. Malloy*, 27 Fla. Supp. 2d 1, 2 (Dade Cty. 1988); 24 C.F.R. §966.4(1)(3)(ii).

8. Plaintiff's 30-Day Notice is facially defective because it lacks any specificity regarding the alleged criminal activity.

9. The service of a proper termination notice is a condition precedent to the filing of an eviction action.

10. A statutory cause of action cannot be commenced until Plaintiff has complied with all conditions precedent.

11. A proper and non-defective notice is a statutory condition precedent and the service of a defective notice by the Plaintiff gives the Court no power to grant Plaintiff relief based on the defective notice.

12. 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. Defendants' Motion to Dismiss is granted.

B. Plaintiff's Complaint for Eviction is dismissed without prejudice.