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13 Fla. L. Weekly Supp. 715c

Landlord-tenant -- Eviction -- Public housing -- Landlord who is participant in Low Income Housing Tax Credit Program is required to demonstrate good cause for non-renewal of lease of low income tenant -- Although landlord's manager testified that decision not to renew lease was due to excessive late payments, and tenant admitted to failing to pay rent on time at least twice, landlord failed to establish good cause for non-renewal -- Landlord's demand for possession of premises denied

TWC TWENTY-NINE, LTD. d/b/a WYNGATE APARTMENTS, Plaintiff, vs. NICOLE BROTHERS, Defendant. County Court, 6th Judicial Circuit in and for Pinellas County. Case No. 06-2007-CO-54. UCN No. 522006CC002007XXCOCO. March 31, 2006. Mark I. Shames, Judge. Order on Final Hearing (Plaintiff's Demand for Possession Denied). Counsel: Daniel G. Drake, for Plaintiff. James J. Moss, Bay Area Legal Services, Inc., for Defendant.

*ORDER ON FINAL HEARING (AND RELEASING
COURT REGISTRY MONIES TO PLAINTIFF)*

THIS CAUSE CAME TO BE HEARD upon Plaintiff's Complaint (for possession of the subject residential premises) previously filed in this matter, as well as upon Plaintiff's "Motion to Strike" Defendant's previously filed "Motion to Determine Amount of Rent to Deposit," Answer and Affirmative Defenses. Counsel for Plaintiff, Plaintiff's designated manager, Defendant, and Counsel for Defendant were present. The Court heard the testimony of witnesses and the legal arguments of counsel. On the evidence presented, the Court makes the following:

FINDINGS OF FACT:

1. Plaintiff participates in the Federal Low Income Housing Tax Credit Program codified at Title 26 of the United States Code Section 42.
2. Paragraph 9B of the "Apartment Lease" (copy attached to Complaint) provides for delivery to Defendant of "30 days written notice of Non-Renewal prior to the expiration of this lease without cause."
3. However, 26 U.S.C. Section 42(h)(6)(B)(I), when read in conjunction with 26 U.S.C. Section 42(h)(6)(E)(ii), prohibits a landlord from terminating a tenant's tenancy, or from failing to renew a tenant's lease, without good cause; and these regulations are enforceable by the tenant.
4. On January 10, 2006, Plaintiff (through its agent) delivered to Defendant a notice reminding Defendant that her written lease would expire on February 28, 2006 and that it was giving "sufficient notice of our request for possession of your apartment on the 28th day of February, 2006."
5. Although Plaintiff's "Motion to Strike" asserts that Defendant has not deposited rent money in the Court registry, Defendant did, in fact, deposit \$280 plus a nonrefundable administrative fee

(the \$280 being equivalent to one month's rent, based on the copy of the "Apartment Lease" attached to the Complaint) on or about March 13, 2006.

6. At hearing Plaintiff's manager testified that Plaintiff decided not to renew Defendant's lease due to "excessive lates." Defendant admitted that, on at least two occasions, Defendant failed to pay her rent "on time."

CONCLUSIONS OF LAW

1. As a participant in the Federal Low Income Housing Tax Credit ("LIHTC") Program, Plaintiff is required to demonstrate good cause to evict or terminate the tenancy of any low-income tenant of the LIHTC property.

2. The "good cause" eviction protection extends to situations where the Plaintiff does not renew the lease of a low-income tenant. *See Cimarron Village Townhomes, Ltd. v. Washington*, No. C3-99-118, 1999 Minn. App. LEXIS 890 (1999); *Cimarron Village v. Washington*, 659 N.W.2d 811 (Minn. App. 2003); *Carter v. Maryland Management Co.*, 377 Md. 596, 835 A. 2d 158 (Md. 2003); *Green Gables Apartments, Ltd. v. Williams*, 11 Fla. L. Weekly Supp. 1070 (Fla. Marion Cty. Ct. 2004). *TWC Twenty-Nine, Ltd. vs. N. Brothers*, Pinellas Co. Civ. 06-2007-CO-54 Order.

3. Based on the testimony presented at hearing, Plaintiff failed to establish "good cause" for the non-renewal of Defendant's lease. *See, e.g., Cimarron Village*, 659 N.W. 2d at 817-818.

Based upon the foregoing, it is ORDERED AND ADJUDGED that Plaintiff's "Motion to Strike" is DENIED; the demand by Plaintiff, TWC TWENTY-NINE LTD. d/b/a WYNGATE APARTMENTS, for possession of the subject premises is DENIED; and it is ORDERED AND ADJUDGED that Defendant, NICOLE BROTHERS, is entitled to remain in possession of the premises located at 391 - 112th Avenue North Apt. 1104, St. Petersburg, Pinellas County, Florida, and to go hence without day.

The Clerk of Court is hereby directed to release all monies which Defendant has previously deposited in the registry of the Court (minus nonrefundable administrative fees) to Plaintiff, TWC TWENTY-NINE, LTD., d/b/a WYNGATE APARTMENTS, via Plaintiff's attorney of record.