

STATE OF MINNESOTA
COUNTY OF HENNEPIN

SEP - 2 1992
MPLS. LEGAL AID SOCIETY
DISTRICT COURT
FOURTH JUDICIAL DISTRICT
FOURTH DIVISION, SOUTHDALE
UNLAWFUL DETAINER

Loring Towers Apartments Limited
Partnership,

Plaintiff,

vs.

Ricky Seamon, Mary Roe and John Doe,

Defendant.

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MPLS. LEGAL AID SOCIETY
DECISION AND ORDER

Case No. UD-1920810515

This matter came before this Court on August 21, 1992. Plaintiff appeared by Bridget Murray. 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, conclusions of law, and order:

FINDINGS OF FACT

1. Defendant leases from Plaintiff the premises located at 15 East Grant Street, Apartment #709, Minneapolis, MN 55403.

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2. Plaintiff and Defendant participate in the Section 236 and 8 Programs.
(Defendant's Exhibit 1).

3. The complaint alleges only nonpayment of rent of \$47.00 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 o'clock a.m., Plaintiff would commence this action. (Defendant's Exhibit 4).

5. The notice only provided for a ^{discussion} four day ~~grace~~ period. *wi*

6. Plaintiff filed this action on August 10, 1992.

7. Plaintiff filed this action *four* days after it issued the notice.

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 (Defendant's Exhibit 2), and the Lease. ¶ 27 (Defendant's Exhibit 3).

3. Defendant's tenancy continues indefinitely until it is properly terminated. Plaintiff may terminate the tenancy only for material noncompliance with the rental 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 ¶ 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 ¶ 27. *This particular 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 ¶ 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 ¶ 27(c)(3).

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

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

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

12. Plaintiff filed this action prematurely.

13. This action must be dismissed.

ORDER

IT IS HEREBY ORDERED that

1. This action is dismissed.
2. Judgment shall be entered for Defendant.

RECOMMENDED BY:

Dated: August 31, 1992

Wesley L. Diggins
Referee of District Court

BY THE COURT:

Dated: 8-31, 1992

Roberta K. Lee
Judge of District Court

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