

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

PASCO COUNTY HOUSING
AUTHORITY,

Appellant,

UCN: 512015AP0018APAXWS

Appeal No: 2015-AP-0018-WS

v.

L.T. No: 15-CC-3043-WS

CHELSEA TIFFANY WHITTAKER,
Appellee.

On appeal from County Court,
Honorable Paul Firmani,

Shelly May Johnson, Esq.,
for Appellant,

Chelsea Tiffany Whittaker,
Appellee, *pro se*.

ORDER AND OPINION

The trial court erred by granting judgment in favor of Appellee finding that by continuing to accept late payments, Appellant was estopped from evicting Appellee without first giving notice that late payments would no longer be accepted. The order of the trial court is reversed and remanded for further proceedings.

STATEMENT OF THE CASE AND FACTS

Appellant, Pasco County Housing Authority ("PCHA"), oversees the operation of public housing, rural development, and Section 8 for persons of low income in Pasco County. Appellee entered into a lease with PCHA in October, 2014. The Lease Agreement requires Appellee to pay \$308.00 per month due on the first day of each month. On August 7, 2015, a Notice for Rent or Possession (a three-day notice) was served on Appellee by PCHA for non-payment of rent for July 2015 and August 2015 for a total past due amount of \$380.00. The Notice demanded that either the entire amount be paid within three days or Appellee vacate the premises. Appellee did not pay the past due amount or vacate the premises. On September 1, 2015, a Notice of Non-Compliance with Opportunity to Cure was served by PCHA for past due late fees for July 2015 and August 2015 in the amount of \$60.00. The Notice informed Appellee that her failure to make this payment by September

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8, 2015, would result in the termination of her lease and require her to vacate the premises on September 9, 2015.

On September 10, 2015, PCHA filed a complaint against Appellee to recover possession of its rental property. On October 1, 2015, Appellee posted the back rent into the court registry and requested a hearing. After a final hearing on December 1, 2015, the lower court entered an order in favor of Appellee.

STANDARD OF REVIEW

"[A]n appellate court's review of a trial court's finding on factual matters is limited to whether they are supported by competent, substantial evidence." *Griffin Indus., LLC v. Dixie Southland Corp.*, 162 So. 3d 1062, 1066–67 (Fla. 4th DCA 2015) (citations omitted).

LAW AND ANALYSIS

PCHA raises two issues on appeal. First, PCHA contends that the trial court erred by finding that PCHA did not establish a material breach of the lease since Appellee had been consistently late making payments, and PCHA accepted the late payments. The lower court correctly concluded that a landlord may be estopped from evicting a tenant for late payments when the record establishes that the landlord consistently accepted late payments. See *Prairie Oaks Apartment, LTD v. Kiddie Robinson*, 20 Fla. L. Weekly Supp. 800a (Fla. 8th Cir. Ct. Apr. 26, 2013) (holding landlord was barred from evicting tenant without giving additional notice that late payments would no longer be accepted). However, this Court finds that the *Prairie Oaks* case is readily distinguishable from the present case. In that case, a pattern of consistently accepting late payments was clearly established in the record, including detailed logs and ledgers that indicated the tenant was sent a notice to pay or vacate each month for six months, and the landlord accepted the late payments after each notice. In this case, no such evidence was presented to conclusively establish that Appellee was consistently late or that PCHA routinely accepted late payments from Appellee.

Next, PCHA alleges that it provided adequate notice of noncompliance as required by the Florida Statutes and the Lease Agreement, and that it was otherwise under no obligation to accept a late payment from Appellee or to discuss the acceptance of a late payment with Appellee. In its December 1, 2015 Order, the lower court discusses Appellee's testimony that she called the Housing Authority Manager and indicated that she would be able to pay everything in full by September 19, 2015. Although both of the notices

that were sent to Appellee stated that she could "contact the Housing Authority to discuss the termination of [her] tenancy" within ten days, that does not prohibit the Housing Authority from continuing to take steps to evict the tenant under the terms of the lease and the provisions of Florida's eviction laws. See *Thorpe v. Hous. Auth. of City of Durham*, 393 U.S. 268, 278 (1969).

Pursuant to section 83.56(3), Florida Statutes, "[i]f the tenant fails to pay rent when due and the default continues for 3 days . . . after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement." Additionally, Provision 5 of the Lease Agreement between PCHA and Appellee provides that "[i]f the tenant does not pay the full amount of the rent shown in paragraph 3 by the end of the 5th day of the month, the landlord may . . . terminate this Agreement for non-payment of rent." Accordingly, PCHA was under no obligation to accept the late payment. In fact, "[i]f the landlord accepts rent with actual knowledge of a noncompliance by the tenant . . . the landlord . . . waives his or her right to terminate the rental agreement or bring civil action for that noncompliance." § 83.56(5), Fla. Stat.

CONCLUSION

Competent substantial evidence does not support the trial court's decision that PCHA consistently accepted late payments from Appellee, and Appellee's promise to pay did not estop PCHA from instituting an eviction proceeding. The order of the trial court is reversed and remanded for further proceedings.

It is **ORDERED AND ADJUDGED** that the Order of the trial court is hereby **REVERSED AND REMANDED**.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this 16th day of September 2016.

Original Order entered on September 16, 2016, by Circuit Judges Linda H. Babb, Shawn Crane, and Kimberly Campbell.

Copies furnished to:
Shelly May Johnson, Esq.
Chelsea Tiffany Whittaker