

**20 Fla. L. Weekly Supp. 938a**

**Online Reference: FLWSUPP 2009PRAI**

**Landlord-tenant -- Public housing -- Eviction -- Noncompliance with lease -- Where landlord failed to provide tenant with written notice of termination of rent subsidy as required by lease, court cannot terminate lease for nonpayment of increased rent -- Landlord cannot terminate lease based on tenant's objectionable verbal altercation with landlord and voicemail message to landlord that violated house rules where notice of termination does not specifically describe conduct giving rise to violation -- Tenant should have been given opportunity to cure noncompliance where tenant had not received prior warning that verbal altercations and objectionable voicemails would result in termination of lease**

PRAIRIE OAKS APARTMENTS, LTD. d/b/a PRAIRIE OAKS APARTMENTS, Plaintiff, vs. KISSIE ROBINSON 1050 SW 1st Drive #506 Chiefland, Florida 32626, Defendant. County Court, 8th Judicial Circuit in and for Levy County. Case No. 38-2013-CC-124. July 3, 2013. James T. Browning, Judge. Counsel: Conrad C. Bishop, III, Perry, for Plaintiff. Gloria R. Walker, Three Rivers Legal Services, Inc., Gainesville, for Defendant.

ORDER DENYING EVICTION

Before the Court is Prairie Oaks Apartments, Ltd.'s ("Prairie Oaks") Complaint for Eviction, which was tried on May 23, 2013. Counsel and both parties were present. The Court, having heard the testimony and argument of counsel, and having reviewed the evidence, supplemental memoranda, and file, finds as follows:

Preliminarily, Ms. Robinson's Motion to Dismiss was heard, and the Court reserved ruling. Thereafter, at the close of the evidence, Ms. Robinson moved for a directed verdict, and the Court reserved ruling.

The evidence established that the parties to the lease agreed to follow the rules regulations promulgated by the Department of Housing and Urban Development ("HUD requirements"), and specifically to this case, as they relate to removal of the subsidy to Ms. Robinson's rent and termination of the lease. Additionally, termination of the lease must comply with Florida law and the terms of the lease itself.

The testimony of Prairie Oaks staff established that it did not comply with the provisions of Section 17 of the lease or the HUD requirements. Specifically, Prairie Oaks did not provide Ms. Robinson with written notice of the proposed termination of the rent subsidy or provide a meeting to discuss the proposed termination. Thus, the monthly rent increase that resulted from the removal of the rent subsidy occurred without proper notice to Ms. Robinson, and the Court cannot terminate the lease for nonpayment of a rental amount that was improperly increased.

Further, Ms. Robinson admitted to the verbal altercation with and voicemail message left for Prairie Oaks management, the conduct and language of which the Court finds objectionable. The Court further finds that this conduct violates the Royal American Management House Rules, which are incorporated into the lease. Whether such conduct rises to the level of a material noncompliance or constitutes "other good cause" for termination under Section 23 of the lease is not a necessary determination at this point because Prairie Oaks did not provide Ms. Robinson with sufficient notice that her lease would be terminated on the basis of her verbal altercation and voicemail message. Although the House Rules do indicate that violation of any one of them could result in termination of the lease, the Notice of Termination and No Ability to Cure gives as the reason a "violation of House Rules page 1 # 4 b." It does not include a specific description of the conduct giving rise to the violation and thus is not a statement of the grounds for termination, with enough detail for

the tenant to prepare a defense, as required under Section 23(e) of the lease.

Notwithstanding, Section 83.56(2), Florida Statutes, provides for a landlord's authority to terminate a lease for noncompliance with its terms, without the tenant's opportunity to cure, if the noncompliance is of a nature that no opportunity to cure should be given, or the noncompliance is a subsequent or continuing noncompliance within 12 months of a written warning for a similar violation. (2012) It includes, as examples of noncompliance for which no opportunity to cure is required, misuse, destruction, or damage to property. *Id.* On the other hand, an opportunity to cure is required in instances where, for example, a tenant has engaged in "activities in contravention of the lease" such as permitting unauthorized pets, guests, or vehicles, unauthorized parking, or failing to keep the premises clean. *Id.*

The parties provided supplemental memoranda on the issue of whether Ms. Robinson should have an opportunity to cure her noncompliance with the terms of the lease. The cases cited by the parties are persuasive, and although the case Prairie Oaks relies upon affirmed an eviction, the facts of that case were such that the tenant had received prior warning that his behavior would lead to a termination of the lease if it continued. In the present case, Ms. Robinson did not receive a prior warning that continued conduct in the nature of the verbal altercation and voicemail would result in her lease being terminated. Further, the cases upon which Ms. Robinson relies involve similar conduct to hers, and each resulted in the respective court finding that an opportunity to cure was necessary. Accordingly, the Court finds that Ms. Robinson's noncompliance is of a nature that she should have been given an opportunity to cure it.

Finally, Prairie Oaks filed a Motion for Default Judgment on June 13, 2013, and Ms. Robinson filed an objection on June 18, 2013.

It is therefore ORDERED and ADJUDGED:

1. Defendant's Motion to Dismiss is DENIED.
2. Defendant's Motion for Directed Verdict is DENIED.
3. Plaintiff's Motion for Default Judgment is DENIED.
4. Plaintiff's Complaint for Eviction is DENIED.

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