

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED  
IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION

JOHN BAILEY,  
Appellant,

Case No.: 15-000018AP-88A  
UCN: 522015AP000018XXXXCV

v.

TOM FITZGERALD,  
Appellee.

\_\_\_\_\_  
Opinion Filed \_\_\_\_\_

Appeal from Final Judgment  
Pinellas County Court  
Judge Edwin Jagger

John Bailey, Pro se

No appearance for Appellee

**PER CURIAM.**

Appellant, John Bailey, appeals the "Final Judgment-Eviction" entered by the trial court on February 5, 2015. We affirm.

**Statement of Case**

On January 21, 2015, Appellee, Tom Fitzgerald (hereinafter Landlord), filed a "Complaint for Tenant Eviction and Damages" in which it was alleged Mr. Bailey owed \$2,040.00 in accrued rent. On January 29, 2015, Mr. Bailey filed a "Response to Eviction Notice" in which he claimed no rent was due, there was no written agreement, and he had paid rent in the form of work done December 7, 2014, through February 12, 2015. Further, he claimed he was not given a three-day notice.

On February 2, 2015, Landlord filed a "Motion for Court Default" because Mr. Bailey had failed to place the past due rental payments into the registry of the court. On

February 5, 2015, the "Default" for failure to deposit rent money in registry of the court and the "Final Judgment –Eviction" was entered. Mr. Bailey timely appealed the final judgment of eviction.

### **Argument on Appeal**

Mr. Bailey argues that the trial court erred in finding that there was a written rental agreement between the parties as there was no oral or written rental agreement. In the Initial Brief, Mr. Bailey explains that the time and money he spent attempting to improve the building/apartment so that it would pass a government inspection "more than adequately paid rent."

### **Analysis**

The trial court's "Default" and "Final Judgment – Eviction" was entered solely on the basis that Mr. Bailey failed to deposit the accrued rental payments into the registry of the court. Section 83.60(2), Florida Statutes (2015), states:

In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating.

Mr. Bailey did not claim the accrued rent had been paid and did not file a Motion to Determine Rent. Therefore, the trial court properly entered the "Default" against Mr. Bailey and the "Final Judgment - Eviction." The question of whether there was a valid written agreement between the parties or any other issues raised by Mr. Bailey were

never considered by the trial court due to his failure to comply with section 83.60(2).

Affirmed.

**DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this  
2 day of September, 2015.

Original Order entered on September 2, 2015, by Circuit Judges Linda R. Allan,  
Jack R. St. Arnold, and Keith Meyer.

Copies furnished to:

John Bailey  
513 Kirkwood Terrace North  
St. Petersburg, FL 33701

Tom Fitzgerald  
200 Central Ave., Ste. 5127  
St. Petersburg, FL 33701

Hon. Edwin Jagger