

4 Fla. L. Weekly Supp. 872a

Landlord-tenant -- Eviction -- Subsidized housing tenant -- County was required to comply with both state and federal notice requirements before terminating tenancy of resident of publicly assisted housing -- Regardless of whether tenant is entitled to grievance, termination notice served by public housing authority on public housing tenant must state specific grounds for termination, inform tenant of right to make reply as tenant may wish, and must inform tenant of right to examine housing authority documents related to the termination -- Termination notice which did not advise tenant of right to reply was defective -- Court did not have jurisdiction to provide relief where notice was deficient

METROPOLITAN DADE COUNTY, Plaintiff, v. JOSE MOLINA, Defendant. County Court in and for Dade County, Civil Division. Case No. 97-376 CC 20. July 14, 1997. Myriam Lehr, Judge.

ORDER GRANTING DEFENDANT'S

MOTION TO DISMISS

THIS CAUSE is before the Court on defendant's motion to dismiss this action for lack of jurisdiction. The Court held a hearing on June 5, 1997 and received memoranda of law from both parties. Having been fully advised in the premises, the Court hereby rules as follows:

Metropolitan Dade County, as owner and operator of public housing, filed this action to evict Jose Molina, a tenant in public housing, for an alleged violation of the lease agreement. Jose Molina moved to dismiss the action arguing that Dade County failed to comply with a necessary precondition to bringing this action by failing to serve defendant with a proper termination notice. For the reasons described below, this Court agrees and grants Jose Molina's motion to dismiss this action.

A proper notice terminating the tenancy is a jurisdictional requirement in an eviction action pursuant to § 83.59, Fla. Stat. *See, e.g., Cook v. Arrowhead Mobile Community*, 50 Fla. Supp. 2d 26 (3rd Cir. App. 1991). Thus, if a landlord serves a tenant with a defective termination notice, any subsequent eviction action based on that defective notice must be dismissed for lack of jurisdiction. *See, e.g., Holy Comforter Senior Housing v. Pope*, 48 Fla. Supp. 2d 129 (Dade Cty. Ct. 1991).

A landlord of publicly assisted housing who seeks to terminate the tenancy of one of its residents must comply not only with the notice requirements of State law but also with the notice requirements of the federal regulations governing the particular housing program. *See* 24 C.F.R. § 966.4(1)(3)(iv); *Metropolitan Dade County v. Dansey*, 43 Fla. Supp. 2d 169 (Dade Cty. Ct. 1990). *See also Seventh Housing Corporation v. Levinson*, 38 Fla. Supp. 2d 196 (Palm Beach Cty 1989). Thus, an entity that operates a public housing program must comply with the notice requirements found at 24 C.F.R. § 966.4(1)(3). Subsection (ii) of that paragraph requires, among other things, that a landlord inform the tenant in the termination notice of "the tenant's right to make such reply as the tenant may wish." 24 C.F.R. § 966.4(1)(3)(ii). Dade County did not

inform Jose Molina of this right in the termination notice that it served on him. Because Dade County's termination notice did not include the required language, the notice is defective. An eviction complaint that is based on a defective termination notice is jurisdictionally deficient, and this court does not have authority to provide relief on the basis of a jurisdictionally deficient complaint. *Dansey* 43 Fla. Supp. 2d at 171.

Dade County argued that 24 C.F.R. § 966.4(1)(3)(ii) does not apply to this action since this case involves the termination of a tenant who is not entitled to a grievance. This Court disagrees. Clearly, the notice requirements of 24 C.F.R. § 966.4(1)(3)(ii) are not limited only to those cases in which the tenant is entitled to a grievance hearing. On the contrary, every termination notice that a public housing authority serves on its public housing tenants must state specific grounds for the termination, must inform the tenant of his or her right to make such reply as the tenant may wish, and must inform the tenant of his or her right to examine housing authority documents related to the termination. The notice must include these provisions whether or not the tenant is entitled to a grievance hearing.

Dade County's notice does not include all of the required provisions; the notice is therefore defective. Dade County has failed to comply with a necessary precondition to the filing of this eviction action, and thus Dade County's complaint is jurisdictionally deficient and must be dismissed.

It is accordingly ORDERED AND ADJUDGED that this case is hereby DISMISSED for lack of jurisdiction.