

18 Fla. L. Weekly Supp. 1167c**Online Reference: FLWSUPP 1811COFF****Landlord-tenant -- Public housing -- Eviction -- Complaint for eviction of public housing tenant that was filed before expiration of time for requesting grievance hearing was premature -- Complaint dismissed without leave to amend**

PINELLAS COUNTY HOUSING AUTHORITY, Plaintiff, vs. CELESTE COFFMAN, Defendant. County Court, 6th Judicial Circuit in and for Pinellas County. County Civil Case No. 11-5843-CO-54. UCN 522011CC005843XXCOCO. July 28, 2011. Kathleen T. Hessinger, Judge. Counsel: Daniel G. Drake, for Plaintiff. James J. Moss, Bay Area Legal Services, Inc., for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TODISMISS COMPLAINT (AND DIRECTING CLERK TORELEASE COURT REGISTRY FUNDS TO PLAINTIFF)

THIS CAUSE CAME TO BE HEARD upon Defendants' "Motion to Dismiss Plaintiff's Complaint" scheduled for hearing in this matter. Counsel for Plaintiff and counsel for Defendant were present. The Court, being duly advised in the premises, makes the following

FINDINGS OF FACT:

1. Defendant and her family are residents at a public housing complex for which Plaintiff is the landlord.
2. Defendant and her family have possession of the apartment in which Defendants have resided for approximately eight years under a written lease, a copy of which was attached to Plaintiff's Complaint.
3. Plaintiff, via its agent, delivered to Defendant a notice dated June 7, 2011 giving Defendants until June 21, 2011 to pay \$105 rent due or to surrender possession of the rental premises.
4. The June 7, 2011 "Notice To Tenant -- Original [] Rent Unpaid" also recites that Defendant is "entitled to contest this decision under the Housing Authority's Grievance Procedure. In order to do this, you must present your complaint, orally or in writing, to the main office of the Housing Authority or to the Manager's office of your housing complex, not later than thirty (30) calendar days after the occurrence of the event giving rise to the grievance." The notice also explains how the "Housing Authority will schedule an informal settlement conference in an attempt to settle the grievance," how the tenant can request a formal grievance hearing, etc. Another paragraph in the notice explains further, "The Housing Authority will not take any further action with respect to terminating your lease until the later of: (1) the time within which you may request a grievance hearing has expired; or (2) if you have requested a hearing, until the completion of the grievance process."
5. Plaintiff filed this action on June 23, 2011.

The Court makes the following CONCLUSIONS OF LAW:

1. In relevant part, Title 24 of the Code of Federal Regulations Section 966.4(1) (3)(iv) states, "When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a

grievance concerning the lease termination . . . , the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired.”

2. In *Hialeah Housing Authority v. Conley*, 12 Fla. Law Weekly Supp. 1176a (Fla. Dade Cty. Ct. 2005), the Housing Authority issued a “30-Day Notice of Termination” on March 18, 2005; tenant attended an “informal conference” on April 27, 2005; Housing Authority filed the eviction suit on May 3, 2005; and the hearing officer at the “informal conference” mailed a letter to tenant dated May 4, 2005 upholding the decision to terminate. The “Informal Conference Letter” stated tenant had ten days from the date of the letter to “appeal” the decision and request a formal hearing. The trial court held that 24 CFR Sec. 966.4(1)(3)(iv) applied, and the Housing Authority filed suit to evict prematurely.

3. In *Walton v. Lewis*, 46 Fla. Supp. 2d 138 (Fla. Palm Beach Cty. Ct. 1991) and *Walton v. Manning*, 46 Fla. Supp. 2d 132 (Fla. Palm Beach Cty. Ct. 1991), the tenant in each of these federally subsidized tenancy case received a notice from landlord giving her three days to pay rent or vacate; the notice in each case went on to state that the tenant had “10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10 day period will begin on the earlier date in which the Notice was hand delivered to the unit or the day after the Notice is mailed. However, Landlord will proceed to terminate the tenancy after expiration of the 3 day notice provision required under Florida law.” The trial court in each case held that the termination notice was insufficient under both federal and state law. In *Lewis*, the Court held that the notice failed to adequately notify the tenant of the date landlord sought to terminate the tenancy if rent was not paid in contravention of Sec. 83.56(3), Fla. Stat. and the HUD regulation applicable to the tenancy (in the *Lewis* case, 24 CFR Sec. 247.4(a)). In the *Manning* case, the Court also held, “A person of normal intelligence reading the notice cannot ascertain his or her obligations regarding payment. It is not clear which time limit applies. In this sense, the notice fails to ‘substantially’ comply with the form prescribed by the state statute.” (*Lewis* at 134).

4. Similarly, in Defendant's case, the June 7, 2011 notice is, at best, confusing for a “person of normal intelligence” as to what Defendant's obligations and rights are. The notice certainly appears to provide that Plaintiff “will not take any further action” (which would presumably include filing suit in county court to evict Defendant) “until . . . the time within which you may request a grievance hearing has expired,” and the notice specifically states Defendant has “thirty (30) calendar days after the occurrence of the event giving rise to the grievance” has occurred to “contest this action.” Even if the “event giving rise to the grievance” were Defendant's failure to pay rent due June 1, 2011 and not the issuance on June 7 of the termination notice, since Plaintiff filed this suit on June 23, 2011-less than thirty days from June 1, 2011, Plaintiff filed this action prematurely.

5. If the termination notice is insufficient, the landlord has no valid cause of action existing at the time of filing suit, and the defect cannot be cured by filing an amended complaint. *Moorer v. Williams*, 39 Fla. Supp. 2d 165 (Fla. Pinellas Cty. Ct. 1989) (citing *Meredith v. Long*, 96 Fla. 719, 119 So. 114 (Fla. 1928).

Therefore, it is

ORDERED AND ADJUDGED that Plaintiff's demand for judgment for possession of the leased residential premises against Defendant is DENIED; Defendant shall go hence without day. The Clerk of Court is hereby directed to release all rent monies Defendants have deposited into the Court Registry (minus nonrefundable administrative fees) to Plaintiff, via Plaintiff's attorney of record. The Court reserves jurisdiction on the issue of the amount of attorneys fees to be awarded to Defendant's counsel as the “prevailing party” pursuant to Sec. 83.48, Fla. Stat.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Plaintiff's Complaint is GRANTED; Plaintiff's Complaint is dismissed without leave to amend. The Clerk of Court is hereby directed to release all rent monies Defendants have deposited into the Court Registry (minus nonrefundable administrative fees) to Plaintiff, via Plaintiff's attorney of record.

The Court reserves jurisdiction on the issue of the amount attorney's fees to be awarded to Defendant's counsel as the "prevailing party" pursuant to Sec. 83.48, Fla. Stat.

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