

IT'S REALLY CLEAR - NO EVICTION

By Judith I. Johannsen

When the resolution of a lawsuit depends upon interpreting the meaning of the language in the statutes, more often than not case law states that effect must be given to the intention of the legislature, that the legislature's intent is found in the wording used in the statute, and that if the language of the statute is clear and unambiguous, its meaning cannot be modified.

There you have it. Statutes are deemed crafted with carefully and specifically chosen words that reflect the intent of the legislature and such intent must be carried out, in other words, when the statutory language is clear, what is stated is what is meant.

In August, 2005, a Superior Court decision in the Judicial District of Tolland heard a landlord and tenant dispute, the resolution of which focused on statutory language and its intent.

Here's how the story went: The landlord of a commercial property claimed his tenant hadn't complied with its obligations under the lease, so the landlord brought an eviction action against the tenant. The tenant protested and filed a Motion to Dismiss the eviction, claiming the landlord was supposed to have given him a written notice of the alleged violation as required under the statute. (CGS §47a-15).

Apparently the tenant was more familiar with CT's landlord/tenant statutes than the landlord. The relevant statute requires that before beginning an eviction proceeding on the basis that a tenant is not complying with its obligations under its lease, a landlord *must* provide written notice to the tenant of the tenant's deficiencies, and if the offending tenant can adequately remedy the non-compliance within 21 days, the rental agreement won't terminate.

The landlord's theory of the case was based on two cases that held that the eviction statute pertained only to residential tenancies and didn't apply to commercial tenancies, so his argument was that because his tenant was a commercial tenant, the statute did not apply. As a side note, the language of the statute neither specifically limited its applicability to residential tenants nor stated that it was inapplicable to commercial tenants, it just referred to *tenant*.

Both the landlord and the tenant agreed that the tenant in this case did not receive notice of any violation of the lease. The tenant believed he was entitled to have an opportunity to remedy the claimed breach and not be evicted. He believed so because of the clear and unambiguous language of the statute and a case from 1979, *Kapa Associates v. Flores*, which held that failure to provide notice to a tenant of alleged deficiencies and failure to provide time in which to correct them is fatal to an eviction action based on non-compliance. This case is so well known in Housing Court that the required notice is known as a "Kapa" notice.

Another point in favor of the tenant and a nail in the coffin of the landlord's theory is that in 1997, the statute was amended by adding a requirement to a landlord's responsibilities regarding commercial leases in shopping centers and to the measure of damages. Until these amendments, the statute's applications had been only to residential situations; after the amendments, the statute clearly was not limited to residential tenancies and did reach commercial tenancies.

The court's granting the tenant's Motion to Dismiss the landlord's eviction action hammered home the proposition that courts must presume that the legislature intended a sensible and reasoned result and must construe statutes accordingly. Here, the court found the language of the statute unmistakable – 1) a tenant must be given written notice to correct non-compliance to avoid the harsh consequence of eviction/termination of the rental agreement, 2) a landlord's failure to deliver such a notice is fatal to an eviction complaint, and 3) the statute is not limited to residential leases. Furthermore, the court pointed out that allowing a tenant to come into compliance with its responsibilities discourages evictions against first-time offenders and helps to promote and enhance health and safety without resort to litigation.

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