

14 Fla. L. Weekly Supp. 979b

Landlord-tenant -- Eviction -- Notice -- Defects -- Landlord was not obligated to provide additional five days to comply with three-day notice merely because landlord's office is in different county than leased premises -- Claim that notice demanded incorrect amount of rent does not justify dismissal where court cannot determine whether amount is correct without hearing -- If tenants wished to defend eviction action on basis of alleged defect in three-day notice, tenants were nonetheless required to deposit undisputed rent into court registry, and failure to do so waives tenants' right to raise defective notice defense

KRISTY McDONNELL, Plaintiff, vs. BARBARA WILLIAMS and JOHN WILLIAMS, Defendants. County Court, 15th Judicial Circuit in and for Palm Beach County, Civil Division. Case No. 502007CC006903XXXXMB. August 8, 2007. Donald Hafele, Judge. Counsel: Cathy L. Lucrezi, Law Offices of Heist, Weisse & Lucrezi, P.A., Fort Myers, for Plaintiff. Alexander P. Johnson, Fort Lauderdale, for Defendant.

ORDER

This cause came to be heard upon Defendant's Motion to Dismiss. Upon consideration of the argument presented and the record of this case, the Court finds and orders as follows:

The landlord filed this eviction case against her tenants, alleging the tenants had failed to pay rent or vacate the premises following the service of a three day notice.

The tenants answered the Complaint and moved to dismiss the case, claiming there were defects in the notice. Specifically, the tenants claimed the three day notice should have allowed an additional five days for compliance, and claimed the three day notice demanded an incorrect amount of rent. Neither of these justify dismissal of the Complaint.

The Court finds the three day notice substantially complied with Sec. 83.56(2), Fla. Stat. The landlord was not obligated to include an additional five days for the tenant's compliance with the notice, simply because the landlord's office was in a different county than that of the rental premises. The Court cannot rule whether the amount demanded is correct without an evidentiary hearing.

The five additional days on the nonpayment notice were required, it was argued, because the landlord's office (where rent was to be paid) was located in a county different than that of the rental premises. The tenants' unit was located in Boca Raton, and the notice required payment to the landlord in Fort Lauderdale. Indeed, the two cities are in different counties, but that alone does not require a landlord to provide five additional days for a tenant to pay the rent demanded by a nonpayment notice. The county line is not a barrier to a tenant's payment of rent.

The Court takes judicial notice that the distance between the southernmost point of Boca Raton to the northernmost point of Tequesta (which are geographic extremes of Palm Beach County, Florida), is greater than the distance between the rental premises in Boca Raton and the landlord's office in Fort Lauderdale. Were the Court to adopt the tenants' argument, the result would be unreasonable. A tenant's time for compliance with a notice should not be lengthened by the artificial distinction of being across the county line.

The Court has considered the case of *Custom Homes of South Florida v. Bobby Atterbury*, 12 Fla. L. Weekly Supp. 796a (Broward Co. 2005), and does not consider it persuasive. A county line should not

be the determinative factor on the issue of whether a tenant is induced to make payment by mail.

The second basis which the tenants posit for dismissal of the Complaint is the claim that the three day notice overstated the rent that was due. The tenants claimed that of the \$4,740.00 demanded by the three day notice (and later, the Complaint), only \$2,200.00 was owed for rent.

Whether the notice is defective due to an alleged overstatement of the rent that was due, is an issue left for some future evidentiary hearing. The Court makes no ruling regarding the validity of the notice on the point of the amount of rent demanded.

The tenants relied on the motion to dismiss to avoid depositing rent into the Court Registry. They argued they were not obligated to comply with the rent deposit requirements of Sec. 83.60(2), Fla. Stat., because the alleged defects in the three day notice deprived the Court of subject matter jurisdiction. Thus, although the tenants acknowledged owing rent of \$2,200.00, nothing was deposited.

If the tenants wished to defend the eviction on the basis of an alleged defect in the three day notice, the tenants were nonetheless obligated to deposit undisputed rent into the Court Registry. See *Kaiser v. Dudley*, 14 Fla. L. Weekly Supp. 489a (Broward Co. 2007); *Jandebeur v. Capobianco*, 13 Fla. L. Weekly Supp. 388a (Broward Co. 2006). The failure to deposit the undisputed rent operates as a waiver of the tenants' right to raise a defective notice in defense of the eviction. *Id.*; see also *Cantor v. Wilson*, 10 Fla. L. Weekly Supp. 1024 (Sarasota Co. 2003)).

The Court is persuaded by and follows the reasoning of the Fourth District Court of Appeal in *Bell v. Kornblatt*, 705 So.2d 113 (Fla. 4DCA 1998), and of the Honorable Robert W. Lee in *Kaiser v. Dudley*, 14 Fla. L. Weekly Supp. at 489a. A defect in a three day notice may give rise to a defense of the failure of a condition precedent, but it does not deprive the Court of subject matter jurisdiction. The failure of a condition precedent is a defense which is waived if a tenant defendant fails to comply with the rent deposit requirements of Sec. 83.60(2), Fla. Stat.

Defendants' Motion to Dismiss the Complaint is DENIED on the issue of the alleged defective nature of the three day notice.

The Court specifically reserves ruling on the issues of payment and amount of rent due. Those issues are deferred until a final evidentiary hearing in the case.

The Court also reserves ruling on the issues of attorney fees and costs.

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