

LANDLORD/TENANT COMMITTEE MEETING

February 24, 2012

Presentation by Anthony J. Horky, Esquire

“County Court Orders to Deposit and Disburse Funds (Rent) from the Court Registry: Can the Amount Exceed the Court’s Jurisdictional Limit?”

Issue for Discussion

In an action for possession of real property (nonresidential or residential), whether a county court has the authority to order the tenant to deposit the alleged rent owed into the court registry when the amount of rent exceeds \$15,000? Alternatively, is a county court authorized to enter an order disbursing the rent held in the court register in an amount exceeding its jurisdictional limits?

Short Answer

Arguably, there are two sides to this argument. For purposes of today’s discussion, I am taking the side that says “no,” a county court does not have the authority to order the tenant to deposit rent into the court registry or to order a disbursement of funds in an amount that exceeds the county court’s jurisdictional limits.

My Research

There are differing points of view on this question. I believe the confusion stems from the ambiguity in §§ 34.01 and 34.011, Fla. Stat. and the paucity of decisional law.

In search of the answer, I reviewed the following:

- Florida Law Weekly Supp., 1993 – 2007; jurisdiction and landlord-tenant
- Florida Residential Landlord Tenant Manual, Volumes 1 – 5, Lexis Law Publishing
- Florida Commercial Landlord Tenant Manual, Lexis Publishing
- Florida Jur 2d; jurisdiction and landlord-tenant
- West’s Florida Statutes Annotated: § 34.011 and Chapter 83
- West’s Florida Digest 2d; Deposits in Registry of Courts
- Decisional law using Westlaw access
- West’s Trawick’s Florida Practice and Procedure, 2011 ed.

How I Reached My Conclusion

In coming to my conclusion, I reviewed: (A) Florida Statutes on county court jurisdiction; (B) Chapter 83 on past due rent determinations, money deposited into the court registry and applying for an order to disburse funds from the court registry; (C) pleading requirements for an action for possession; and (D) decisional law from the county court level up through the district courts of appeal.

A. COUNTY COURT JURISDICTION

Section 34.01, Fla. Stat, Jurisdiction of county court, states in part:

(1) County courts have original jurisdiction:

(c) Of all actions at law in which the matter in controversy does not exceed the sum of \$15,000, exclusive of interest, cost and attorneys' fees....

Section 34.011, Fla. Stat. Jurisdiction in landlord tenant cases, states:

(1) The county court shall have jurisdiction concurrent with the circuit court to consider landlord and tenant cases involving claims in amounts which are within its jurisdictional limitations. The county court may issue a temporary and permanent injunction where appropriate for violation of §§ 83.40 et seq.

(2) The county court shall have exclusive jurisdiction of proceedings relating to the right of possession of real property and to the forcible or unlawful detention of lands and tenements, **except that the circuit court also has jurisdiction if the amount in controversy exceeds** the jurisdictional limits of the county court or the circuit court otherwise has jurisdiction as provided in § 26.012. In cases transferred to the circuit court pursuant to Rule 1.170(i), Florida Rules of Civil Procedure, or Rule 7.100 (d), Florida Small Claims Rules, the demands of all parties shall be resolved by the circuit court.

(Emphasis added).

B. NONRESIDENTIAL: Florida Statutes, Chapter 83, Part I.

Pursuant to § 83.232, Fla. Stat., Rent paid into registry of court:

(1) In an action by the landlord which includes **a claim for possession** of real property, the tenant shall pay into the court registry the amount alleged in the complaint as unpaid, or if such **amount is contested**, such amount as is **determined by the court**, and any rent accruing during the pendency of the action, when due, unless the tenant has interposed the defense of payment or satisfaction of the rent in the amount the complaint alleges as unpaid...

If the tenant **contests the amount** of accrued rent, the tenant must pay the amount *determined by the court* into the court registry on the day that the court makes its determination. The court may, however, extend these time periods to allow for later payment, upon good cause shown. Even though the defense of payment or satisfaction has been asserted, the court, in its discretion, **may order the tenant** to pay into the court registry the rent that accrues during the pendency of the action, the time of accrual being as set forth in the lease.

If the landlord is in actual danger of loss of the premises or other hardship resulting from the loss of rental income from the premises, the landlord **may apply to the court** for disbursement of all or part of the funds so held in the court registry.

(2) If the tenant **contests the amount** of money to be placed into the court registry, **any hearing regarding such** dispute shall be limited to only the factual or legal issues concerning:

- (a) Whether the tenant has been properly credited by the landlord with any and all rental payments made; and
- (b) What properly constitutes rent under the provisions of the lease.

(3) **The court**, on its own motion, shall notify the tenant of the requirement that rent be paid into the court registry **by order**, which shall be issued immediately upon filing of the tenant's initial pleading, motion, or other paper.

(5) Failure of the tenant to pay the rent into the court registry pursuant to **court order** shall be deemed an absolute waiver of the tenant's defenses. In such case, the landlord is entitled to an immediate default for possession without further notice or hearing thereon.

(Emphasis added).

RESIDENTIAL: Florida Statutes, Chapter 83, Part II.

Pursuant to § 83.60(2), Fla. Stat. Defenses to action for rent or possession; procedure,

In an action by the landlord for possession of a dwelling unit, if the tenant interposes any **defense** other than payment, 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 which 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. In the event 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 shall be required to deposit only that portion of the full rent for which the tenant is responsible pursuant to federal, state, or local program in which they are participating.(Emphasis added).

Pursuant to § 83.61, Fla. Stat., Disbursement of funds in registry of court; prompt final hearing:

When the tenant has deposited funds into the registry of the court in accordance with the provisions of § 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the **landlord may apply** to the court for disbursement of **all or part** of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, **may award all or any portion of the funds** on deposit to the landlord or may proceed immediately to a final resolution of the cause.

(Emphasis added).

C. PLEADING REQUIREMENTS FOR POSSESSION ACTIONS

At the pleading stage, the jurisdiction of the court is determined by the good faith allegations in the complaint. I looked to Form 5 of the Florida Supreme Court approved landlord-tenant forms. To state a cause of action for possession, a party must plead:

This is an action to evict a Tenant from real property in _____ [insert county in which the property is located] County, Florida.

2. Plaintiff owns the following described real property in the County: _____ [insert legal or street description of the property including, if applicable, unit number].

3. Defendant has possession of the property under a (oral/written) agreement to pay rent of \$ _____ [insert rental amount] payable _____ [insert terms of rental payments, i.e., weekly, monthly, etc.]. A copy of the written agreement, if any, is attached as Exhibit "A."

4. Defendant failed to pay the rent due _____, 20____ [insert date of payment Tenant has failed to make].

5. Plaintiff served Defendant with a notice on _____, 20____ [insert date of notice], to pay the rent or deliver possession but Defendant refuses to do either. A copy of the notice is attached as Exhibit "B."

WHEREFORE, Plaintiff demands judgment for possession of the property against Defendant.

D. DECISIONAL LAW AND ANALYSIS

Not surprisingly, I found little case law on point. Thus, my analysis is a combination of my own statutory interpretation intermixed with several decisions I reviewed. I welcome opposing views on this issue.

Sections 34.01 and 34.011, *Fla. Stat.* state that the county court jurisdiction is limited to actions where the matter in controversy does not exceed \$15,000, and the county court has exclusive jurisdiction of proceedings related to the right of possession, EXCEPT THAT the circuit court also has jurisdiction if the amount in controversy exceeds \$15,000.

What does this mean?

One example of a possession action that exceeds a county court's jurisdiction is when the tenant files a counterclaim for damages in excess of \$15,000. But the inclusion of this example does not mean the exclusion of other examples where a possession action is not within the exclusive jurisdiction of the county court.¹

On the face of a complaint for eviction only, the jurisdiction of the court is exclusive, as the action only seeks the right of possession. The amount of rent to be paid is alleged as is the failure of the tenant to pay it. However, there is an allegation that the 3-day notice is attached to the complaint. An exhibits attached to a pleading is a part of it for all purposes. Fla. R. Civ. P. 1.130(b). If the notice indicates that the tenant has failed to pay rent in excess of \$15,000, then the "amount in controversy" exceeds the county court's jurisdictional limits.

Arguably, in a "pure" possession action as found in Form 5, there is no "amount in controversy" only the right to "possession" is in controversy. But that argument ignores the central focus of the proceeding, especially when the tenant contests the alleged rent owed and/or to be paid into the court registry, and the notice attached to the complaint shows that the amount exceeds \$15,000.

When the tenant contests the amount of rent, the alleged amount of rent owed is the "amount in controversy." See *Alexdex Corp. v. Nachon Enterprises, Inc.*, 641 So.2d 858 (Fla. 1994) (although an action to foreclose a construction lien is an action seeking to judicially convert a lien interest against a land title to a legal title to the land, the central focus is on the actual debt and not the underlying securing property).²

A critical reading of §83.232(1) – (3), Fla. Stat. supports my argument that the amount of past due rent is the "amount in controversy."

A tenant who is sued for possession may contest the amount of rent owed. By contesting the amount of rent to be deposited, the tenant has placed the amount of rent into controversy. An evidentiary hearing is conducted and the county court determines the amount of rent that must be paid by the tenant into the court registry. The county court issues an order that the tenant pay an amount certain into the court registry.

Under this scenario, the county court is exercising its jurisdiction. Therefore, even though the action is for possession only (and not damages for unpaid rent), the contested rent amount is the "amount in controversy."

The same is true if the tenant interposes the defense of payment. The alleged past due rent is placed in controversy. The county court must conduct a trial to determine whether the rent was

¹ See *Lewis v. Williams*, Case No.: COCE 07-10704, Broward County, Florida, 14 Fla. Law Weekly Supp. 982b(2007).

² In *Alexdex*, the Florida Supreme Court held that construction lien foreclosures that fall within the county court's jurisdiction may be filed in either county or circuit court. *Id.* at 862.

paid and how much rent was paid. A trial on the defense of payment makes the rent the “amount in controversy.”

I found one case on point and it supports my opinion. In the case of *Lewis v. Williams*, Case No.: 07-10704 COCE, Broward County, Florida, (2007) the amount of past due rent alleged in the complaint for eviction exceeded \$15, 000. 14 Fla. Law Weekly Supp. 982b. The county court granted tenant’s motion to dismiss on the grounds, *inter alia*, that the county court lacked jurisdiction to grant Plaintiff any relief because the eviction action was based on past due rent exceeding \$15,000. Specifically, the court held:

.... The Court lacks jurisdiction to order Defendant to deposit the alleged rent owed into the Court Registry because the amount is in excess of \$15,000. The Court also lacks jurisdiction to Strike Defendant’s pleadings due to her failure to place the alleged rent owed in to the Court Registry as that sum exceeded \$15,000.

Conclusion

In a proceeding related to the possession of real property, the county court has exclusive jurisdiction, except that the circuit court also has jurisdiction if the amount in controversy exceeds the jurisdictional limits of the county court. When the amount of alleged rent owed exceeds \$15,000, the county court does not have the authority to order a tenant to deposit the rent into the court registry, or to enter an order that the landlord be paid in excess of \$15,000.00 from the funds held in the court registry.