

North Tampa Housing Development Corporation
Owner/Agent Statewide Conference
July 20, 2010

EVICTIONS 101

Presented by:
Rhonda E. Stringer, Esq.
SAXON, GILMORE, CARRAWAY & GIBBONS, P.A.

RELEVANT LAWS

- Chapter 83, Part II, Florida Statutes.
- Federal Statutes.
- Code of Federal Regulations.

TERMINATION OF TENANCY

- Termination by Landlord must be in accordance with HUD regulations, State and local law, and the terms of the Lease.
- Important for O/A's to understand the various grounds for termination as stated in the Lease and the eviction process.

LANDLORD MAY TERMINATE LEASE FOR:

1: Tenant's material noncompliance.

Term "material noncompliance" includes:

- One or more substantial violations of the Lease.
- Repeated minor violations that:
 - a. Disrupt the livability of the project;
 - b. Adversely affect the health or safety of any person or the right of any tenant to quiet enjoyment of the premises/project;
 - c. Interfere with the management of the project;

LANDLORD MAY TERMINATE LEASE FOR:

Term "material noncompliance" also includes:

- Failure to timely supply all required information regarding income, composition, eligibility factors of the tenant household.
- Non-payment of rent or any other financial obligation due under the Lease beyond the grace period permitted under State law.

LANDLORD MAY TERMINATE LEASE FOR:

2. Tenant's material failure to carry out obligations under any State Landlord and Tenant Act.

3. Drug related criminal activity engaged in on or near the premises, by any tenant, household member, guest, or person under tenant's control.

LANDLORD MAY TERMINATE LEASE FOR:

4. Determination by Landlord that a household member is illegally using drugs.

5. Determination by Landlord that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

LANDLORD MAY TERMINATE LEASE FOR:

6. Criminal activity by a tenant, any member of the tenant's household, a guest or another person under tenant's control that:

- a. threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or
- a. threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises.

LANDLORD MAY TERMINATE LEASE FOR:

7. Tenant is a "fleeing/fugitive felon".

8. Tenant is violating a condition of probation or parole under Federal or State law.

9. Determination by Landlord, that household member's abuse or pattern of abuse of alcohol threatens the health, safety, or peaceful enjoyment of the premises by other residents.

LANDLORD MAY TERMINATE LEASE FOR:

10. "Other good cause"

- Such termination only effective at end of any initial or successive term.
- At least 30 days notice before tenant required to move from unit must be given.
- Lease may require prior notices before tenant's conduct can be deemed basis for "other good cause".

LEASE TERMINATION NOTICE

- ✓ Give proper and due care to preparing a notice of Lease termination.
- ✓ The notice is the legal prerequisite to terminating the Lease.
- ✓ Defects in the notice may provide tenant with procedural defenses and/or result in case being involuntarily dismissed on procedural grounds.

LEASE TERMINATION NOTICE

- Determine the appropriate type of notice to be given based on nature of the Lease violation:
 - Curable vs. non-curable
 - Non-payment of rent?
 - Criminal, drug-related criminal activity?
 - Housekeeping violations, disturbing peace, illegal boarder, etc?
 - Repeated minor violations?
 - Same or similar conduct after prior notice(s)?

DRAFTING TERMINATION NOTICE

Notice shall be in writing and should:

- o State reasons with enough specificity for tenant to prepare a defense (and avoid challenge that notice is vague).
 - o Who, What, When, & Where?
- o State specific lease provision(s)/house rule(s) violated.
- o Reference prior notices given for same/similar conduct, if given within 12 months of current violation.

DRAFTING TERMINATION NOTICE

Notice shall be in writing and should:

- o Specify the date the Lease will be terminated.
- o If required, advise tenant of 10-day time period to request meeting to discuss termination.
- o If required, advise tenant of his/her right to defend the action in court.
- o If required, advise tenant that if he/she fails to vacate after the termination date, Landlord will seek to enforce the termination only by bringing a judicial action at which time tenant may present a defense.

DRAFTING TERMINATION NOTICE

Non-payment of rent notices should...

- Only demand rent and not late fees or other fees.
- Accurately state amount of rent owed.

DRAFTING TERMINATION NOTICE

- Termination date in notice should be correctly calculated...
- ✓ If mailed, must add 5 days to notice time period, per Florida law.
- ✓ If termination date fall on legal holiday or weekend, termination date extends to next day that is not a legal holiday or weekend.
- ✓ Any HUD-required notice period runs concurrently with notice period required by State or local law.

DELIVERY OF NOTICE

- Issue notice as soon as possible after receive knowledge of the Lease violation.
- If need more information to determine violation, investigate possible violation as soon as possible.
- Per Florida law, waiver will occur if an eviction action has not been instituted within 45 days of the Lease noncompliance. §83.56(5), Florida Statutes.

DELIVERY OF NOTICE

- In accordance with Florida law
- Or as otherwise required by Lease:
 - Sending by 1st class mail and
 - Serving copy on any adult answering the door, or if no adult responds, by placing the notice under or through the door, if possible, or by affixing the notice to the door.

DELIVERY OF NOTICE

- Notice should clearly indicate how and when notice was delivered, and by whom.
- If possible, get tenant to sign a copy of the notice to acknowledge that he/she received the notice

AVOID WAIVER ARGUMENTS

In non-payment of rent cases

- Do not accept rent after notice period expires.
- Do not accept partial payments.

In non-curables cases

- Best to not accept rent once Landlord has knowledge of a possible Lease violation (i.e. criminal activity).
- Do not accept rent after notice is given.

- If inadvertently accept rent, return rent to tenant ASAP via certified mail or personal delivery with letter memorializing A/O's actions.
- Do not execute new Lease with tenant that is in violation.

TERMINATION FOR CRIMINAL ACTIVITY

- Review & analyze on a "case-by-case" basis.
- Review relevant police reports, arrest information, etc. However, an arrest and/or conviction is not necessary to pursue an eviction.
- Interview tenants that may be witnesses and get them to memorialize their observations in writing.
- If domestic violence involved, is Tenant entitled to VAWA protections?

TERMINATION FOR CRIMINAL ACTIVITY

- Be consistent in approach and decision making to ensure tenants view process as fair and to avoid selective enforcement or discrimination arguments.
- Should strive to demonstrate that O/A's enforcement of the Lease is done fairly, impartially, and in good faith.
- Ensure evidence is sufficient enough to warrant filing eviction case and prove case in court.

TERMINATION FOR CRIMINAL ACTIVITY

- Not best practice to file every case, regardless of strength of case. Frequent losses can undermine O/A's efforts and may result in lack of credibility with local judges.
- Better practice is to file only the strongest cases or at least those that the O/A has a relatively good chance of winning.
- Use discretion were appropriate
 - Exclusion of culpable household member or guest.
 - Allow participation in drug, alcohol, other treatment programs.

TERMINATION FOR CRIMINAL ACTIVITY

- Consider executing written stipulations/settlements in cases with proof problems.
- Know any special proclivities of local judges.
- Educate judges as to regulatory requirements of management operation and Lease.
- Build relationship with local law enforcement, especially any officers that are assigned to patrol the zone were property is located.
- File appeals if necessary.

FILING COMPLAINT

1. Count I – possession, Count II – money damages.
2. Service of process (Summons & Complaint).
3. Tenant must file Answer to Count I in 5 days after service, and file Answer to Count II in 20 days after service.

ANSWER TO COMPLAINT

- Failure to file Answer = clerk's default entered followed by Final Judgment entered by Court.
- Failure to deposit rent as alleged in complaint and rent that accrues during pendency of case; or failure to file motion to determine rent = Landlord entitled to an immediate default judgment for possession. §83.60(2), §83.56(5) Florida Statutes.

LITIGATING YOUR CASE

- Pre-trial Motions (default, determine rent, dismiss, continue).
- Court ordered mediation.
- Discovery requests by opposing counsel.
- Obtain any additional evidence needed for trial (ex. 911 tape, photos, video, additional witness information, reports, copy of search warrants, certified copy of relevant criminal judgment and sentence, probation officer information).
- Subpoena witnesses for trial.

LITIGATING YOUR CASE

- Settlement offers (ex. stay w/conditions, voluntarily vacate, repay, remove offending household member, grant reasonable accommodation request).
- Witness & trial (bench or jury) preparations.
- Considerations regarding Judge involved and/or if opposing counsel involved.
- Consider obtaining court report for trial.

FINAL HEARING/TRIAL

1. Landlord has burden of proof regarding Lease violation/Complaint.
2. Standard of proof = preponderance of the evidence.
3. Tenant has right to raise defenses and has burden of proving them.
4. Rules of Evidence apply.

FINAL HEARING/TRIAL

- Sworn testimony taken & exhibits/evidence admitted
- Court's ruling.
- Final judgment/order entered by Court.
- Writ of Possession – issued by clerk, executed by Sheriff.
- Prevailing party entitled to reasonable court costs and attorney's. §83.48, Florida Statutes
- Losing party has right to file an appeal.

NEVER HESITATE TO
ASK QUESTIONS

THANK YOU FOR YOUR TIME AND
ATTENTION!
