

19 Fla. L. Weekly Supp. 401b**Online Reference: FLWSUPP 1905PICE**

Landlord-tenant -- Public housing -- Eviction -- Noncompliance with lease -- Notice that advises that tenants failed to maintain premises pursuant to lease agreement and statute and lists means by which tenants can effect cure, but which does not specify deficiencies and relate them to specific parts of lease, is deficient

PICERNE DEVELOPMENT CORPORATION D/B/A HAMPTON POINT APARTMENTS, Plaintiff, vs. LAURA KIRK and SAMANTHA KIRK, Defendants. County Court, 20th Judicial Circuit in and for Charlotte County, Civil Division. Case No. 11-769-CC. February 1, 2012. Paul Alessandrone, Judge. Counsel: James I. Barron, III, James I. Barron, III, P.A., Orlando, for Plaintiff. Cathy L. Lucrezi, Florida Rural Legal Services, Inc., Fort Myers, for Defendant.

VERDICT AND FINAL JUDGMENT

THIS CAUSE came before the Court upon a trial on the Plaintiff's Complaint for Tenant Eviction, and the Court having received the testimony of witnesses and exhibits introduced into evidence by the parties, and having heard argument of counsel, now, therefore, the Court makes the following findings of fact and renders the following Verdict.

Plaintiff leased premises to Defendants under a lease commencing January 1, 2011 and expiring on December 31, 2011. The Hampton Point Apartments is a rental community operated pursuant to the rules and regulations of the Federal Low Income Housing Tax Credit Program. On June 2, 2011, Plaintiffs properly served a seven day notice to cure noncompliance followed on June 20, 2011 by a seven day notice of noncompliance without opportunity to cure. The Defendant Samantha Kirk previously vacated the leased premises but Defendant Laura Kirk remains in occupancy.

The Court finds that the Defendants' challenge to the legal sufficiency of the notice requirement has merit based on the way the notice requirement has been strictly interpreted by Florida courts.

An extensive review of Florida decisional law brings this Court to the firm conclusion that Florida courts have zealously protected the Due Process rights of tenants in situations such as the one before the Court where the sufficiency and specificity of the notice has been challenged. See [*Enterprise Housing Lake Wales, Inc. v. Woodard*](#), 18 Fla. L. Weekly Supp. 1044a (Polk County 2011), [*Broward Community Development Corporation v. Shirley*](#), 9 Fla. L. Weekly Supp. 488a (Broward County 2002), notice vague and conclusory; [*Hialeah Housing Authority v. Lawren*](#), 12 Fla. L. Weekly Supp. 1177a (Miami-Dade County, 2005), notice lacked description of activity, name of parties involved and charges; [*Oakridge Apartment Complex, Inc. v. Perry*](#), 13 Fla. L. Weekly Supp 839c (Alachua County, 2006) failure to include date of violation and identity of unauthorized person; [*A & M Properties, Inc. v. Miller*](#), 14 Fla. L. Weekly Supp. 382a (Polk County, 2006) notice without facts or date of fight is defective and vague, [*Jones Walker Palm Gardens Associates Joint Venture v. Jackson*](#), 12 Fla. L. Weekly Supp. 182c (Lee County, 2004).

The standard for the content of such notices in this setting begins with the due process provision of the U.S. Constitution and works its way through to the terms and conditions of the lease. As was pointed out in *Enterprise Housing Lake Wales, Inc. v. Woodard*:

The Fourteenth Amendment of the United States Constitution provides in relevant part “nor shall

any State deprive any person of life, liberty, or property, without due process of law". In language that is substantially similar to the United States Constitution the Florida Constitution provides at Article I, Section 9 "no person shall be deprived of life, liberty or property without due process of law,". Federal regulations have been enacted consistent with the above described fundamental right to due process; the Code of Federal Regulations speaks to the requirements of a lease termination notice at Title 24-Housing and Urban Development, Section 247.4:

Sec. 247.4 Termination notice.

(a) Requisites of Termination Notice. The landlord's determination to terminate the tenancy shall be in writing and shall:

(1) State that the tenancy is terminated on a date specified therein; (2) state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense; (3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing judicial action, at which time the tenant may present a defense; and (4) be served on the tenant in the manner prescribed by paragraph (b) of this section.¹ (emphasis added)

Id.

Substantially the same rights are guaranteed to a tenant under Florida Law under Chapter 83, F.S. The Court finds that the notice in question here inadequately describes the nature of the deficient poor housekeeping that constituted the alleged breach of the lease. Having said that, the Court is fully aware that the Landlord, apparently acting in good faith, attempted in its notice to give the Defendants a laundry list of ways that they could remedy the alleged deficiencies but without specifically describing the deficiencies and relating them to specific parts of the lease that were allegedly violated. The notice advises the Defendants that they failed to maintain the premises pursuant to the lease agreement and Florida Statutes §83.52, F.S. Had the notice provided additional information regarding the specifics of the alleged non-compliance rather than merely reciting the means by which a cure could be effected, the strict notice requirements of law would have been met. The well entrenched doctrine of *stare decisis* binds this Court to decisional law of superior courts, and while the cases cited above are not those of superior courts, the Court has found no decision of a superior court in Florida that calls into serious question the admittedly strict standard imposed by county judges throughout Florida when faced with similar challenges to the sufficiency of a non-compliance notice.

Accordingly, the Court enters a verdict in favor of the Defendants and the Plaintiff shall take nothing by this action. The Court reserves jurisdiction for sixty (60) days to determine any properly and timely pled request for attorney fees and costs.

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