

A.C.

Sterling R. Cockrill, Area Director, 6.2S
Roger N. Zachritz, Deputy Area Director, 6.2SD
Andy L. Watts, Director, Housing Management,
6.2H 6.2G

May 24, 1978

Robert E. Moore

Evictions Pursuant to Ark. Stat. Ann. 50-523, Subsidized Multifamily
Projects

The attached letter and memorandum opinion have been received regarding the subject. The immediate matter of concern to Mr. Thomas Gay of the Legal Aid Bureau of Central Arkansas is the Pineywoods Apartments in Pine Bluff, Arkansas. It is alleged that the management of this 221(d) (3) rent supplement project has failed to comply with eviction procedures prescribed for certain subsidized projects at 24 CFR, Part 450. We have orally discussed this aspect of the complaint with Joe Madden of the Housing Management Division. He is looking into this alleged non-compliance with required procedures by the project management.

The larger question raised by Mr. Gay, however, is the appropriateness of use of Ark. Stat. Ann. 50-523 (1971 Repl.) as a tool for eviction after the required 24 CFR Part 450 procedures have been exhausted.

We substantially agree with the position taken by Mr. Gay in his memorandum opinion. It is our opinion that it is improper for management of a subsidized multifamily project to utilize 50-523 as the tool for eviction after exhaustion of the Part 450 procedures. The proper tool is the Arkansas Forcible Entry and Detainer Statute found at Ark. Stat. Ann. 34-1501 et. seq. (1962 Repl.).

The Part 450 procedures, at various times, make reference to "judicial proceeding for eviction" (§ 450.4(a)) and "any judicial action instituted to evict the tenant" (§ 450.4(g)). It is our opinion that 50-523 is not a judicial action for eviction. It is merely a criminal statute that is utilized to force a tenant to vacate a property under threat of fine. No reference at any point in the statute is made to eviction. The Arkansas eviction statute, a civil remedy, is found at 34-1501 et. seq. This is the statute and procedures contemplated by the Part 450 procedures.

Accordingly, based on the foregoing, it is our strongest recommendation that immediate steps be taken to advise Pineywoods Apartments in Pine Bluff of the required Part 450 procedures if the project management is not, in fact, complying with the procedures.

CORRE- SPON- DENCE CODE	ORIGINATOR	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE
Name						
Date						

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Additionally, Pineywoods should be advised that it shall use the Arkansas civil procedure for eviction, not 50-523, after exhaustion of the Part 450 procedures.

Second, it is our strongest recommendation that a general notice be sent to all multifamily projects subject to the Part 450 procedures reminding them of the requirements of Part 450. This notice should also advise these projects of the HUD interpretation of Part 450 as this Part relates to eviction pursuant to judicial procedures. That is, they should be advised to use the civil procedure, not the criminal procedure.

This recommendation has been discussed with and concurred by the Office of Assistant General Counsel, Multifamily Mortgage Branch, Mr. David Pinsky.

Area Counsel

Attachments

cc:
6G/Vernon C. Mayfield

6.2G:MOORE:jo 5913 5/24/78

RE- ON- NCE DE	ORIGINATOR	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE
ame	6.2G MOORE					
ve	5/24/78					

ous edition

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

OFFICIAL RECORD COPY

HUD-713 (7-75)

★ U. S. GOVERNMENT PRINTING OFFICE: 1977-346-509

TO: Owners and Management Agents - Subsidized Projects

SUBJECT: Implementation of Prescribed Lease Amendments
Use of Proper Eviction Procedures

On January 31, 1977, and May 9, 1977, we notified you of certain applicable lease amendments prescribed by Part 450 of Title 24 of the Code of Federal Regulations. Part 450 provides specific procedures which must be followed when a landlord terminates the occupancy of a tenant in a subsidized project. The prescribed lease amendments must be made a part of the rental agreement, without alteration, for applicable tenants.

Please make sure that the prescribed lease amendments have been incorporated as a part of new rental agreements of applicable tenants and that existing rental agreements have been amended as they were renewed.

If it becomes necessary to utilize state law for the eviction of a tenant after the appropriate administrative procedures have been exhausted, the only state law which should be utilized is the Arkansas Forcible Entry and Detainer Act (Ark. Stat. Ann. Sec. 34-1501 et. seq.) -- not the criminal nonpayment of rent statute (Ark. Stat. Ann. Sec. 50-523). The Department of HUD has determined that an action against a tenant under the criminal nonpayment of rent statute (commonly called the "criminal eviction statute") is not an "eviction action" acceptable to HUD. The only acceptable judicial eviction procedure under Arkansas law is the Forcible Entry and Detainer Act.

If you have questions concerning the implementation of these notices, please contact this office for assistance as soon as possible.

Sincerely,

Andy L. Watts
Director
Housing Management Division

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
LITTLE ROCK AREA OFFICE
UNION NATIONAL BANK BUILDING, ONE UNION NATIONAL PLAZA
LITTLE ROCK, ARKANSAS 72201

REGION VI
Office of the Area Manager

April 16, 1981

IN REPLY REFER TO:
SPECIAL LETTER 81-4d

TO: All Public Housing Authorities and Owners of HUD Subsidized Projects

SUBJECT: NEW EVICTION LAW FOR ARKANSAS

In its recent session, the State Legislature adopted Act 615 which substantially changed the procedures for Forcible Entry and Unlawful Detainer Actions (Evictions). The Act has an effective date of March 23, 1981, which makes its provisions applicable to any eviction actions commenced after that date.

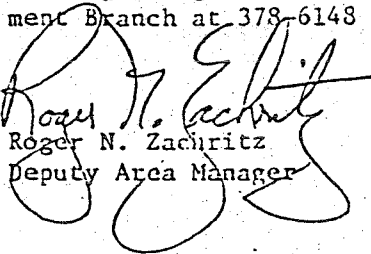
As you know, the Department of HUD determined a few years ago that the so-called "criminal eviction statute", Section 50-523 of the Arkansas Statutes, was not an acceptable method of evicting tenants from assisted housing and advised all housing authorities and owners of subsidized projects that Section 50-523 was not to be used as a means of evicting their tenants. As a result of that determination, your evictions will have to follow the new procedures in Act 615. We recommend that you consult with the attorney who usually handles your eviction cases to insure compliance with this new law.

This change in Arkansas law does not affect the federal termination of tenancy requirements prior to initiating an eviction action in state courts.

For your information, the following list contains the several housing programs to which this notice is applicable:

1. Low-rent Public Housing
2. Section 8 Existing Housing
3. Section 8 New and Substantial Rehabilitation Housing
4. Section 202
5. Section 221(d)(3) or (5) below market interest rates
6. Section 236 interest reduction
7. Rent Supplement

Should you desire additional information, please feel free to contact the Assisted Housing Management Branch at 378-5933 for programs 1 and 2 above, or the Loan Management Branch at 378-6148 for programs 3 through 7 above.


Roger N. Zachritz
Deputy Area Manager

FILED

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Municipal Court Crim. Div.

FEB 26 1985

Municipal Court Crim. Div.

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IN THE MUNICIPAL COURT OF LITTLE ROCK, ARKANSAS

STATE OF ARKANSAS,
CITY OF LITTLE ROCK

PLAINTIFF

VS.

LR-CRIM-85-1059

ALVIN WALLS

DEFENDANT

ORDER

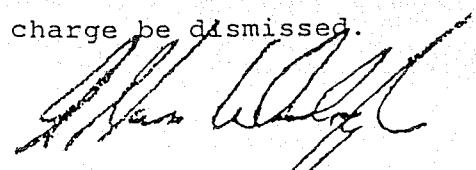
On the 20th day of February, 1985, this matter came for trial, the defendant appearing in person and through counsel, Bill Rahn.

The defendant was charged with the offense of failure to vacate, Ark. Stat. Ann. § 50-523, a violation. The defendant moved for dismissal on grounds that the defendant was renting property at Apollo Terrace apartments, which is federally subsidized housing; that as such the management of said apartments must comply with specific federal regulations which govern eviction and which do not contemplate prosecutions against tenants; and that the management of such housing has been specifically advised by the U.S. Department of Housing and Urban Development (HUD) not to prosecute tenants pursuant to § 50-523.

WHEREUPON, the court finding the defendant's contentions to be true, hereby orders that this charge be dismissed.

IT IS SO ORDERED.

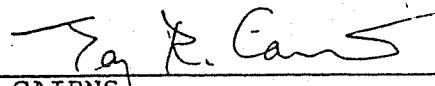
APPROVED:



MUNICIPAL COURT JUDGE

2-26-85

DATE



JAY CAIRNS
PROSECUTING ATTORNEY





Central
Arkansas
Legal
Services

May 15, 1992

Main Office
209 W. Capitol Ave., Suite 36
Little Rock, AR 72201-3678
(501) 376-3423

Hot Springs Branch Office
622 Malvern Ave.
Hot Springs, AR 71901-5432
(501) 624-2591

X Pine Bluff Branch Office
1400 W. 5th Ave.
Pine Bluff, AR 71601-3991
(501) 536-9006

Mr. Bill Freeman
Pine Bluff Housing Authority
2503 Belle Meade
Pine Bluff, AR 71601

Mr. John Munday
Housing & Urban Development
523 South Louisiana
Little Rock, AR 72201

Dear Gentlemen:

Board President
Sheila Campbell

Executive Director
Don Hollingsworth

I am sending this letter pursuant to our recent telephone conversation in which Mr. Freeman promised to provide all landlords receiving HUD assistance through the Pine Bluff Housing Assistance Program notification that the Little Rock HUD office and the Housing Authority Association of Arkansas have a policy against the usage of the "criminal eviction" statute to effectuate the termination of lease agreements. Since Mr. Freeman wanted Mr. Munday to approve any statement which might come out of his office, I am forwarding this letter to both of you at the same time. If the language which I have proposed is unacceptable in any fashion by either one of you, please let me know as soon as possible so that we can discuss the possibility of making modifications. If I have not heard from either of you by May 25, 1992, I will assume that the proposed language is acceptable and that all of the landlords who receive HUD money through the Pine Bluff Housing Assistance Program will have received a copy of the proposed letter before June 1992.

The language which I propose to be sent is as follows:

It has recently come to the attention of the Pine Bluff Housing Authority that there is a need to clarify a situation with respect to the eviction procedures employed by landlords who receive federal funding through the Housing Assistance program which is sponsored by the Pine Bluff Housing Authority. Therefore, for any of you who are not already aware of the fact, this letter is sent to inform you that the Little Rock office of HUD and the Housing Authority Association of Arkansas have for

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Mr. Bill Freeman
Mr. John Munday
May 15, 1992

several years maintained a position which does not countenance the usage of the Arkansas "criminal eviction statute" as a means of terminating the lease agreement of tenants who benefit from your receipt of federal funding through this office. In other words, HUD and the Housing Authority Association do not condone the usage of Arkansas Code Annotated §18-16-101, which is sometimes used by the city attorneys to bring criminal charges in the Municipal Court for "failure to pay rent/vacate" against tenants who are delinquent in their rent and who have received a 10 day notice to vacate. Rather, we approve the usage of the "unlawful detainer statutes", which are codified at Arkansas Code Annotated §18-60-301 thru 312 in all situations where a tenant will not voluntarily comply with a notice to vacate. This requires filing a lawsuit in the Circuit Court.

I appreciate the time and cooperation of both of you gentlemen. If I can be of further assistance, please feel free to call me.

Sincerely,

J. Vernon Walker
Staff Attorney

JVW:bkd

housing authority

OF THE CITY OF PINE BLUFF • P. O. BOX 8872 • PINE BLUFF, ARKANSAS 71611 • MAIN OFFICE 536-2074 • H.A.P. 541-0706

*Fax to Vernon Walker
536-9009*

May 31, 1995

TO: ALL LANDLORDS RECEIVING SECTION 8 RENTAL ASSISTANCE

FROM: Billy Freeman, Director
Housing Authority Of the City of Pine Bluff

It has come to the attention of the City of Pine Bluff Housing Authority that there is a need to clarify eviction procedures used by landlords.

The City of Pine Bluff Housing Authority is requesting that landlords not use Arkansas Code Annotated 18-15-101 to evict tenants who fail to pay rent or vacate. The City Attorney's office has been bringing criminal charges through Municipal Court after a landlord has served the ten (10) day notice to vacate.

It is preferred that landlords use Arkansas Code Annotated 18-60-301 thru 312. If a tenant will not voluntarily vacate, the landlord must file a lawsuit in Circuit Court.

Billy Freeman
Billy Freeman, Director
City of Pine Bluff Housing Authority

Mr. Walker,

This letter was sent to all landlords with HAP Contracts.

Thank you

B Freeman