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STATE OF MINNESOTA  
COUNTY OF HENNEPIN

MPLE. LEGAL AID SOCIETY

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
FIRST DIVISION

Loring Towers Apartments  
Limited Partnership,

No. UD 1920810513

Plaintiff,

DECISION & ORDER

-vs-

Thomas E. Sheehy,

Defendant.

The above-entitled matter was heard by the undersigned Referee on August 21, 1992. Plaintiff appeared by Bridget Cleary, agent. Gary Strootman, Legal Assistant, and Lawrence R. McDonough, Esq., appeared for Defendant. Defendant moved for summary judgment or dismissal on the grounds that Plaintiff failed to provide Defendant proper notice and Plaintiff filed this action prematurely.

Having heard the argument of the parties, and being duly advised of the documentation in the file, the Court makes the following:

FINDINGS OF FACT

1. Defendant leases from Plaintiff the premises located at 15 East Grant Street, Apartment #314, Minneapolis, MN 55403.
2. Plaintiff and Defendant participate in the Section 236 and 8 Programs.

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3. The Complaint alleges nonpayment of rent of \$159.00 for August 1992, and a combined late fee and legal fee of \$127.00.

4. Plaintiff issued a notice to Defendant dated August 6, 1992, which stated that if Defendant did not pay the August 1992 rent by August 10, 1992 at 10:00 a.m., Plaintiff would commence this action (Pl. Exh. B).

5. Although the notice advised of a 10-day discussion period, as a practical matter only four days was given because Plaintiff filed this action on August 10, 1992.

#### CONCLUSIONS OF LAW

1. Plaintiff must comply with the eviction requirements of the housing program. RFT and Associates v. Smith, 419 N.W.2d 109, 111 (Minn. Ct. App. 1988) (Section 8 Existing Housing Certificate Program); Housing and Redevelopment Authority of Waconia v. Chandler, 403 N.W.2d 708, 711 (Minn. Ct. App. 1987) (public housing); Hoglund-Hall v. Kleinschmidt, 381 N.W.2d 889, 894 (Minn. Ct. App. 1986) (FmHA subsidized housing project).

2. Eviction of tenants participating in this program is governed by 24 C.F.R. Part 247 (1991), HUD Handbook No. 4350.3, 1-2, 4-17 - 4-21, and the Lease para. 27.

3. Defendant's tenancy continues indefinitely until it is properly terminated. Plaintiff may terminate the tenancy only for material noncompliance with the rental

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agreement, material failure to carry out obligations under state landlord-tenant act, or other good cause. 24 C.F.R. 247.3(a); HUD Handbook No. 4350.3, 4-17 - 4-21; Lease para. 27.

4. Material noncompliance includes nonpayment of rent due under the lease beyond any grace period permitted under state law. 24 C.F.R. 247.3 (c)(4); HUD Handbook No. 4350.3, 4-18; Lease para 27. The parties' lease provides a grace period to the 5th of each month.

5. In order for Plaintiff to terminate the tenancy, Plaintiff must serve a written notice of termination of tenancy on Defendant. The notice must specify the date on which the tenancy will be terminated, state the grounds for termination with enough details for Defendant to prepare a defense, advise Defendant that Defendant has ten days within which to discuss the proposed termination with Plaintiff, and advise Defendant of Defendant's right to defend the action in court. 24 C.F.R. 247.4(a); HUD Handbook No. 4350.3, 4-20 - 4-21; Lease para 27.

6. Plaintiff must serve the written notice of termination of tenancy in nonpayment of rent cases. 24 C.F.R. 247.4(b), (c); HUD Handbook No. 4350.3, 4-17 - 4-21; Lease para. 27(c)(3).

7. The ten-day requirement is a period within which the tenant can discuss the proposed termination of the lease before the lease actually terminates.

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8. Plaintiff may not file an unlawful detainer until expiration of the ten-day period. An unlawful detainer action filed before expiration of the ten-day period must be dismissed.

9. The notice only provided for a four day period, rather than the required ten day period.

10. Plaintiff failed to provide proper notice to terminate the tenancy.

11. Plaintiff filed this action four days after it issued the notice, rather than after expiration of the ten day period.

12. Plaintiff filed this action prematurely.

13. This action must be dismissed.

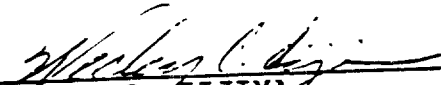
NOW, THEREFORE, IT IS ORDERED:

1. This action is dismissed.

2. Judgment shall be entered for Defendant.

Dated: September 4, 1992.

RECOMMENDED BY:

  
WESLEY C. IIJIMA  
REFEREE

BY THE COURT:

  
ROBERTO L. LACEY  
JUDGE OF DISTRICT COURT

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