

JUL 08 1992

STATE OF MINNESOTA
COUNTY OF HENNEPIN

MPLS. LEGAL AID SOCIETY

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
FIRST DIVISION, MINNEAPOLIS
UNLAWFUL DETAINER

Joseph F. Shun.

Plaintiff,

ORDER

v.

Case No. UD-1920605513

Olivia Jasper.

Defendant.

This matter came before this Court on June 26, 1992. Plaintiff appeared _____, Lawrence R. McDonough, Esq., and Gary Strootman, Legal Assistant, appeared for Defendant. Defendant moved for summary judgment or dismissal on the grounds that Plaintiff failed to serve a copy of the lease termination notice and the summons and complaint on the Minneapolis Public Housing Authority (MPHA).

Having heard the argument of the parties and being duly advised of the documentation in the file, the Court makes the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Defendant leases from Plaintiff the premises located at 1062 - 11th Avenue Southeast, Apartment #3, Minneapolis, MN 55414.

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2. Plaintiff and Defendant participate in the Minneapolis Public Housing Authority (MPHA) Section 8 Existing Housing Certificate Program. The Program grants qualified tenants a certificate which entitles the tenant to housing assistance. Tenants seek housing, and if the landlord agrees to rent to the tenant and participate in the program, the landlord enters into a Section 8 lease with the tenant, and enters into a contract with the MPHA to receive housing assistance payments (HAPs). The landlord receives a portion of the rent from the tenant, and the remaining portion of the rent from the MPHA in the form of HAPs.

3. The parties executed a Section 8 lease, effective September 3, 1992. The contract rent for the unit was \$675.00, with Defendant paying a monthly rent of \$54.00 and the MPHA paying a HAP of \$621.00. (Defendant's Exhibit 2).

4. The MPHA issued a Section 8 lease amendment, under which the contract rent would be \$675.00, of which Defendant would pay a monthly rent of \$44.00 and the MPHA would pay a HAP of \$631.00.

5. Plaintiff delivered its June 15, 1992 letter to Defendant, stating that Plaintiff would file this action that same day. (Defendant's Exhibit 3).

6. Plaintiff failed to serve the MPHA with a copy of the letter.* Plaintiff also failed to serve the MPHA with a copy of the summons and complaint in this action.*

** "at the same time..." notice was given to Defendant/Tenant. Plaintiff did provide copies to the MPHA on 6/26/92 after the initial hearing herein.*

CONCLUSIONS OF LAW

1. Plaintiff must comply with the eviction requirements of the government subsidized housing program and the lease. *RFT and Associates v. Smith*, 419 N.W.2d 109, -wci

111 (Minn. Ct. App. 1988) (Section 8 Existing Housing Certificate Program); *Housing and Redevelopment Authority of Waconia v. Chandler*, 403 N.W.2d 708, 711 (Minn. Ct. App. 1987) (public housing); *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 894 (Minn. Ct. App. 1986) (FmHA subsidized housing program).

2. The regulations, HAP contract and the Section 8 lease all require Plaintiff to notify the MPHA in writing of the commencement of procedures for termination of the tenancy, at the same time that Plaintiff gives notice to the tenant under state law. 24 C.F.R. § 882.215(c)(4); Section 8 Lease ¶ J(3) (Defendant's Exhibit 2).

3. Failure to serve the MPHA with a copy of the lease termination letter and the summons and compliant violates this requirement, requiring dismissal of the Complaint.

ORDER

IT IS HEREBY ORDERED that

1. This action is dismissed.
2. Judgment shall be entered for Defendant.

RECOMMENDED BY:

Dated: July 7, 1992 Walter C. Benjamin
Referee of District Court

BY THE COURT:

Dated: July 7, 1992 Roberta K. Sevey
Judge of District Court