

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
SUMMARY PROCESS
NO. 02-01/8/1/7/

WINGATE MANAGEMENT, CO., INC.
Plaintiff

VS.

MANUEL TILLERIA
Defendant

ORDER

The parties appeared before this Court in this for cause summary process matter on plaintiff's **Motion to Compel Discovery from Defendant** and defendant's **Motion to Dismiss**. Plaintiff's **Motion to Compel Discovery from Defendant** was **allowed** by the Court.

Defendant Manuel Tilleria is a resident of Unit #2, at 82 Peterborough Street, Boston, MA, which is managed by the plaintiff, Wingate Management Company. The defendant executed a Lease agreement dated August 4, 1998 (the "Lease"), which reflected that the unit and the rent were subsidized as either a project sponsored by the Department of Housing and Urban Development ("HUD") or pursuant to other rental subsidies from HUD. The Lease, as amended and extended through July 31, 2002, further requires that the Landlord follow a specific procedure in terminating the Lease. In relevant part, the procedure for notice reads:

All termination notices must:

(3) advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10- day period will begin on the earlier of the date the notice was hand-delivered to the unit, or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant.

(SUMMARY PROCESS 02-/0/1/8/1/7/) (WINGATE MGMT. CO. V. TILLERIA)

On February 27, 2002¹, the plaintiff, through counsel, served a Thirty (30) Day Notice to Quit on the defendant stating: "The reason for this notice to quit is material non-compliance with your Occupancy Agreement." The letter further alleges that the defendant caused police and illegal activity on the premises, harassment of other tenants, and the unauthorized occupancy of the unit. The letter also sets forth that the defendant had ten (10) days in which to discuss the proposed termination with the plaintiff.

On or about March 6, 2002, defendant's counsel, through a letter to plaintiff's counsel, requested an opportunity to discuss the Notice to Quit. As further represented by the affidavit of John J. Russell, Esq., defendant's counsel did not receive a response to the meeting request from either the plaintiff or plaintiff's counsel. Plaintiff's counsel at this Court's hearing confirmed that, in fact, no meeting had taken place between the parties in response to the letter, stating in court that a meeting would have been a waste of time of the parties.²

As this is a cause termination of a lease of a public or subsidized housing tenant, the plaintiff/landlord must follow the requirements of any administrative hearings or procedures prior to the termination of the tenancy. See Spence v. Gormly, 387 Mass. 258 (1982); Spence v. O'Brien, 15 Mass. App. Ct. 489 (1983); Skinner v. Boston Housing Authority, Civ. No. 88-0624-Y (D. Mass. May 19, 1988). If the tenant so requests, a pre-termination hearing is clearly required by the terms of both the Lease and the plaintiff's Notice to Quit. In this instance, the defendant clearly requested a meeting that the plaintiff was legally obligated to hold before serving the Summons and

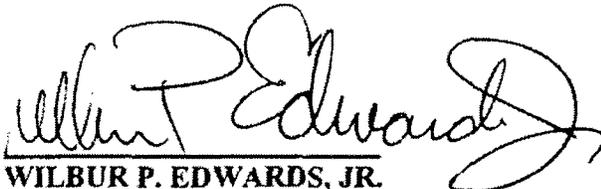
¹According to the original Return of Service.

²The Summons and Complaint was served April 16, 2002.

(SUMMARY PROCESS 02-01/8/1/7) (WINGATE MGMT. CO. V. TILLERIA)

Complaint, notwithstanding the fact that it might have been a waste of time for both parties.

Accordingly, the defendant's **Motion to Dismiss** is **ALLOWED**, without prejudice. The defendant's counterclaims are also **dismissed**, without prejudice.


WILBUR P. EDWARDS, JR.
ASSOCIATE JUSTICE

November 4, 2002

cc: **Robert G. Najarian, Jr., Esq.**
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