



## NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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January 17, 2020

### LETTER OPINION

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Re: *FCRHA Cedar Ridge LP v. Nicole Boler*  
Case No. CL-2019-12942

Dear Counsel:

This cause came before the Court on the appeal of Defendant, Nicole Boler ("Boler"), of her eviction as a tenant under a lease with Plaintiff, FCRHA Cedar Ridge LP ("Cedar Ridge"), in an unlawful detainer action. This case presents the following notable issues for adjudication: 1) Whether the Court has jurisdiction in this appeal de novo in

**OPINION LETTER**

light of Boler's failure to post bond in the amount of attorney's fees and costs awarded against her as required by the Fairfax General District Court ("GDC") in order to perfect the appeal; and 2) Whether Cedar Ridge complied with the requisite legal notices to Boler in order to maintain successfully an unlawful detainer action.

This Court holds no appeal bond is required in this action for unlawful detainer as Boler is indigent; that the Circuit Court possessed jurisdiction to hear the trial de novo of the cause upon the filing of Boler's notice of appeal in the GDC; that this Court properly ordered the GDC to transmit its case papers<sup>1</sup> to the Circuit Court for adjudication of the suit; and that Cedar Ridge failed to give Boler the requisite legal notices required for an eviction by the terms of the lease, U.S. Department of Housing and Urban Development ("HUD") regulations, and applicable Virginia and federal law, requiring the unlawful detainer action be dismissed.

Thus, this Court shall by separate order dismiss the unlawful detainer action of Cedar Ridge against Boler.

## **BACKGROUND**

Boler entered into a written lease agreement ("Lease") with Cedar Ridge on March 22, 2018, which converted to a month to month tenancy on March 30, 2019. On June 21,

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<sup>1</sup> Virginia Code § 16.1-112 delineates the duty of the lower court to transmit "case papers" to the Circuit Court upon the noting of an appeal:

The judge or clerk of any court from which an appeal is taken under this article shall promptly transmit to the clerk of the appellate court the case papers, which shall include the original warrant or warrants or other notices or pleadings with the judgment endorsed thereon, together with all pleadings, exhibits, and other papers filed in the trial of the case.

2019, Cedar Ridge issued Boler a notice of termination of the tenancy. Eviction proceedings were subsequently initiated against Boler in the GDC culminating in entry of judgment in favor of Cedar Ridge on September 6, 2019. On the same day, Boler timely noted her appeal of the GDC decision, wherein that Court had ordered her evicted from her rental apartment and also imposed an appeal bond of \$1,100.00 to cover awarded attorney's fees and costs. The GDC, however, refused to send this Court the case papers inasmuch as Boler, being impecunious, was unable to post the appeal bond required by the lower court. Boler averred that she approached the GDC Clerk's Office with a request for that Court to waive the bond as she is indigent. Boler claimed her entreaty to file a motion was rebuffed by the GDC Clerk and she was dissuaded from further effort in such regard. Boler further produced a copy of her attempted filing rejected by the GDC Clerk.

On September 12, 2019, Boler approached this Court with a filing requesting to proceed without payment of court costs and fees, an in forma pauperis motion, which request was granted on September 13, 2019, by another judge of this Court. Boler mistakenly believed this action meant her appeal would be sent forth by the GDC to this Court for proper adjudication. Boler's filing did cause this Court to open a file and for her intent to appeal to become evident to the Circuit Court. Nevertheless, the GDC did not send the case papers to this Court, maintaining the appeal to be unperfected due to the absence of posted bond.

On October 30, 2019, the GDC Clerk issued a writ of eviction against Boler. On November 6, 2019, Boler filed a motion for an emergency stay of her eviction and to "waive fee or time to waive fee" in the GDC, which appeared to request waiver of the appeal bond. The GDC denied Boler's motion on November 8, 2019. The GDC's eviction

order was carried out in the early morning hours of November 12, 2019. On such date in parallel, Boler approached this Court pro se, through its accessible Calendar Control procedure, and requested an emergency hearing to stay her eviction. Judge Azcarate of this Court docketed the matter for hearing before the undersigned judge on the same day consistent with the practices of this Court to provide a timely opportunity to be heard for potentially meritorious claims, particularly when adverse consequences to litigants are imminent and of an emergency nature. As it happened, counsel for Cedar Ridge was to appear before the Court on another unrelated matter and graciously made himself available to respond to the emergency motion. The undersigned judge heard the matter and determined preliminarily that it appeared to this Court the GDC's reading of a July 1, 2019 amendment to the applicable law requiring attorney's fees awarded in the case be posted as an appellate bond as a matter of jurisdiction, was incorrect inasmuch as this case did not involve nonpayment of rent but rather, purported violation of one or more lease terms pursued through an unlawful detainer action. The Court indicated, however, that its ruling was preliminary, and that Cedar Ridge would have further opportunity to brief the issues during a merits hearing, at which time the Court would reconsider if it had jurisdiction along with determination of the eviction cause. This Court rendered the eviction ruling by the GDC a nullity by taking jurisdiction over the appeal de novo, and directed the lower court transmit its case papers to the Circuit Court for adjudication of the case.

On November 18, 2019, the GDC Clerk conveyed the case papers to this Court as directed. A writing from the Chief Deputy of the GDC Clerk's Office accompanying the case papers opined legally in relevant part, "All the GDC case paperwork is being

transmitted to the Circuit Court on 11/18/19 – there is no appeal bond paperwork on this appeal as the defendant did not complete the appeal correctly in the GDC – it is a deficient appeal.” On the same day, the Circuit Court Clerk’s Office completed a customary Case Transmittal and Fees Sheet reflecting acceptance of the remittance of the GDC case papers without any associated funds.

On December 19, 2019, this Court heard evidence pertaining to whether it had jurisdiction in consideration of the absence of a posted appeal bond required by the GDC, as well as on the merits of the eviction. Boler was now represented by pro bono counsel who raised a defense of lack of adequate legal notice of eviction. The Court took the matter under advisement in consideration of the parties’ briefs, and also granted Cedar Ridge’s request to make a supplemental filing in response to Boler’s new contention that the eviction must fail as a matter of lack of proper notice. Because this case is herein decided based on the legal issues of the appellate jurisdiction of this Court and the notice requisite in this eviction proceeding, further facts pertaining to the alleged violations of the Lease are not relevant for consideration at this time.<sup>2</sup>

## **ANALYSIS**

### **1. The Circuit Court had jurisdiction to hear this appeal as the posting of an appeal bond by the indigent defendant Boler was not required**

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<sup>2</sup> Cedar Ridge invited this Court to make specific findings of violations of the Lease by Boler, maintaining that these conclusions could serve as *res judicata* in future proceedings even if the Court found the legal notice of eviction to be deficient. The Court does note that Cedar Ridge’s onsite manager was revealed to be particularly professional and kind to Boler while working through issues culminating in Cedar Ridge’s corporate decision to proceed with the eviction. The Court, however, respectfully declines to pre-adjudicate facts related to the merits of an eviction without first finding that the notice of eviction complies with the terms of the Lease and applicable Virginia and federal law, for to do otherwise would be to place the legal cart before the horse. Consideration of substance must follow procedure, not precede the same.

In this case, the GDC refused to transmit the case papers to the Circuit Court on the ground that the appeal was not perfected, this after Boler properly noted her appeal. In light of the recency of the July 1, 2019 amendment to the Virginia Code pertaining to appeal bonds that may be applicable to tenants similarly situated to Boler who are not indigent, it is somewhat explicable the GDC possessed this mistaken view. See 2019 Va. Acts, c. 785. A superficial reading of such amendment might lead to the initial conclusion the posting of a bond was required in this case. However, when a disputed issue of first impression arises regarding the jurisdiction of the Circuit Court, particularly that of interpretation of a new statutory provision, due process and prudence suggest the GDC Clerk should transmit the case papers to the upper court to permit *this* Court to determine the issue of its jurisdiction. The wisdom of this course of action is evident, for uncertainty of the status of the GDC's ruling is thereby obviated.

This concept of erring on the side of affording the litigants meaningful opportunity to be heard should be of particular focus when the consequences of error could be dire, in this case, wrongful eviction of an indigent person from her subsidized rental apartment. By failing to transmit the case papers to the Circuit Court, the GDC acted in derogation of "strong policy reasons favoring certainty of results in judicial proceedings." See *McEwen Lumber v. Lipscomb Bros. Lumber*, 234 Va. 243, 247, 360 S.E.2d 845, 848 (1987). As a matter of forethought, both tenant and landlord deserve and benefit from confidence in the finality of judgments. If the GDC enters a writ of eviction at a time the underlying judgment on an unlawful detainer has been appealed, the GDC has no jurisdiction to enforce its appealed ruling now pending for trial de novo adjudication in the Circuit Court. As happened in this case, the landlord was required to return possession to the tenant as

the eviction was based on a judgment that was rendered a nullity by virtue of the notice of appeal of such ruling. Had the Circuit Court intervened much later than on the day the eviction was carried out, the tenant could potentially have been rendered homeless for a period of time and the landlord would have had to scramble to find her a new apartment if Boler's residence had already been re-let by the time the Circuit Court asserted its jurisdiction. Moreover, because subsidized housing was involved, and as was learned at trial there are limited numbers of such apartments for which there is a waiting list, the ultra vires action of the GDC might not have been easily curable after the expiration of significant time, embroiling the landlord in unforeseen litigation. Once appeal is noted in the GDC, the appealed order is no longer final and the resolution of the case remains open pending further order from the Circuit Court. The GDC's action in failing to transmit the appeal to this Court called into question the finality of lower court judgment in the absence of a ruling from the Circuit Court. It is axiomatic the GDC may determine its jurisdiction but not, when legitimately in question, the jurisdiction of the Circuit Court.

By refusing to transmit the case papers, the GDC in effect delayed timely adjudication of this appeal de novo by declining to perform a ministerial act, namely the forwarding of its case papers to the Circuit Court as mandated by Virginia Code § 16.1-112. This circumstance placed Boler in an untenable procedural position. While she could have potentially pursued a mandamus proceeding to compel the GDC to transmit its case papers to this Court, the time lag for adjudicating such a cause would have meant Boler would have long been evicted before the Circuit Court could reach the merits of this case. See *Williams v. Matthews*, 248 Va. 277, 281, 448 S.E.2d 625, 627 (1994) (mandamus lies for failure to perform ministerial duties). Boler, though pro se and possessing only a

limited understanding of the vagaries of the legal system, undertook the more proper course of action to secure the process she was due, that of approaching the Circuit Court directly. This Court, upon Boler's previously granted motion to proceed in forma pauperis and her subsequent motion to be heard at Calendar Control in assertion of this Court's jurisdiction, granted hearing on whether this Court had jurisdiction.

When a lower court procedurally impedes appeal by failing to transmit its case papers to the upper court under the mistaken belief the Circuit Court does not have jurisdiction *and* the appellant has taken all steps in the lower court properly to invoke the jurisdiction of the Circuit Court, then, in effect, the upper court has already acquired jurisdiction over the appeal. This Court "always has jurisdiction to determine whether it has subject matter jurisdiction. . . ." *Morrison v. Bestler*, 239 Va. 166, 170, 387 S.E.2d 753, 755 (1990).<sup>3</sup> Here, while the GDC did not transmit the relevant case papers to this Court, this Court acquired jurisdiction to determine the appropriateness of the appeal by the filing of the notice of appeal in the GDC. A mandamus proceeding is thus unnecessary. This Court possessed jurisdiction over the cause and merely did not have the GDC's case papers. The failure of the GDC to transmit timely such papers to the Circuit Court is not jurisdictional but rather merely affects the *docketing* of the case. See Va. Code § 16.1-112.<sup>4</sup>

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<sup>3</sup> While it is arguable that direct approach of this Court to determine its jurisdiction when the GDC refuses to transmit the case papers could lead to frivolous filings, the Circuit Court is well equipped to adjudicate and address improper claims of jurisdiction made to this Court. See *Ford Motor Co. v. Benitez*, 273 Va. 242, 639 S.E.2d 203 (2007).

<sup>4</sup> In addition to enabling the orderly docketing of cases on appeal de novo, Code § 16.1-112 also serves as the mechanism for transmitting relevant funds from the lower court to the Circuit Court. As it turns out in this case, no funds were being held by the GDC. Arguably, the Circuit Court would not have been prevented from trying Boler's appeal de novo upon certified copies of the lower court case papers without formal



The GDC having been divested of jurisdiction over the case by virtue of Boler's appeal, the obtaining of the case papers from the GDC became the province of this Court's inherent power to exercise the jurisdiction afforded to it by the General Assembly to adjudicate those causes properly entrusted to this forum. More explicitly, the Circuit Court has "appellate jurisdiction in all cases . . . in which an appeal may, as provided by law, be taken from the judgment or proceedings of any inferior tribunal." Va. Code § 17.1-513. Implicit in the jurisdiction conferred by statute is the power to make orders to enforce such authority. The Calendar Control Judge thus appropriately set a hearing in this matter before the undersigned judge to consider whether the bond set by the GDC judge was required to perfect the appeal, i.e., for this Court to determine its own jurisdiction. If the rule were otherwise, upon notation of an appeal, the GDC could thwart the jurisdiction of the Circuit Court by its inaction in failing to transmit the relevant papers and funds held on account of the case. It is not the transmission of the case papers which creates the jurisdiction of the Circuit Court but rather the filing of the notice of appeal. See Va. Code § 16.1-107. Albeit via a circuitous route, the case is properly before this Court for consideration.

Virginia Code § 16.1-107 sets out the requirements for an appeal from courts not of record in this unlawful detainer action. Virginia Code § 16.1-107(A) requires a bond be posted in order to perfect an appeal; Code § 16.1-107(B) exempts indigent defendants from posting a bond except in limited circumstances; Code § 16.1-107(C) sets out specifications for the bond in cases involving unlawful detainer for a residential dwelling

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transmission of the file, much as is done in the situation of bail review appeals, particularly in this case where no transmission of funds from the lower court was required.

unit; Code § 16.1-107(D) concerns the conditions of the appeal; and Code § 16.1-107(E) requires the appellant to pay fees as set by the court.

At issue in this case is the relationship between Section B and the new text in Section C of Virginia Code § 16.1-107. The GDC appears to have concluded, and Cedar Ridge argues, that section C provides an exemption from the indigency waiver of bond on appeal. This Court finds this interpretation misconstrues the new statutory provision.

It is presumed “the General Assembly, in framing a statute, chose its words with care.” *Halifax Corp. v. First Union Nat’l Bank*, 262 Va. 91, 100, 546 S.E.2d 696, 702 (2001). “When statutory terms are plain and unambiguous, [courts] apply them according to their plain meaning without resorting to rules of statutory construction.” *Smith v. Commonwealth*, 282 Va. 449, 454-55, 718 S.E.2d 452, 455 (2011) (citing *Halifax Corp.*, 262 Va. at 99-100, 546 S.E.2d at 702). Section B states that “in *all civil cases, except trespass, ejectment, unlawful detainer against a former owner based upon a foreclosure against that owner, or any action involving the recovering [of] rents, no indigent person shall be required to post an appeal bond. . . .*” Va. Code § 16.1-107(B) (emphasis added). Subsequently, Section C states, “In cases of *unlawful detainer for a residential dwelling unit*, notwithstanding the provisions of § 8.01-129, an appeal bond shall be posted by the defendant with payment into the general district court in the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due, as contracted for in the rental agreement, and as amended on the unlawful detainer by the court. . . .”<sup>5</sup> Va. Code § 16.1-107(C) (emphasis added).

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<sup>5</sup> Code § 8.01-129 does not modify the indigency exception and states in relevant part:

When interpreting statutes, courts “have consistently applied the time-honored principle *expressio unius est exclusio alterius*. That rule recognizes the competence of the General Assembly to choose its words with care. In applying it, this Court holds that the mention of specific items in the applicable statute implies that all items omitted were not intended to be included. *GEICO v. Hall*, 260 Va. 349, 355, 533 S.E.2d 615, 617 (2000). “[B]ecause [a] statute specifically lists exceptions . . . , those exceptions are the only ones allowed by law.’ *Jackson v. Fidelity & Deposit Co.*, 269 Va. 303, 313, 608 S.E.2d 901, 906 (2005).” *Virginia Dep’t of Health v. NRV Real Estate, LLC*, 278 Va. 181, 187–88, 677 S.E.2d 276, 279 (2009).

Section B provides a specific list of exceptions to the general rule that indigent persons are not required to post bond. Those exceptions, “trespass, ejectment, unlawful detainer against a former owner based upon a foreclosure against that owner, or any action involving the recovering [of] rents,” are therefore the only exceptions contemplated and allowed by the law. *Jackson*, 269 Va. at 313, 608 S.E.2d at 906. Section C, a July 1, 2019 amendment to the Code, concerns “unlawful detainer for a residential dwelling unit,” the cause of action in this case as pled. However, Section C does not mention the indigent nor does it purport to create a new exception for this action. Unlawful detainer for a residential dwelling unit is simply *not* one of the listed exceptions to the general rule waiving bond for the indigent in Section B.

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When the appeal is taken by the defendant, he shall be required to give security also for all rent which has accrued and may accrue upon the premises, but for not more than one year's rent, and also for all damages that have accrued or may accrue from the unlawful use and occupation of the premises for a period not exceeding three months.

Cedar Ridge posits Section C requires bond be set in every appeal of an unlawful detainer judgment involving a residential unit. If Cedar Ridge were right, the impact would be that all indigent residential tenants appealing an adverse ruling on an unlawful detainer from the GDC would be required to post bond, while indigent tenants appealing a commercial building unlawful detainer would be exempt from such bond. This Court “must give effect to the legislature’s intention as expressed by the language used unless a literal interpretation of the language would result in a manifest absurdity. If a statute is subject to more than one interpretation . . . [this Court] must apply the interpretation that will carry out the legislative intent behind the statute.” *Conyers v. Martial Arts World*, 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007) (internal citations omitted). Cedar Ridge’s reading would appear to lead to the interpretation the General Assembly intended to give greater procedure appellate rights to the indigent being evicted from their businesses rather than from their home. In effect, Cedar Ridge’s position is that Section C restricts Section B in a manner that the purported exception swallows the indigency rule, an absurdity. Such interpretation is contrary to established principles of statutory interpretation.

This Court has the duty to “interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal.” *VEPCO v. Prince William Co.*, 226 Va. 382, 388, 309 S.E.2d 308, 311 (1983). Under Cedar Ridge’s countervailing interpretation, Section B and C would be locked in conflict, the former creating a broad indigency exception from posting appellate bond, the latter taking such exception back in residential cases. Instead, Section C details the specific bond to be posted, *by non-indigent persons in unlawful detainer cases or indigent persons being sued for mere rent*

*and not unlawful detainer.*<sup>6</sup> This section requires the bond be “in the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due, as contracted for in the rental agreement, and as amended on the unlawful detainer by the court,” which merely modifies the general bond provision of Section A, “bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one,” to accommodate the circumstances of such an action.

Therefore, because this action for unlawful detainer for a residential dwelling unit does not qualify for any of the exceptions enumerated in Section B, an indigent appellant is not required by Virginia Code § 16.1-107 to post the bond described in Section C. It is undisputed Boler is indigent, and this Court has entered an order finding her such and waiving costs and fees in this case. Thus, the appeal was properly noted, and this Court has jurisdiction to consider the merits of the case.

**2. Cedar Ridge did not comply with HUD regulations for evicting a tenant and therefore its unlawful detainer claim must be dismissed**

At trial, defense counsel presented the Court with HUD Occupancy Handbook Chapter 8: Termination (“Handbook”).<sup>7</sup> This regulatory document requires that property management for dwellings that fall under the Department of Housing and Urban Development subsidized multifamily housing programs comply with regulations and procedures in dealing with tenants.

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<sup>6</sup> Boler’s rent was current and there was no accompanying claim in this cause for nonpayment of rent.

<sup>7</sup> At this juncture, defense counsel made a motion for summary judgment on this issue. The Court denied the motion for summary judgment, finding that there were material facts in dispute, namely, the terms of the Lease and their meaning.

According to the first chapter of the Handbook, its purpose is as follows:

HUD-subsidized multifamily properties represent an important and valuable resource in addressing the nation's affordable housing needs. The successful delivery of this housing resource to the people who need it depends on effective occupancy policies and procedures. HUD's occupancy requirements and procedures ensure that eligible applicants are selected for occupancy, that tenants receive the proper level of assistance, and that tenants are treated fairly and consistently.

HUD Handbook 4350.3, "Occupancy Requirements of Subsidized Multifamily Housing Programs," 1-1(A).

At trial, there was some disagreement as to whether the Lease Boler signed with Cedar Ridge required the notices in the Handbook. However, a close review of the Lease by the Court reveals such agreement unambiguously contemplates the existence of and obligations under the HUD regulations.

First, the Lease states, "Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this agreement." Lease 23(b). This is clearly conjunctive language encompassing all four sources of authority named. Further, compliance with HUD regulations is listed first, not as an afterthought that Cedar Ridge might have overlooked.

Second, the provision in the Lease describing the notice required by the Lease reads,

If the landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice and the grounds for the proposed termination. If the Landlord is terminating this agreement "for other good cause" the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the *manner required by HUD* at least 30 days before the date the Tenant will be required to move from the unit and in accordance with the State law requirements. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. *Any HUD-required notice period may*

*run concurrently with any notice period required by State or local law. All termination notices must:*

- Specify the date this Agreement will be terminated;
- State the grounds for termination with enough detail for the Tenant to prepare a defense
- Advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand delivered or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and
- Advise the Tenant of his/her right to defend the action in court

Lease 23(e) (emphasis added). Again, the Lease clearly recognizes the requirements of the HUD regulations. In fact, several of the notice requirements included in the Lease itself borrow language directly from the Handbook.

The Lease includes multiple references to HUD regulations and requirements for terminating the tenancy. Cedar Ridge was contractually obligated, in addition to obligations it owed to HUD as a participant in the program, to abide by the Handbook procedures when terminating Boler's tenancy.

Having established Cedar Ridge was obligated to comply with the HUD regulations, the Court must determine whether Cedar Ridge did in fact comply. The answer is plainly, no. Cedar Ridge failed, in the "Thirty Day Termination Notice" ("Termination Notice") dated June 20, 2019, to comply with several of the Handbook requirements, namely: to provide a specific date of termination, to advise the tenant of her right to present a defense, to advise the tenant of a 10 day period in which to discuss the termination; and to advise the tenant that reasonable accommodations must be provided for persons with disabilities.

The Handbook provides:

2. Termination notice.

A. If the owner proposes to terminate a lease, the owner must give the tenant written notice of the proposed termination.

b. for tenants with a disability, the notice must be provided in a form accessible to the tenant.

c. When an owner terminates tenancy, written notice must be provided to the tenant and must:

- (1) State the specific date the tenancy will be terminated;
- (2) state the reasons for the action with enough detail for the tenant to prepare a defense;
- (3) Advise the tenant that remaining in the unit on the termination date specified in the notice may result in the owner seeking to enforce the termination in court, at which time the tenant may present a defense;
- (4) Advise the tenant that he/she has 10 days within which to discuss termination of tenancy with the owner. The 10-day period begins on the day that the notice is deemed effective . . . ;
- (5) advise that persons with disabilities have the right to request reasonable accommodations to participate in the hearing process . . . .

HUD Handbook 4350.3, 8-13.

The Termination Notice sent to Boler was deficient in several ways. First, it did not state the specific date when the tenancy would be terminated. The notice merely says, "if you fail to vacate by 30 days from service of this notice upon you, then you will be subject to a suit for eviction." Cedar Ridge argues this language clearly meets the requirement as one could easily add thirty days to the date of service, and that "there is no requirement that cardinal numerals be written out for the tenant." Plaintiff's Post Trial Memorandum ("Pl.'s Memo").

Besides the fact the Termination Notice provides a time frame in which the tenant "will be subject to a suit for eviction," rather than a *date* "the tenancy will be terminated," the Court finds Cedar Ridge's assertion the specific date requirement does not, in fact, require a specific date to be unpersuasive. An undefined term must be "given its ordinary



meaning, given the context in which it is used.” *Virginia Dep’t of Taxation v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980). The ordinary meaning of “specific date” is a calendar date, presented in an unambiguous fashion, or what this Court refers to in its docketing system as a “date certain.” The specific date provision’s inclusion is, in HUD’s aims of fair and consistent treatment, designed to make sure that both tenant and landlord have the same, clear understanding of when the lease agreement will cease to require each to perform their respective obligations of the tenancy.

Second, the Termination Notice did not “advise the tenant that he/she has 10 days within which to discuss termination of tenancy with the owner.” HUD Handbook 4350.3, 8-13. Again, Cedar Ridge claims compliance with this provision by the inclusion of a vague statement in the notice. The closing line of the Termination Notice states, “[i]f you should have any questions or concerns regarding this matter, you can contact me at my office.” Cedar Ridge claims this “right is broader than that set for in the regulation or Lease and that thus, the omission of the exact words “10 days” in the notice is immaterial.” Pl.’s Memo. The Court takes issue with this argument for several reasons. The Termination Notice is signed by, imputing that “me” in this sentence refers to, counsel for Cedar Ridge and not the owner/landlord as required in the regulation *and* in the Lease. Elsewhere in the Termination Notice, the landlord is referred to specifically as such, the courtesy closing to the letter being the only place where the language refers to the attorney specifically.

This language also does not provide notice of a “right,” nor is it as specific as the HUD Handbook regulation and Lease require. Again, bearing in mind the intention of HUD

to treat tenants fairly and consistently, the 10-day requirement is clear. The tenant may discuss "*termination of tenancy with the owner.*" HUD Handbook 4350.3, 8-13 (emphasis added). The Termination Notice does not notify Boler she may discuss anything at all with the owner or landlord, merely that if she has questions about "this matter" she can speak to the attorney who drafted the letter. Nor does it give her a timeframe in which to do so, neglecting to instill the urgency implied by the HUD regulations and the Lease agreement.

Third, the Termination Notice does not advise the tenant that, if and when the landlord seeks to enforce the termination with a suit for eviction in court, "the tenant may present a defense." HUD Handbook 4350.3, 8-13. Cedar Ridge contends that this requirement is met by the inclusion of the language, "[i]f you fail to vacate by 30 days after service of this notice upon you, then you will be subject to a suit for eviction and be held responsible for all costs and damages incurred by landlord by reason of your breach and failure to vacate, including reasonable attorney's fees," in the Termination Notice because "being subject to a suit for eviction imparts the same information." Pl.'s Memo.

If the notice of being subject to a suit for eviction was equivalent to notice that the tenant may present a defense, HUD would not have included *both* notices in the Handbook. HUD, aiming to provide clear and fair information to tenants who in many cases may not have a sophisticated understanding of the legal system or the rights litigants possess, instructed owners and landlords to give tenants specific notices of those rights. Notice a suit may be impending and notice of a right to defend that suit, are quite simply two separate concepts. Cedar Ridge was required to notify Boler of her right to present a defense at an eviction trial and did not do so.

Fourth, the Handbook requires landlords to “advise that persons with disabilities have the right to request reasonable accommodations to participate in the hearing process.” HUD Handbook 4350.3, 8-13. Nowhere in the Termination Notice is the word disability or accommodation mentioned. Cedar Ridge did not include any form of such notice.

Despite Cedar Ridge’s arguments the deficiencies in the notice are “immaterial and of no import,” the Handbook and the Lease clearly convey and impart obligations to the landlord when terminating a tenancy. Constructive compliance with the regulations is not contemplated, nor was it even demonstrated in this case.

Cedar Ridge failed to comply with the obligations laid before it by the Lease and the Handbook. Therefore, the Court finds the notice given in this case is woefully defective, and the unlawful detainer action must be dismissed.


## **CONCLUSION**

This cause is before the Court on the appeal of Defendant, Nicole Boler, of her eviction as a tenant under a Lease with Plaintiff, FCRHA Cedar Ridge LP, in an unlawful detainer action. The Court has considered the following notable issues for adjudication: 1) Whether the Court has jurisdiction in this appeal de novo in light of Boler’s failure to post bond in the amount of attorney’s fees and costs awarded as required by the Fairfax General District Court in order to perfect the appeal; and 2) Whether Cedar Ridge complied with the requisite legal notices to Boler in order to maintain successfully an unlawful detainer action.

This Court holds no appeal bond is required in this action for unlawful detainer as Boler is indigent; that the Circuit Court possessed jurisdiction to hear the trial de novo of the cause upon the filing of Boler's notice of appeal in the GDC; that this Court properly ordered the GDC to transmit its case papers to the Circuit Court for adjudication of the suit; and that Cedar Ridge failed to give Boler the requisite legal notices required for an eviction by the terms of the Lease, U.S. Department of Housing and Urban Development regulations, and applicable Virginia and federal law, requiring the unlawful detainer action be dismissed.

Thus, this Court shall by separate order dismiss the unlawful detainer action of Cedar Ridge against Boler, and until such time, THIS CAUSE CONTINUES.

Sincerely,

  
David Bernhard  
Judge, Fairfax Circuit Court

**OPINION LETTER**