

Online Reference: FLWSUPP 2304BONA

Landlord-tenant -- Public housing -- Eviction -- Recertification Complete Letter requesting that tenant come to rental office to sign forms within four days to avoid termination of rental subsidy did not comply with lease requiring ten-day notice -- Letter also failed to comply with lease requirement that tenant be notified that she may request to meet with landlord during ten-day notice period to discuss proposed termination of assistance -- Complaint for eviction is denied

PRAIRIE OAKS APARTMENTS, LTD, d/b/a PRAIRIE OAKS APARTMENTS, Plaintiff, vs. MICHAEL BONANNO and BRANDY BONANNO, Defendants. County Court, 8th Judicial Circuit in and for Levy County. Case No. 38-2014-CC-000455. April 7, 2015. Honorable James T. Browning, Judge. Counsel: Conrad Bishop, Bishop Law Firm, P.A., Perry, for Plaintiff. Lakesha P. Thomas, Three Rivers Legal Services, Inc., Gainesville, for Defendants.

ORDER DENYING COMPLAINT FOR EVICTION

THIS MATTER having come before the Court on February 12, 2015, for final hearing on the merits of Plaintiff's Complaint for Eviction of Defendants for Non-Payment of Rent, and the Court having fully considered the evidence as well as legal arguments of counsel for each party, and being otherwise fully advised in the premises, finds as follows:

FACTUAL BACKGROUND

Plaintiff owns the housing complex where Defendants live, in Levy County, Florida, known as Prairie Oaks Apartments. Prairie Oaks Apartments provides subsidized housing for low-income tenants under the United States Housing Act of 1937, § 8, as amended, 42 U.S.C.A. § 1437f. and is regulated by the Department of Housing and Urban Development ("HUD"). Plaintiff must comply with the applicable federal regulations, state law and the governing lease agreement.

Defendants moved to Prairie Oaks Apartments on December 3, 2010, and occupy a unit with rent fully subsidized by HUD under the Section 8 Housing Choice Voucher Program. In 2014, as in each year prior, Defendants attended a recertification interview with Plaintiff, and supplied Plaintiff with information necessary for verification of income and family composition. Defendants also provided signatures on consent forms to allow verification of income and other relevant/required documents from outside sources.

On October 27, 2014, Plaintiff delivered a letter entitled "Recertification Complete Letter" to Defendants. Said letter read, in pertinent part:

Your recertification has been completed and your rent, effective 12/1/2014 will be \$0.00 per month. . . . Please come to the rental office by/on 10/31/2014 to sign the required forms. Failure to sign these forms before the above date will result in your rent going to the market rent rate of \$758.00 effective 12/1/2014.

Defendants believed all required forms had been submitted to Plaintiff, particularly since the Recertification Complete Letter indicated that Defendants recertification was completed and rent was \$0.00 per month.

On December 8, 2014, Plaintiff issued a Ten (10) Day Notice to Pay Rent or Vacate the Premises. The notice demanded Defendants pay (market) rent in the amount of \$758 or vacate the premises on or before December 22, 2014. When market rent was not paid, this eviction action followed.

LEGAL CONCLUSION

I. VIOLATION OF HUD MODEL LEASE

PARAGRAPH 17 (REMOVAL OF SUBSIDY)

Paragraph 17(a)(1) of the HUD Model lease reads, in pertinent part:

The Tenant understands that assistance payments made available on his/her behalf may be terminated if events in either items 1 or 2 below occur. Item 1: The Tenant does not provide the Landlord with the information or reports required by paragraph 15 . . . within 10 calendar days after receipt of the Landlord's notice of intent to terminate the Tenant's assistance payment.

The evidence submitted at the February 12, 2015, final hearing established that Plaintiff did not comply with paragraph 17(a)(1) of Defendants' lease. Specifically, the Recertification Complete Letter, dated October 27, 2014, requested that Defendants come to the rental office by/on October 31, 2014, which was only four (4) days, rather than the ten (10) days required by paragraph 17(a)(1).

Plaintiff's Recertification Complete Letter is legally insufficient to terminate Defendants' subsidy.

II. VIOLATION OF HUD MODEL LEASE

PARAGRAPH 17 (REMOVAL OF SUBSIDY)

Paragraph 17(2)(b) of the HUD Model lease reads as follows:

The landlord agrees to give the Tenant written notice of the proposed termination. The Notice will advise the Tenant that, during the ten calendar days following the date of the notice, he/she may request to meet with the landlord to discuss the proposed termination of assistance.

The evidence submitted at the February 12, 2015, final hearing established that Plaintiff did not comply with paragraph 17(2)(b) of Defendants' lease. Specifically, the Recertification Complete Letter, dated October 27, 2014, failed to advise Defendants that, during the ten calendar days following the date of the notice, he/she may request to meet with the landlord to discuss the proposed termination of assistance. Plaintiff's Recertification Complete Letter is legally insufficient to terminate Defendants' subsidy, as it violates paragraph 17(2)(b) of Defendants' lease.

Because Plaintiff improperly terminated Defendants' subsidy, this Court finds that Plaintiff improperly increased Defendants' rent to market rate.

Accordingly, it is ORDERED and ADJUDGED that:

- a) Plaintiff's Complaint for Eviction is DENIED;
- b) Defendant's Motion to Determine Rent is MOOT;
- c) Defendant's Motion to Dismiss is MOOT; and
- d) This Court reserves jurisdiction to award Defendants' counsel reasonable attorney's fees associated with defending this action.

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