

\* \* \*

**16 Fla. L. Weekly Supp. 752a**

**Online Reference: FLWSUPP 168LAFAY**

**Landlord-tenant -- Eviction -- Public housing -- Noncompliance with lease -- Waiver -- Where landlord filed eviction complaint more than 45 days after noncompliance with lease, landlord waived right to bring eviction action -- Eviction complaint based on disturbance at apartment caused by tenant's adult relative is dismissed where relative was not guest or under control of tenant, and disturbance occurred in tenant's absence**

LAFAYETTE APARTMENTS, Plaintiff, vs. TRUDY THOMAS, Defendant. County Court, 3rd Judicial Circuit in and for Lafayette County. Case No. 2009-13CC. May 11, 2009. *nunc pro tunc* March 19, 2009. Darren K. Jackson, Judge. Counsel: Conrad C. "Sonny" Bishop, III, for Plaintiff. Three Rivers Legal Services, Inc., Lake City, for Defendant.

*ORDER GRANTING MOTION TO DISMISS*

The Defendant's Motion to Dismiss came before this Court on March 19, 2009. The Court has reviewed the file and applicable case law, heard the argument of counsel and has been otherwise advised in the premises. The Court makes the following findings of fact and conclusions of law:

*A. Waiver*

**Complaint Filed More Than 45 Days From the  
Date of Subsequent Curable Noncompliance**

1. Lafayette Apartments is a Federally Subsidized apartment complex.
2. The Defendant has lived at Lafayette Apartments for approximately 10 years and is being evicted for a noncompliance with the lease other than nonpayment of rent.
3. Between May 22, 2008 and November 13, 2008, the Plaintiff delivered to the Defendant several Notices of Noncompliance/Lease Violations all of which cite curable noncompliances associated with housekeeping and/or minor damage to the rented premises.
4. The most recent inspection covered by the Complaint was conducted on November 12, 2008. The following day, on November 13, 2008, the Plaintiff issued a Notice of Noncompliance/Lease Violation form to the Defendant citing an oven filter which did not pass inspection.
5. On December 29, 2008, the Plaintiff issued a Notice of Termination And Demand for Return of Apartment ("Notice of Termination") purporting to terminate the Defendant's lease as of January 31, 2009.
6. The Notice of Termination is cumulative in nature. It enumerates the exact same housekeeping violations and damages which were previously cited by the Plaintiff in the notices dated between May 22, 2008 and November 13, 2008 and resolved by the Defendant.

7. The Notice of Termination does not allege that any subsequent inspection of the rented property or any additional act of noncompliance occurred after November 12, 2008.

8. The Plaintiff filed the Complaint for Eviction on February 4, 2009 based on the Notice of Termination dated December 29, 2008 and the previous Notices of Noncompliance; however, Fla. Stat. §83.56(5) states that waiver will occur if the Plaintiff fails to file the complaint for eviction within 45 days of the noncompliance.

9. In this case, the Complaint was filed on February 4, 2009. The last recorded act of noncompliance was on November 12, 2008. Over 45 days passed from the date of noncompliance to the date the Complaint was filed; therefore, the Plaintiff has waived its right to bring this an eviction action based on this noncompliance.

10. Where the eviction action was not filed within 45 days of the re-occurring noncompliance, the Complaint must be dismissed. *Oakridge Apts. vs. Perry*, 13 Fla. L. Weekly Supp. 839c (Alachua Cty. May 1, 2006).

*B. Combatant Was Not A Guest or  
Under the Control of the Defendant*

11. January 6, 2009, an altercation occurred on Lafayette Apartments property which involved an adult relative of the Defendant.

12. At the time of the altercation, the Defendant was absent from her apartment and the combatant was neither her guest nor under her control.

ORDERED AND ADJUDGED that the Complaint for Eviction is hereby dismissed without leave to amend.