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Landlord-tenant -- In absence of written agreement in lease addressing application of security deposit, landlord has discretion to apply security deposit toward unpaid rent -- Landlord's claim against security deposit is not barred by his failure to comply with statutory notice requirement where lease was not terminated -- Landlord's failure to place security deposit in Florida bank account does not warrant forfeiture of landlord's claim against security deposit -- Error to enter judgment in favor of tenant for amount of security deposit

NATHAN PEKOFISKY, Appellant, vs. HARVEY GOLDEN AND MERYLEE GOLDEN, Appellees. 11th Judicial Circuit in and for Dade County, Appellate Division. Case No. 92-288AP. Opinion July 30, 1993. An appeal from COUNTY COURT, Dade County, Florida, LAUREN LEVY MILLER, Judge. MARK A. MARDER, for appellant. RYAN E. WILLETS, for appellees.

(Before SALMON, RAMIREZ, and MUIR, JJ.)

(SALMON, J.) Nathan Pekofsky, (landlord), appeals the final judgement of the County Court entered June 23, 1992. We Reverse.

Appellant, owner of unit 1701 at Williams Island, executed a one year written lease with appellee commencing November 1, 1990, and terminating October 31, 1991. In May of 1991, appellees vacated the premises and continued to make monthly rental payments in the amount of \$4,100 per month. In July of 1991, appellees ceased paying rent. Appellant then sent a letter notifying appellee of the application of the security deposit toward the rent due for July and August and later sued for the balance of the rent due. Appellees answered, and counterclaimed for return of the \$8,200 security deposit.

The trial court entered judgement against the appellant on the complaint and in favor of the appellees for \$8,200 on the counterclaim. This appeal ensued.

Several issues are raised in this appeal. The first issue is whether the landlord may legally apply the security deposit toward the rent current. We have concluded from our review of the record that the landlord retook possession of the leased premises solely for the benefit of the tenant, one of the options permitted by law. A different conclusion is not supported by the substantial, competent evidence. In accordance with F.S. §83.43(12), "Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including but not limited to, *monetary damage* to the landlord caused by the tenant's breach of lease prior to the expiration thereof. Therefore, in the absence of any written agreement in the lease addressing the application of the security deposit, the landlord has the discretion to apply the security deposit toward the unpaid rent pursuant to F.S. §83.43 (12).

The second issue on appeal is whether appellant's claim against the security deposit is barred by his failure to comply with the notice requirement of F.S. §83.49(3)(a). We find that it is not. We have determined from our review of the record that the lease was not terminated, therefore F.S. §83.49(3)(a) is inapplicable.

The last issue raised on appeal is whether the landlord's failure to place the deposit in a Florida bank account resulted in a forfeiture of the landlord's claim against the security deposit. We find no remedy provided in F.S. §83.49 for the landlord's failure to comply with the security deposit requirement and consequently no forfeiture of a claim against the security deposit. Under the circumstances of this case, forfeiture, if it exists as a remedy, (which we do not decide), would not be warranted.

For the foregoing reasons, the decision of the trial court is reversed and remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED. (RAMIREZ and MUIR, JJ., concur.)

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