

19 Fla. L. Weekly Supp. 380c**Online Reference: FLWSUPP 1905WARR**

Landlord-tenant -- Public housing -- Eviction -- Notice -- Defects -- Seven-day notice of termination alleging unauthorized boarders is defective for failing to provide tenant with opportunity to cure -- Notice is also defective for alleging that unauthorized boarder was arrested without indicating that boarder was engaged in criminal activity -- Mere arrest is not tantamount to criminal activity or violation of lease -- Complaint is dismissed

MIAMI-DADE COUNTY, Plaintiff, v. APRIL WARREN, AND ALL OTHERS IN POSSESSION, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County, Civil Division. Case No. 10-18626 CC 05. June 16, 2011. Wendell M. Graham, Judge. Counsel: Mehdi Manseur, De Leon & De Leon, P.A., Miami, for Plaintiff. Ely Gonzalez, Legal Services of Greater Miami, Inc., Miami, for Defendant.

ORDER OF DISMISSAL

THIS CAUSE came before the Court on Defendant's Motion to Dismiss. The Court having conducted a hearing on June 1, 2011, and having been fully advised on the premises, makes the following findings:

1. Defendant, April Warren, (hereinafter "Ms. Warren") occupies residential real property owned by Plaintiff, Miami-Dade County, under a public housing lease.
2. Plaintiff filed a complaint for eviction against Ms. Warren on November 11, 2010, based upon a 7-Day Notice of Termination.
3. Plaintiff's 7-Day Notice of Termination states in pertinent part: "Ms. Warren you have two unauthorized boarders Mya Necole James and Tykeisha L. Alexander living in your unit who are not listed on your public housing lease. Tykeisha was arrested at your unit on 10/22/2010 for Violation of Probation due to Possession of a loaded gun which was in plain sight on the nightstand (No Permit for Gun). Tykeisha gave the arresting officer Ms. Warren's address as her place of residence."
4. Proper statutory notices must be provided for each violation alleged by Plaintiff in the complaint.
5. Plaintiff's 7-Day Notice of Termination is defective as it failed to provide Ms. Warren with an opportunity to cure regarding the allegation of unauthorized persons.
6. Section 83.56(2)(b), Florida Statutes, provides that a landlord is required to give a tenant an opportunity to cure if the noncompliance is of a nature that the tenant should be given an opportunity to cure it. Section 83.56(2)(b) cites a tenant's unauthorized guest as an act of noncompliance whereby the tenant should be given an opportunity to cure.
7. In accordance with Section 83.56(2)(b), Florida Statutes, allowing an unauthorized person to reside in a public housing unit is the type of non-compliance for which a tenant should be given an opportunity to cure prior to termination.
8. Plaintiff's 7-Day Notice of Termination is also defective as it alleges that the unauthorized person was arrested with a crime and does not indicate that the person has engaged in criminal activity.
9. Plaintiff cannot evict a public housing tenant for criminal activity when the only allegation is that the

person has been arrested. Merely being arrested is not criminal activity and is not a violation of the lease.

10. A statutory cause of action cannot be commenced until Plaintiff has complied with all conditions precedent. *Ferry Morse Seed Co. v. Hitchcock*, 426 So. 2d 958 (Fla. 1983).

11. The service of a defective notice by the Plaintiff gives the Court no power to entertain a complaint based on the defective 7-Day Notice. *Rolling Oaks Homeowners Ass'n v. Dade County*, 492 So. 2d 686 (Fla. 3d DCA 1986).

12. Ms. Warren's counter claim remains pending.

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