

2021 WL 2775065

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UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Fairfield, Housing Session at
Bridgeport.

Ikechnkmu NWAGWU

v.

Cynthia DAWKINS et al.

BPHCV215004438S

|

March 2, 2021

Opinion

Walter M. Spader, Jr., Judge

***1** This summary process action was commenced by writ summons and complaint dated February 4, 2021 and returnable to this Court on February 11, 2021. The complaint followed a notice to quit from the plaintiff, IKECHNKMU NWAGWU, dated January 26, 2021 demanding that the defendants, CYNTHIA DAWKINS (and various Jane and John Does) vacate the premises located at 289 WILLOW STREET IN BRIDGEPORT on or before January 31, 2021.

The notice to quit alleged that it was issued for “serious non-payment” and that the defendants owed back rent in the amount of \$5,907 due over eight months—January, March, May, June, September, November and December 2020 and January 2021. See Docket Entry #100.32.

The complaint alleges that monthly rent was due based on an oral agreement to pay \$1,515 on the 10th of each month.

New Haven Legal Assistance Association, Inc., has filed an appearance on behalf of the defendant and filed a motion to dismiss. The motion to dismiss alleges that 1) the plaintiff has not filed a *Cares Act* Affidavit; 2) the plaintiff failed to provide 30 days for the defendant to vacate in the notice to quit in this matter; 3) while payments may have been late, the amounts owed to do

give rise to a serious nonpayment claim, as portions have been paid by a Section 8 Housing Choice Voucher; 4) The rent that was due prior to February 29, 2020 was paid and 5) there were heating issue at the premises and the City of Bridgeport is providing funds to fix the heat.

The parties attempted a mediation with the Court’s Housing Specialists which, despite the best efforts of the parties, was unsuccessful. A hearing was held remotely on this motion via Microsoft TEAMS on March 1, 2021. The plaintiff appeared as did Ms. Dawkins with her attorney, Sarah N. Mervine.

For the reasons stated below, the defendant’s motion to dismiss is GRANTED.

Through various eviction moratoria, residential summary process actions cannot be commenced solely because a landlord does not want to continue the relationship with his or her tenant after a lease expires. Under Connecticut’s current coronavirus regulations, a residential summary process action can only be maintained in four circumstances:

- 1) The tenants pose a “serious nuisance”;
- 2) Rent is unpaid prior to February 29, 2020;
- 3) There is a “serious non-payment” situation, that is—more than 6 months of rent is due in the aggregate; or
- 4) The landlord has a *bona fide* intent to make the premises his or her primary residence.

See Governor Lamont’s *Executive Order 10A* (February 8, 2021).

The plaintiff only brought an action for “serious non-payment,” so the Court will not review the defendant’s argument that the pre-February 29, 2020 payments were made as that is not the plaintiff’s claim. Likewise, the issue over the heating may be a defense later raised in this case but it is not a jurisdictional claim as the Court cannot find that the defendant previously filed a Housing Code Enforcement Action. Had one been filed, the plaintiff could not file this action. To the City of Bridgeport’s credit, they have decided to step in and assist both parties resolve the heating issue without utilizing the services of this Court or its Housing Specialists.

***2** The remaining three claims of the defendant are intrinsically linked to the *CARES Act*, so the Court will review the claims under the *Act*.

The *CARES Act*¹ was signed into federal law on March 27, 2020 (Pub. L. 116-36), and provided 120 days of eviction relief for tenants in residential housing units that were federally insured or backed. The eviction moratorium restricted lessors of such properties from filing new eviction actions for nonpayment of rent, and prohibited assessing fees, penalties, or other charges to the tenant related to nonpayment of rent. See *Cares Act* § 4024(b).

Relevant to the present case, a tenant in a covered property could not have been served with an eviction notice solely for nonpayment of rent until July 25, 2020 and then, after July 25, 2020, any such notice must provide the tenant 30 days to vacate the property. See § 4024(c).

This 30-day notice requirement applies to “covered dwellings” which includes those dwellings on or in “covered properties.” See § 4024(a). The Act defines a “covered property” as a property that: (1) participates in a “covered housing program” as defined by the Violence Against Women Act (VAWA) (as amended through the 2013 reauthorization); (2) participates in the “rural housing voucher program under section 542 of the Housing Act of 1949”; (3) has a federally backed mortgage loan; or (4) has a federally backed multifamily mortgage loan. See § 4024(a)(2).

The aforementioned provision of a 30-day notice to tenants of a “covered dwelling” survives the expiration of the CARES Act.

HUD provided guidance for practitioners to assist in determining if a tenant should receive a 30-day notice to quit² and specifically advises that the *Cares Act* “applies to the Public Housing Program, the Section 8 HCV and PBV Programs and the Section 8 Moderate Rehabilitation (Mod Rehab) Programs administered by the Office of Public and Indian Housing.” See *Eviction Moratorium COVID-19 FAQs for Public Housing Agencies* (“FAQ”) by the U.S. Department of Housing and Urban Development, Version 3, April 22, 2020³ at § 3.0. See also *HUD Notice H-20-07*.⁴

*3 The Guidance explains that the 30-day notice requirement for non-payment notices to quit survives the *CARES Act* and is specifically only required for non-payment allegations. *FAQ* § 3.0 at EM2 and EM3. Accordingly, “serious nuisance” cases alleging criminal

or lease violations, for example, would not require a 30-day notice. HUD advises that in market rate properties without a federally backed mortgage, the 30-day notice applies *only* to the voucher holder. *FAQ* § 3.0 at EM12 but mixed-finance public housing projects are entirely subject to the Act. *FAQ* § 3.0 at EM13.

From the above, it is evident when evicting a tenant who utilizes a Section 8 voucher for nonpayment of rent, the *CARES Act* requires a 30-day Notice to Quit.

Early in the pandemic, Connecticut’s judiciary realized the impact the *CARES Act* would have on housing matters and promulgated a “*CARES Act Affidavit of Compliance*,” publically available at the Court Forms website as Form JUD-HM-41.⁵ When reviewing summary process filings, it would be impossible for clerks to recognize which filings impacted premises that were “covered properties” under the *CARES Act* and which were not. Prior to the entry of a default, Housing Judges require the filing of this Affidavit with an averment that the property is not subject to the *CARES Act*. One ground for the defendant’s motion to dismiss here is the failure of the plaintiff to file this Affidavit. The error is harmless, however, as the defendant quickly filed a motion to dismiss, so the Court never had to do an analysis regarding the Affidavit.⁶ A default would not have been entered without this Affidavit. It appears that the plaintiff also failed to deliver CDC Declaration Forms with his Notice to Quit, which this Court would allow him to cure with service of new Forms if the case were to proceed.

The final ground for the motion to dismiss is the defendant’s contention that there is not six months of non-payment to qualify as “serious non-payment” under the Governor’s Executive Orders. The Court did not take testimony as to the amounts paid or the amounts due, and as it is dismissing this matter on other grounds, it does not need to address this question.

In summation, this matter is dismissed as a 30-day notice under the *Cares Act* was not provided to the tenant, who is a recipient of a Section 8 Choice Voucher.

All Citations

Not Reported in Atl. Rptr., 2021 WL 2775065

Footnotes

¹ From the *Cares Act* § 4024:

(b) MORATORIUM.—During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not—

(1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or

(2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

(c) NOTICE.—The lessor of a covered dwelling unit—

(1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and

(2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).

2 The CARES Act and various HUD advisories are documents applicable nationwide. The Act and HUD refers to notices as “notices to vacate.” In Connecticut, we call these documents “notices to quit.”

3 https://www.hud.gov/sites/dfiles/PIH/documents/COVID19_Round3-FAQs_04-2220.pdf (last visited March 1, 2021).

4 <https://www.hud.gov/sites/dfiles/OCHCO/documents/20-07hsgn.pdf.pdf> (last visited March 1, 2021).

5 <https://jud.ct.gov/webforms/forms/HM041.pdf> (last visited March 1, 2021).

6 It is clear from the information presented at the Hearing that the plaintiff would have had to sign the affidavit advising the Court that the premises were subject to the Act and the notice to quit was not timely.