

Online Reference: FLWSUPP 2305OROZ

Landlord-tenant -- Public housing -- Eviction -- Notice -- Defects -- Landlord is prohibited from demanding that tenant in federally subsidized housing pay rent that is due from housing authority, and three-day notice that demands that tenant do so is defective -- Because it would be impossible to cure defective notice to demand proper amount of rent from tenant whose portion of rent is \$0, complaint is dismissed without affording opportunity to cure and without leave to amend

EDUARDO OROZCO, Plaintiff, v. JESSICA ESTRADA, And all others in possession, Defendants. County Court, 11th Judicial Circuit in and for Miami-Dade County, Civil Division. Case No. 2015-11550-CC-05 (04). August 20, 2015. Lourdes Simon, Judge. Counsel: Eduardo Orozco, Key Biscayne, pro se Plaintiff. Lissie Salazar, Legal Services of Greater Miami, Inc., Miami, for Defendant.

ORDER OF DISMISSAL

This cause came before the Court on the Defendant's Motion to Dismiss. The Court, having conducted a hearing on August 18, 2015, and having been fully advised on the premises, makes the following rulings:

1. Plaintiff's Complaint is based on a July 10, 2015 notice demanding that Defendant pay \$1,500 or vacate the premises with three days.
2. Plaintiff filed this Complaint on July 21, 2015 alleging the monthly rent is \$1,500 and Defendant failed to pay the rent for July 2015.
3. This Court held a hearing on August 12, 2015 on the Defendant's Motion to Determine Rent. It was undisputed that this tenancy is federally subsidized tenancy through the Section 8 Program administered by Miami Dade Housing Choice Voucher Program (hereafter "MDHCVP"), the Section 8 Housing Assistance Payment is \$1500, and the Defendant's portion of the rent is \$0.
4. The federal regulations that govern the Section 8 Program prohibit the Plaintiff from demanding that Defendant pay the \$1,500 that is due from the Housing Authority, MDHCVP. *See* 24 C.F.R. § 982.310(b) and 24 C.F.R. § 982.451(b)(4)(iii).
5. Additionally, a Three Day Notice for non-payment of rent must demand the precise amount due from the tenant and failure to do so renders the notice defective and legally insufficient to support an action for eviction. *See Baker v. Clifford-Matthew Inv. Co.*, 128 So. 827 (Fla. 1930); *Peninsular Real Estate v. Juan and Bethzaida Granizo*, 6 Fla. L. Weekly Supp. 292a (Dade Cty. 1999); *Koster v. Cornado*, 16 Fla. L. Weekly Supp. 1073a (Dade Cty. 2009).
6. Plaintiff's termination notice is defective because it improperly demands that Defendant pay the portion of rent due from the Housing Authority, MDHCVP.
7. The service of a proper, non-defective termination notice is a statutory condition precedent to the filing of an eviction action. *See Investment and Income Realty v. Bentley*, 480 So. 2d 219, 220 (Fla. 5th DCA 1985).
8. A statutory cause of action cannot be commenced until Plaintiff has complied with all conditions precedent. *See Ferry Morse Seed Co. v. Hitchcock*, 426 So.2d 958 (Fla. 1983).
9. The Court has no power to grant the Plaintiff relief because a proper and non-defective termination notice is a statutory condition precedent and Plaintiff's Complaint is based on a defective notice. *See*

Rolling Oaks Homeowners Assn v. Dade County, 492 So.2d 686 (Fla. 3rd DCA 1986); *Investment and Income Realty v. Bentley*, 480 So.2d 219 (Fla. 5th DCA 1985).

10. When less than all the requisite elements of a cause of action exist when the complaint is filed, the complaint must be dismissed without leave to amend. *Rolling Oaks Homeowners Assn v. Dade County*, 492 So.2d 686 (Fla. 3rd DCA 1986).

11. The Court is cognizant that Fla. Stat. § 83.60(1)(a) was amended effective July 1, 2013 so that in non-payment evictions, a landlord must be given the opportunity to cure a defective Three Day Notice. But here, because the Defendant's portion of the rent is \$0, it would be impossible to cure the defective notice. Accordingly, Plaintiff's Complaint must be dismissed without leave to amend.

It is ORDERED and ADJUDGED that:

A. Defendant's Motion to Dismiss is granted.

B. Plaintiff's Complaint is dismissed without leave to amend.

C. This Court retains jurisdiction to tax attorney's fees and costs against the Plaintiff.

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