

ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

KATHLEEN TERRY, TRUSTEE,
SUN TERRACE TRUST,
Appellant,

v.

COUNTY CIVIL #07-009473CO-41
CIRCUIT APPEAL #07-000068AP-88B

JAMES HOWARD,
SAMANTHA APPLING,
STEPHEN GLOGOWSKI,
and all others in possession,

Appellees.

FILED
St. Petersburg Branch
2008 OCT -8 PM 1:54
KEN BURKE
CLERK OF CIRCUIT COURT

ORDER AND OPINION

THIS CAUSE came before this Court pursuant to the Notice of Appeal filed by the Appellant/Plaintiff on November 15, 2007. The Court having reviewed the court files, and being otherwise advised in the premises,

FINDS AND ORDERS the following:

1. This case originated on September 21, 2007, in the trial court when the Plaintiff/Appellant filed its Complaint for Eviction and Damages. Under Count I of its Complaint, the Appellant alleged that the Defendants had failed to pay the rent due September 14, 2007, and that the Defendants had been served with a three-day notice to pay or surrender possession. A copy of the written residential lease agreement for the residential premises was attached to the Complaint for Eviction as was the three-day notice.
2. On September 28, 2007, the Defendants, Appellees Samantha Appling and James Howard filed a hand-written answer to the complaint. The essence of the answer is that the premises allegedly have a roach infestation, that there are repairs to be made, and the Defendants state in their written answer that "I have the rent money and utilities money (all of it). I refuse to pay, because problems are not fixed."
3. On October 1, 2007, Plaintiff filed its Motion for Default claiming that the Defendants had failed to deposit any rent into the Court Registry as required by §83.60(2) of the

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Florida Statutes; however, on October 4, 2007, the trial judge issued a "Memorandum" indicating that the Court received the Plaintiff's application for default, but that the Court required the matter be set for hearing. It appears that the matter was heard by the trial court on October 16, 2007, whereupon the trial court entered a brief Final Judgment For The Defendant indicating that the Plaintiff's motion under Count I for possession should be denied, and the court simply ordered and adjudged that judgment is entered in favor of the Defendants and that the matter is dismissed with prejudice. It is this Final Judgment for the Defendant issued on October 17, 2007, that Plaintiff appeals.

4. On January 22, 2008, Plaintiff/Appellant filed its Appellant's Brief, and the Certificate of Service on Page 14 indicates that a copy was mailed on January 21, 2008, to each of the three Defendants/Appellees. On March 13, 2008, this Court entered an Order requiring the Appellees to file and serve their answer briefs within thirty (30) days thereof, and also put the Appellees on notice that their failure to comply with the Court order to file an answer brief would result in this Court considering the merits of the appeal based solely on the initial brief and the appellate record. The Court file indicates that none of the three Appellees have filed any answer brief or additional papers in this case.
5. Pursuant to this Court's Order of March 13, 2008, this court deems it appropriate to consider this appeal based solely upon the court files in their existing state. There is also no record of the transcript of the final hearing before the trial court on October 16, 2007.
6. The law is clear in Florida under Part II of Chapter 83 that a tenant must pay into the Court Registry the amount alleged unpaid if such amount is contested, and if the tenant interposes any defense other than payment, that the tenant shall pay into the Registry of the Court the accrued rent as alleged in the Complaint as it accrues during the pendency of the proceeding. See §83.232; §83.60(2).
7. This case clearly falls under this statutory requirement that rent be paid into the Court Registry; yet there is no indication that the tenants at any time complied with this statutory requirement, but they were still allowed to present evidence and somehow prevailed at the trial court level although the trial court failed to set forth any specific findings in its Final Judgment denying Plaintiff's eviction action. Section 83.56(5) provides, *inter alia*, that the court may not set a date for mediation or trial unless the deposit provisions of §83.60(2) have been met, but shall enter a default judgment for the

- removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with §83.60(2).
8. Again, there is no indication as to why the trial court failed to comply with and enforce this statute, and it is clear on appeal that a default judgment should have been entered against the Defendants based upon their failure to comply with the rent deposit requirements described herein.
 9. Accordingly, the Final Judgment for the Defendants issued by the trial court on October 17, 2007, is hereby reversed and this case is hereby remanded to the trial court for any further proceedings consistent herewith, including issuing a writ of possession in favor of Appellant.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this 7 day of ~~September~~ ^{October}, 2008.

Original opinion entered by Circuit Judges J. Thomas McGrady, Peter Ramsberger, & Amy M. Williams

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