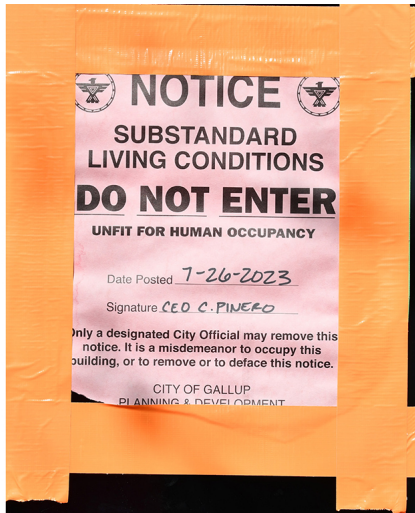


Red tag rebuke

Written by By Molly Ann Howell Managing Editor
Thursday, 23 November 2023 08:25



Lawsuit alleges city failed to protect evicted tenants' rights

An eviction is not an easy obstacle to overcome, especially if an occupant is only given several days at most to clear out. Abruptly leaving a stable living space with no alternative or plan can lead to emotional, financial, and even physical strains.

Five local residents alleged that they experienced the pain and inconvenience of an immediate eviction from their apartments, located at 107. E. Hill Ave, in August.

The group filed a lawsuit against the city Nov. 1.

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So, why not a 30 day notice?

The apartment complex, owned by Jordan Investments, LLC, was red-tagged by the city and deemed a danger to occupants, hastening the near immediate eviction of residents.

But, the dilapidated conditions of the building and reports to the city and landlord by tenants is by no account recent news.

New Mexico Center on Law and Poverty alleged in a Nov. 1 press release that the city refused to enforce city code against Jordan Investments for years, despite multiple requests for help from tenants. Requests for repairs were reportedly ignored by the property owner, although rent increased significantly, NMCLP claimed.

Earlier this year, residents of the apartment complex reportedly asked for the city's assistance in addressing the landlord's continued and alleged violations of the law.

Court documents state that Jordan Investments, Gallup code enforcers, the Gallup Fire Department, and the city in general have known about the issues at the apartment complex as early as 2021.

Prior to the eviction, on July 20, tenants of the building met with code enforcement officers, City Councilor Linda Garcia, Dist. 1, and Gallup Police Chief Erin Toadlena-Pablo to express their frustration with the city and landlord over the lack of code enforcement and overdue repairs.

Gallup's Planning and Development Director C.B. Strain, who serves as the city's code official, told the tenants during the meeting that the building would be red-tagged if found uninhabitable, and they would be forced to move out.

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The tenants reportedly agreed to these terms, and from there, events impacting their welfare progressed quickly.

Six days after the meeting, on July 26, the building was red-tagged by the city's code enforcement officers. Residents were ordered to move out within 24 hours, but the deadline was later extended to Aug. 1. In all, nine families, including children and elders, had to gather their belongings and leave their homes.

New Mexico Center on Law and Poverty claimed that no information was provided to the residents as to what violations were found or when they would be remedied.

"No information was provided to the residents as to what violations were found or when they would be remedied," the press release states. "Residents were not provided with information about a return date or even a right to appeal the determination by the city."

REASONS FOR EVICTION

According to a city of Gallup July 27 press release, the property was plagued by the following issues: insect-infested; damaged windows and doors; ceilings with leaks and growing mold; walls with holes, cracks; growing mold; damaged and blood-stained flooring and carpet throughout; graffiti on all interior surfaces; unstable stairs in the common areas; damaged plumbing and light fixtures; and multiple other code violations.

The release also stated "[the] property is not fit for human habitation and is dangerous both to those who occupy it and the surrounding community."

In a July 31 interview with the *Sun*, interim city manager Jon DeYoung said the city would help the tenants find new places to live.

“We have done everything we can to assist in finding them spaces to go,” DeYoung said. “Currently, the Southwest Indian Foundation has been able to find housing for all the residents who willingly left last week and are able to assist going forward with those who are still there at the facility and who chose not to leave voluntarily.”

But now, the tenants are claiming the city didn’t do enough, as laid out in their lawsuit.

Roy Benally, 81, a co-plaintiff in the lawsuit against the city, lives on a fixed Social Security income, and feels overwhelmed by the sudden move. He agreed to an interview with the *Gallup Sun*.

“I was happy living in my apartment at 107 E. Hill Ave. because it was affordable and it’s close to the hospital where I get medical treatment,” he said. “It needed some repairs, but I thought the owner and the city would help us. When I was suddenly forced to leave, I didn’t know where to go. I didn’t know how I was supposed to pack up all my stuff in one day.”

Benally received temporary help from a non profit, but he claims the organization can no longer help him.

“We shouldn’t be punished for asking the city to address the property owner’s neglect,” he said.

Lawsuit co-plaintiff Ronald Yazzie, said his family was evacuated last winter due to a nearby fire. He shared the apartment with his wife Taylor Sam and their 2-year-old son. When it was safe to return home, he alleges there was damage to the family’s apartment, including a broken window.

“It was freezing in our apartment, and I was concerned about criminal activity that started to escalate in the area, so I reached out to the property owner to request repairs like I was supposed to,” Yazzie said. “I never heard back. That’s around the time I learned my neighbors wanted to try to get the city to help us, and I was relieved and got involved. I never expected the

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city to abandon us like this.”

In a Nov. 6 interview with the *Sun*, DeYoung dismissed the claim that the city had abandoned the tenants. He noted that the property owner and local attorney David Jordan was initially given a deadline of Aug. 10 to address the violations before the city would do a follow-up inspection.

At the time, Jordan was reportedly working on the repairs.

“As long as [Jordan’s] working on it and in communication [with the city] then he is able to show us that he’s brought everything up into the city code standards, then he can operate again,” DeYoung explained.

Jordan didn’t respond to a request for an interview.

Meanwhile, Sovereign Hager, an attorney at the New Mexico Center on Law and Poverty, said the City of Gallup is in the wrong in this situation.

“This tight knit community is exactly what makes New Mexico a great place to call home,” she said. “The trauma that comes when a community is evicted with no notice, and through no fault of their own, cannot be understated. The New Mexico Constitution protects New Mexicans’ homes and renters have a right to due process before being forced to move. The City of Gallup must recognize and protect the rights of families that rent in the city.”

THE RIGHT TO DUE PROCESS

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When it comes to the right of due process, Gallup follows the International Property Maintenance Code. The lawsuit claims that the IPMC does not give tenants the right to due process.

In order to fight this claim, the tenants were scheduled to meet in front of the Board of Appeals Sept. 25, but that meeting was later canceled due to the appellants not providing a written statement of the claims or issues for the Board to review. The appellants did provide a statement the next day, and the hearing was rescheduled for Oct. 27.

The appellants claimed that the city failed to provide constitutionally required notice and appeal rights to the residents of the building before they were told to leave.

However, the IPMC states that if a building is inhabitable, anyone's property right is null.

During the hearing, the city's Building Inspector John Margis testified and said that the building's condition was among the worst he had ever inspected. Gallup Fire Chief John Pairett said that if the building ever caught fire people would have about two minutes to evacuate. He also explained that from a scale of 1 to 10, he would place 107 E. Hill Ave. at a nine, meaning there was a high likelihood of serious injury or fatality if a fire were to break out.

The appellants also claim that the city should be required to make the repairs on the building. They referenced Section 109.4 of the IPMC, saying that the Code Officer is required to perform the work that will address the emergency if they order an immediate evacuation of a structure.

But in their final decision, the Board of Appeals determined that nothing in Section 109 requires the City to make the repairs to 107 E. Hill Ave. It goes on to state that the city can't take measures in an emergency to protect a building's occupants or the public unless it has the cash on hand needed to rehabilitate the structure.

The Board estimated that this amount would equal "hundreds of thousands of dollars, or more."

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They ultimately concluded that the city is not responsible for coming up with the money or making repairs.

The city is also not required to find tenants temporary housing, according to the IPMC.

As a whole, the appeal was ultimately denied Nov. 1.

Now, the lawsuit asks the court to order the city to allow displaced tenants to reenter the property with a deadline for the landlord or the city to make repairs. If the city makes repairs, they would bill Jordan, as required in the Gallup property code in an emergency. The lawsuit also asks the court to enter an order declaring the city's property code unconstitutional because it does not provide notice and appeal rights to tenants in the event of a condemnation.

The complaint is asking the Court to award damages to the plaintiffs due to their suffering and expenses.

The City of Gallup, the defendant in the court case, filed an entry of appearance, which means they stated that an attorney would be representing them, Nov. 13. No other information or further court dates were available at press time.

By Molly Ann Howell
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