FILED
OCT 21 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JANE CLEMENSON,

Appellee,

vs.

BEVERLY GRIMM,

Appellant.

Filed October 21, 1980

0-214
2-64243

Appeal from Polk District Court - C. Edwin Moore, Judge.

Defendant-tenant seeks discretionary review of district court's ruling affirming a lower court judgment for plaintiff-landlord in a forcible entry and detainer action pursuant to chapter 648, The Code 1979. Defendant contends that section 562A.27(2), The Code, requires a landlord to serve a tenant with a three-day notice to cure default before eviction proceedings can be implemented under chapter 648. REVERSED AND REMANDED.

Robert W. Powers and Stephen D. Rocha, Des Moines, Iowa, for appellant.

Tom Isaac, Des Moines, Iowa, for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant-tenant, Beverly Grimm, seeks discretionary review of district court's ruling affirming a lower court judgment for plaintiff-landlord in a forcible entry and detainer action. Defendant contends that section 562A.27(2), The Code 1979, requires a landlord to serve a tenant with a three-day notice to cure default for nonpayment of rent prior to eviction following the three-day notice required by sections 648.3 and 648.4, The Code 1979. We reverse.

Defendant has been a tenant in plaintiff's building since 1975. She entered into a rental agreement with plaintiff in 1978. The building has never had an Inspection Certificate issued pursuant to the Des Moines City Code. The building was condemned by the city in 1975, although plaintiff has since made repairs bringing the building up to substantial compliance with the Housing Code. Plaintiff claims she has an agreement with the City to complete the repairs without further adverse action being taken.

Defendant quit paying rent after the building was posted on August 20, 1979, with a "Red Danger Sign." She paid no rent for September or October. Plaintiff caused a three-day notice to quit to be served on defendant pursuant to section 648.3 and then filed the forcible entry and detainer action in the Small Claims Court for Polk County. Plaintiff served no notice to cure as required by section 562A.27(2). Defendant filed a motion to dismiss plaintiff's petition, alleging that a notice to cure was required. Her motion was overruled by the lower court and affirmed by the district court on appeal. Defendant's subsequent application for discretionary review was granted by a justice of the supreme court. An order staying execution of the lower court's Writ of Removal has been in effect since November 16, 1979.

I. Scope of Review. Our review of the entire record is governed by section 631.16(7), The Code 1979. See also section 648.5, The Code 1979.

II. Notice to Cure. The issue here is whether trial court erred in overruling defendant's motion to dismiss when the evidence showed that plaintiff, prior to filing the forcible entry and detainer action, served defendant with a three-day notice to quit pursuant to section 648.4, but did not serve her with a three-day notice to cure pursuant to section 562A.27(2). The latter section provides:

> If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

We agree with defendant-tenant that error occurred through plaintiff's failure to serve defendant with the three-day notice to cure required by section 562A.27(2), and that this failure precludes adjudication of a cause of action for nonpayment of rent in accordance with the terms of the rental agreement. Our decision on these facts, however, does not reach the broader issue of whether the notice provisions of sections 562A.27(2) and 648.4 require two separate three-day notices or whether both notices legally can be combined in one document.

We reverse and remand this case for entry of an order dismissing plaintiff's action.

REVERSED AND REMANDED.