

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-841

Filed 15 August 2023

Granville County, No. 21CVD799

OXFORD HOUSING AUTHORITY, Plaintiff,

v.

TWANIESHA GLENN, Defendant.

Appeal by defendant from order entered 5 April 2022 by Judge J. Hoyte Stultz, III in Granville County District Court. Heard in the Court of Appeals 8 March 2023.

No brief filed for plaintiff-appellee.

Legal Aid of North Carolina, Inc., by Celia Pistolis, Sarah D'Amato, Tiarra Keese, and Isaac W. Sturgill, for defendant-appellant.

GORE, Judge.

Defendant Twaniesha Glenn appeals the district court order allowing summary ejectment. Plaintiff Oxford Housing Authority filed a summary ejectment proceeding against defendant in the small claims court for failure to pay rent. Defendant appealed the Magistrate's order granting ejectment to the district court. Upon the district court's final order in favor of plaintiff, defendant timely appealed to

this Court. After reviewing defendant's brief and the record, we reverse the district court's order.

I.

Defendant entered into a lease agreement with plaintiff on 11 September 2015. Plaintiff is a federally funded entity and part of the United States Department of Housing and Urban Development. As a federal entity, plaintiff must comply with the federal regulations for public housing, 42 U.S.C. § 1437 et seq., and specifically as it relates to certification of rent processes and lease terminations. 24 C.F.R. § 966.4. In compliance with these regulations, defendant submitted annual recertifications, and on 1 March 2021, an "interim recertification" occurred due to defendant's change in income. This resulted in her rent increasing to \$489.00 per month, which became effective on 1 April 2021.

During the annual recertification in August 2021, defendant's rent changed once again. Consequently, defendant received a notice on 27 August 2021 that her rent starting 1 September 2021 would be \$9.00 per month. Plaintiff claims defendant failed to pay the \$489.00 August rent, while defendant claims she paid the rent but plaintiff lost her payment. Defendant went to plaintiff's office on 1 September 2021 to pay \$9.00 for rent, but plaintiff refused payment stating she was late on her August rent. Plaintiff claims it sent notice of the late payment and notice of termination;

however, defendant denies receiving any such notice and there is no proof of this notice on the record.

The steps for terminating a lease by the resident or plaintiff are specified within the lease agreement, and require the following for a failure to make rental payments:

The [plaintiff] shall not terminate or refuse to renew the Lease other than for serious or repeated violations of material terms of the Lease such as failure to make payments due under the Lease such as rent, utilities, repairs or other financial obligations owed to the [plaintiff], or to fulfill the resident agreements and obligations set-forth in the Lease or for other good cause. . . .

. . .

T[he] [plaintiff] may terminate this Lease at any time and on any day of the month by giving written notice as set forth in Section 13 as follows:
A. Fourteen (14) days in the case of failure to pay rent. . . .

. . .

Such notice shall state the specific grounds for the termination, shall inform the resident of [her] right to make such reply as [s]he may wish, and of [her] right to request a hearing in accordance with the [plaintiff's] Grievance Procedure. The Notice of Lease Termination shall inform the resident of his/her right to examine, and copy at resident's expense, documents directly related to the termination or eviction. . . .

Plaintiff testified it sent notice and included the following statement in the notice,

"The rent is due and payable on first of the month. We give the amount and it is dated the 11th and as of today's day, the rent has not been paid. If the rent is not paid by the 21st of the month, we will proceed with court proceedings."

On 7 September 2021, plaintiff initiated a summary ejectment complaint and defendant was served on 10 September 2021. On or about 14 September 2021, the

Magistrate entered a judgment against defendant after the summary ejectment hearing. Defendant timely appealed the judgment to the district court as an indigent. The district court heard this case on 23 February 2022 and entered an Order on 5 April 2022 granting plaintiff possession of the premises and ejecting defendant fifteen days from its entry. The trial court included findings of fact and conclusions of law within the Order. Defendant then timely appealed to this Court as an indigent. The trial court granted stay of execution of the summary ejectment judgment while this case is before this Court.

II.

On appeal, defendant raises the following issues: (1) whether the trial court erred by granting summary ejectment since plaintiff has no record of defendant receiving a written notice of termination, nor does plaintiff's testimony of what was included in the supposed notice satisfy federal requirements; and (2) whether the claim under N.C. Gen. Stat. § 42-3 was improper because the lease agreement includes a forfeiture clause. Since we determine the first issue is dispositive, we do not address the second issue raised by defendant.

Defendant argues plaintiff failed to send a notice of termination according to the terms of the lease agreement to enforce such provision. Plaintiff claims it sent a notice of termination and testified during the district court hearing as to the contents of the written notice. Defendant then argues that even if a notice was sent, based

upon plaintiff's testimony, the notice did not meet the federal requirements as stated in the lease agreement and in 24 C.F.R. § 966.4.

We review the trial court's findings of fact to see if they are supported by competent evidence, and if the conclusions of law are supported by the trial court's findings. *Friday v. United Dominion Realty Tr., Inc.*, 155 N.C. App. 671, 674, 575 S.E.2d 532, 534 (2003). "A trial court's unchallenged findings of fact are presumed to be supported by competent evidence and [are] binding on appeal." *Cape Fear River Watch v. N.C. Env't Mgmt. Comm'n*, 368 N.C. 92, 99, 772 S.E.2d 445, 450 (2015) (alteration in original) (citation omitted). We review the trial court's conclusions of law de novo and may "freely substitute[] [our] own judgment for that of the lower [court]." *Reeder v. Carter*, 226 N.C. App. 270, 274, 740 S.E.2d 913, 917 (2013) (quotation marks and citations omitted). "In federally subsidized housing cases, the court decides whether applicable rules and regulations have been followed, and whether termination of the lease is permissible." *Charlotte Hous. Auth. v. Patterson*, 120 N.C. App. 552, 555, 464 S.E.2d 68, 71 (1995).

Notice is more than a formality when it is included within the terms of lease termination. "When termination of a lease depends upon notice, the notice must be given in strict compliance with the contract as to both time and contents." *Stanley v. Harvey*, 90 N.C. App. 535, 539, 369 S.E.2d 382, 385 (1988). Section 966.4 of the Code of Federal Regulations plainly states the requirements for termination of a lease. 24

C.F.R. § 966.4 (2022). Notice to the tenant is an important aspect of these requirements, and section 966.4 sets out what is required in a notice:

(3) Lease termination notice.

(i) The [public housing agency, hereinafter “PHA”] must give written notice of lease termination of:

(A) 14 days in the case of failure to pay rent;

...

(ii) The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant’s right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant’s right to request a hearing in accordance with the PHA’s grievance procedure.

24 C.F.R. § 966.4(l)(3)(i)(A), (ii). The lease agreement in the present case mirrors the language set out in section 966.4.

Defendant argues she did not receive any notice, and other than plaintiff’s testimony on cross-examination that it sent a notice of termination, the record is devoid of the existence of the notice of termination, let alone whether it met the requirements plainly stated in section 966.4. As pointed out by defendant, this case is similar to *Lincoln Terrace Assocs., Ltd. v. Kelly*. 179 N.C. App. 621, 635 S.E.2d 434 (2006). In that case, “[defendant] specifically raised the issue to the trial court that [plaintiff] failed to provide proof that proper Notice of Termination in compliance with the requirements of the lease was given.” *Id.* at 628, 635 S.E.2d at 438. Additionally, the only evidence on the record in *Lincoln Terrace Assocs., Ltd.* was that plaintiff had

claimed on cross-examination a notice was sent. *Id.* at 624, 635 S.E.2d at 436. In that case, we determined the trial court's findings of fact did not support the conclusion of law regarding notice compliance and ultimately reversed the trial court's decision. *Id.* at 627–28, 635 S.E.2d at 438.

Similarly, defendant challenges the existence of the notice of termination and its compliance with the terms as stated in the lease. These terms mirror the federal requirements in section 966.4(l)(3). The record contains no evidence of the written notice of termination and defendant denies receiving notice. While plaintiff claims to have sent notice, it also lacks the evidence of the existence of this notice. Plaintiff testified it sent the notice and that the notice stated the following:

The rent is due and payable on first of the month. We give the amount and it is dated the 11th and as of today's day, the rent has not been paid. If the rent is not paid by the 21st of the month, we will proceed with court proceedings.

Assuming there was record evidence of the notice, plaintiff's testimony of what was included within it does not satisfy the requirements plainly written in the lease.

The trial court made no findings of fact as to the notice of termination despite arguments made at the hearing and the cross examination of plaintiff regarding the notice's existence. Accordingly, there are no findings of fact to support the trial court's conclusion of law that plaintiff is entitled to the premises. We must reverse the trial court's decision for non-compliance with the lease and federal statutory requirements for notice of lease termination.

III.

For the foregoing reasons, we reverse the trial court's judgment that entitled plaintiff to the premises.

REVERSED.

Judge DILLON concurs.

Judge TYSON concurs in result only with separate opinion.

Report per Rule 30(e).

TYSON, Judge, concurring in the result only.

The majority’s opinion holds the testimony and evidence presented fails to satisfy the requirements plainly written in the lease and reverses the trial court’s holding for noncompliance with the lease and the federal statutory requirements in 24 C.F.R. § 966.4(1)(3)(i)(A) (2019). The correct analysis includes *both* 24 C.F.R. § 247.4, which governs termination of an existing tenancy, *and* 24 C.F.R. § 966.4. The notice Defendant received satisfies only 24 C.F.R. § 966.4, but not 24 C.F.R. § 247.4, because 24 C.F.R. § 247.4 requires additional information beyond sending the amount due and fourteen-day notice. I concur in the result only.

“[A] tenant in a federally subsidized low-income housing project enjoys substantial procedural due process rights under the Fifth and Fourteenth Amendments.” *Goler Metropolitan Apartments, Inc. v. Williams*, 43 N.C. App. 648, 650, 260 S.E.2d 146, 148 (1979). “Our courts do not look with favor on lease forfeitures.” *Stanley v. Harvey*, 90 N.C. App. 535, 539, 369 S.E.2d 382, 385 (1988). “When termination of a lease depends upon notice, the notice must be given in strict compliance with the contract as to both time and contents.” *Lincoln Terrace Assocs., Ltd. v. Kelly*, 179 N.C. App. 621, 623, 635 S.E.2d 434, 436 (2006) (citation and quotation marks omitted).

The lease provides:

The [Plaintiff] may terminate this Lease at any time and on any day of the month by giving written notice as set forth in Section 13 as follows:

Fourteen (14 days in the case of failure to pay rent.)

Plaintiff's notice to a Section 8 Defendant must satisfy the requirements of the lease and federal statutes and regulations. Here, Defendant challenges the existence of the notice of termination and its compliance with the terms as stated in the lease. The record does not contain the written notice of termination, and Defendant denies receiving notice of termination prior to the filing with the clerk for summary ejectment. Competent evidence shows notice was mailed to Defendant.

Section 13 of the lease provides, *inter alia*:

All notices as set forth herein above shall be in writing *directed to* the last known address of the resident personally or to an adult family member residing in the unit, or *sent by prepaid first class mail* properly addressed to the resident.

(emphasis supplied)

The majority's opinion contains the following testimony from Plaintiff:

The rent it [sic] due and payable on the first of the month. We give the amount and it is dated the 11th and as of today's day, the rent has not been paid. If the rent is not paid by the 21st of the month, we will proceed with court proceedings.

The trial court admitted this testimony, found it credible, and determined Defendant had received the prior written notice as provided in the lease. "The trial judge determines the weight to be given the testimony and the reasonable inferences to be

drawn therefrom. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject.” *In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) (citation omitted). The sole issue before this Court is whether the terms of the notice complied with the terms provided in the lease and with federal statutes and regulations.

The lease provision complies with the requirements in 24 C.F.R. § 966.4(1)(3)(i)(A), which requires 14 day written notice be given for failure to pay rent. The majority’s opinion correctly determines the lease agreement complies with 24 C.F.R. § 966.4(1)(3)(i)(A).

24 C.F.R. § 247.4 provides the requirements for a termination notice of a Section 8 tenant. 24 C.F.R. § 247.4 provides:

(a) Requisites of Termination Notice. The landlord’s determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated on a date specified therein; (2) state the reasons for the landlord’s action with enough specificity so as to enable the tenant to prepare a defense; (3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense; and (4) be served on the tenant in the manner prescribed by paragraph (b) of this section.

(b) Manner of service. The notice provided for in paragraph (a) of this section shall be accomplished by: (1) *Sending a letter by first class mail*, properly stamped and addressed, to the tenant at his or her address at the project, with a proper return address, and (2) *serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice*

under or through the door, if possible, or else by affixing the notice to the door. Service shall not be deemed effective until both notices provided for herein have been accomplished. The date on which the notice shall be deemed to be received by the tenant shall be the date on which the first class letter provided for in this paragraph is mailed, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

(c) Time of service. When the termination of the tenancy is based on other good cause pursuant to § 247.3(a)(4), the termination notice shall be effective, and the termination notice shall so state, at the end of a term and in accordance with the termination provisions of the rental agreement, but in no case earlier than 30 days after receipt of the tenant of the notice. Where the termination notice is based on material noncompliance with the rental agreement or material failure to carry out obligations under a state landlord and tenant act pursuant to § 247.3(a)(1) or (2), the time of service shall be in accord with the rental agreement and state law. In cases of nonpayment of rent, if the Secretary determines that tenants must be provided with adequate notice to secure Federal funding that is available due to a Presidential declaration of a national emergency, the termination notice shall be effective no earlier than 30 days after receipt by the tenant of the termination notice.

...

(e) Specificity of notice in rent nonpayment cases. In any case in which a tenancy is terminated because of the tenant's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity set forth in paragraph (a)(2) of this section. Where the Secretary has made the determination in paragraph (c) of this section, the termination notice must provide such information as required by the Secretary.

(f) Failure of tenant to object. The failure of the tenant to object to the termination notice shall not constitute a

waiver of his rights to thereafter contest the landlord's action in any judicial proceeding.

24 C.F.R. § 247.4 (emphasis supplied).

On 7 September 2021, Plaintiff initiated a summary ejectment complaint, and Defendant was served on 10 September 2021. On 14 September 2021, the magistrate entered judgment against Defendant. Plaintiff's complaint cannot serve as the written notice because it does not meet the fourteen-day notice requirement. The majority's opinion correctly determines the complaint cannot serve as notice required under 24 C.F.R. § 966.4(1)(3)(i)(A).

The judgment served upon Defendant from the magistrate, from which Plaintiff appealed for a trial *de novo* in district court, also cannot serve as proper notice. While the document was: (1) served more than 14 days prior to the proceeding in district court; (2) states the amount of rent owed; and, (3) was served in compliance with the statute, it does not advise Defendant of her right "at a judicial action, . . . [at which time] the tenant may present a defense." 24 C.F.R. § 247.4(a).

I concur in the result to reverse the district court's summary ejectment without prejudice.