

Online Reference: FLWSUPP 169RAMIR

Landlord-tenant -- Eviction -- Standing -- Plaintiff that is not owner of property, landlord, or assignee of owner does not have standing to bring eviction action -- Notice -- Defects -- Three-day notice is fatally defective for failing to give five days for mailing keys or rent to address in different city and county than leased premises -- Complaint dismissed without leave to amend

THE RESIDENCES ON HOLLYWOOD BEACH CONDOMINIUM ASSOCIATION, INC., Plaintiff, vs. LISA RAMIREZ, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COWE 09-10150 (80). July 14, 2009. Steven G. Shutter, Judge. Counsel: Carlos X. Rodriguez, Halpern Rodriguez, LLP, Coral Gables, for Plaintiff. Jeremy A. Cohen, Cohen & Owens, P.A., Hollywood, for Defendant.

ORDER GRANTING DEFENDANT'S

MOTION FOR JUDGMENT ON THE

PLEADINGS AND MOTION TO DISMISS

THIS CAUSE coming before this Court on July 13, 2009 for a special set hearing upon Defendant's Motion to Dismiss Complaint with Prejudice and/or for Judgment on the Pleadings, and the Court being otherwise duly advised in the premises, this Court finds,

ORDERED AND ADJUDGED as follows:

1. That Plaintiff filed the instant action seeking eviction and monetary damages. That Plaintiff is the Residences of Hollywood Beach Condominium Association, Inc., A Florida Corporation. That Plaintiff alleged that they were the assignee of the actual owner of the subject real property and thus entitled to commence a lawsuit seeking eviction and monetary damages against Defendant.
2. That Plaintiff did not establish standing to bring the instant action, as Plaintiff is neither the owner of the subject property or the landlord of the Defendant. The Plaintiff also failed to establish that they were an assignee of the owner. If no landlord-tenant relationship exists, the owner may not file a lawsuit for eviction, but rather must either file a lawsuit for ejectment or when legally authorized to do so a complaint for unlawful detainer. That Defendant and the Court relied upon the holdings set forth in *Meus v. Louiny*, 15 Fla. L. Weekly Supp. 390a (Broward County Court 2008), *Espinosa v. Alonso*, 15 Fla. L. Weekly Supp. 16a (Dade County Court 2007), *Chacin v. Engle*, 11 Fla. L. Weekly Supp. 845a (Broward County Court 2004), *Romero v. Lista*, 14 Fla. L. Weekly Supp. 1066a (Broward County Court 2007), and *Johnson v. Casper*, 13 Fla. L. Weekly Supp. 177b (Orange County Court 2005).
3. That even if the issue of standing was established in the instant matter, the Plaintiff failed to provide the Defendant with a proper Three-Day Notice, as Plaintiff failed to add an additional five days for mailing as the Plaintiff sought payment or possession in a different county than the subject property. Plaintiff's Three-Day Notice is defective on its face and fails to comply with Rule 1.090(e) of the Florida Rules of Civil Procedure and Florida Case Law as it fails to give the tenant an additional five days from mailing either the rent or the keys to Plaintiff. Because the "landlord" is located in a different city and county than the leased premises, the tenant must be afforded the opportunity to mail the rent or keys. Rule 1.090(e) of the Florida Rules of Civil Procedure provides that whenever an act is permitted to be done by mail an extra (5) days for mailing must be given.

In order for a landlord to maintain an action for tenant eviction for non-payment of rent, the landlord

must first give a Three-Day Notice that complies with the statutory requirements of section 83.56(3) of the Florida Statutes, and second properly terminate a tenant's rental agreement prior to filing a complaint for eviction. That due to the fatally defective Three-Day Notice, and Plaintiff's failure to terminate the rental agreement prior to filing the complaint for eviction, an essential element of Plaintiff's cause of action was missing. That Defendant and the Court relied upon the holdings set forth in *Custom Homes of South Florida v. Atterbury*, 12 Fla. L. Weekly Supp. 796a (Broward County Court 2005), *Nguyen v. Brown*, 15 Fla. L. Weekly Supp. 710a (Columbia County Court 2008), *Irvin v. Headley*, 10 Fla. L. Weekly Supp. 218a (Broward County Court 2003), *Sadeek v. Spencer*, 10 Fla. L. Weekly Supp. 749a (Broward County Court 2003), and *Milton v. Martinez*, 11 Fla. L. Weekly Supp. 1115a (Broward County Court 2004).

4. Defendant's Motion for Judgment on the Pleadings and Motion to Dismiss Plaintiff's Complaint are granted without leave to amend.

5. Defendant is the prevailing party.

6. Defendant's counsel, Jeremy A. Cohen, Esq., of Cohen & Owens, P.A., is entitled to recover costs, including reasonable attorney's fees from Plaintiff.

7. The Court retains jurisdiction to award Defendant's counsel costs including reasonable attorney fees of and from the Plaintiff.

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