

**20 Fla. L. Weekly Supp. 1087a**

**Online Reference: FLWSUPP 2011HAMM**

**Landlord-tenant -- Public housing -- Eviction -- Action to evict tenant during term of lease for failing to complete community service hours is premature where federal regulations provide that violation of service requirement is grounds for nonrenewal of lease, but not for termination of tenancy prior to expiration of lease**

MIAMI-DADE COUNTY, Plaintiff, vs. LILLIE HAMMETT, and All Others in Possession, Defendant(s). County Court, 11th Judicial Circuit in and for Miami-Dade County, Civil Division. Case No. 12-12701-CC 05. April 15, 2013. Gladys Perez, Judge. Counsel: Kirk DeLeon, Miami, for Plaintiff. Jeffrey Hearne and Joshua Levine, Certified Legal Intern, Legal Services of Greater Miami, Inc., Miami, for Defendant.

ORDER GRANTING DEFENDANT LILLIE HAMMETT'S

MOTION FOR SUMMARY JUDGMENT

This cause having come before this Court on March 18, 2013, on Defendant's Motion for Summary Judgment, and after holding a hearing, rules as follows:

I. Facts

Defendant, Ms. Lillie Hammett ("Ms. Hammett"), lives in public housing operated by Plaintiff, Miami-Dade County ("MDC"). Ms. Hammett has lived at this residence since October 2009 under a written lease agreement. The lease agreement requires that Ms. Hammett complete an annual re-examination and recertification process and completion of community service hours.

Ms. Hammett entered into her most recent written lease agreement on August 18, 2010. The initial term of the lease ended midnight of August 17, 2011; however, the lease provides for automatic yearly renewal for twelve calendar months.

On February 10, 2011, Ms. Hammett attended her annual recertification appointment. During the appointment, it was discovered that Ms. Hammett did not complete her required community service hours. Ms. Hammett, therefore, entered into a Non Compliance Agreement to Cure ("Agreement"). On February 12, 2012, Ms. Hammett attended the next annual recertification hearing, at which point it was discovered that she did not complete the missing community service hours from 2010, as per her Agreement, and that she had not completed her hours for 2011. Accordingly, the recertification was not completed.

On February 23, 2012, Ms. Hammett was issued an initial 30-Day Notice of Terminating Lease due to her failure to complete her community service hours. This initial 30-Day Notice afforded Ms. Hammett an opportunity to request a grievance hearing. She requested a grievance hearing, and on March 27, 2012, the panel issued a decision authorizing Miami Dade County to move forward with the lease termination.

On April 4, 2012, Ms. Hammett received a 30-Day Notice of Terminating Lease ("Notice"), which stated that Ms. Hammett's lease would be terminated as of midnight on May 14, 2012, due to an alleged noncompliance with her rental agreement. This Notice formed the basis for MDC's eviction Complaint. The final paragraph of the Notice stated the following:

Specifically: Ms. Hammett, you are in receipt of this notice because you failed to provide your

required thirty-two (32) hours of community service hours for the year 2010-2011 . . . . In addition, you have not completed any of the ninety-six (96) hours for 2011 community service. Ms. Hammett, you have a total of one hundred and twenty-eighth [sic] (128) hours of community service past due for the years mentioning above. . . . Ms. Hammett, . . . your violation is ground for lease termination. In order to avoid any further action, upon expiration of this notice, you and all other member [sic] of your Dwelling Lease must vacate the Dwelling Unit and return all keys to the Management Office.

On June 20, 2012, MDC filed the instant action. Ms. Hammett now moves for summary judgment, claiming that MDC improperly seeks to terminate her tenancy.

## II. Standard of Review

Florida Rule of Civil Procedure 1.510(c) provides that a party may seek summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

## III. Discussion

Ms. Hammett's public housing tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Florida Statutes, the United States Housing Act of 1937, 42 U.S.C. § 1437 et seq., and federal regulations promulgated by the United States Department of Housing and Urban Development found at 24 C.F.R. § 960 et. seq. The Department of Housing and Urban Development regulations that govern community service programs provide in pertinent part:

(a) Service requirement. Except for any family member who is an exempt individual, each adult resident of public housing must:

(1) Contribute 8 hours per month of community service (not including political activities); or

(2) Participate in an economic self-sufficiency program for 8 hours per month; or

(3) Perform 8 hours per month of combined activities as described in paragraphs (a)(1) and (a)(2) of this section.

(b) Family violation of service requirement. The lease shall specify that it shall be renewed automatically for all purposes, unless the family fails to comply with the service requirement.

*Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term* (see § 966.4(1)(2)(i) of this chapter).

24 C.F.R. § 960.603 (emphasis added). Because Ms. Hammett's lease renews each year and last expired on August 18, 2011, it automatically renewed until August 18, 2012. Consequently, MDC's Complaint, dated June 20, 2012, which states that “the rental agreement has been terminated and the right of possession of the Defendants have expired,” seeks to evict Ms. Hammett during the lease term. MDC's Complaint, thus, was prematurely filed, as the federal regulation provides for a remedy of non-renewal of the lease, not eviction prior to expiration of the lease for the subject breach.

It is ORDERED AND ADJUDGED:

Based on the foregoing ruling, Defendant's Motion for Summary Judgment is GRANTED.

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FINAL JUDGMENT

Pursuant to the Order Granting Defendant Lillie Hammett's Motion for Summary Judgment,

IT IS ADJUDGED that:

Plaintiff, MIAMI DADE COUNTY, take nothing by this action and that Defendant, LILLIE HAMMETT, shall go hence without day.

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