

**IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA**

LAWRENCE BROOKS,

Appellant,

vs.

GHYANDEO NARINE,

Appellee.

CASE NO.: CVA1 07-84

Lower Case No.: 2007-CC-14430

Appeal from the County Court,
For Orange County,
Deb S. Blechman, County Judge.

Michael L. Resnick, Esquire,
For Appellant.

No appearance for Appellee.

BEFORE POWELL, WHITEHEAD, MUNYON, J.J.

AMENDED FINAL ORDER REVERSING LOWER COURT WITH DIRECTIONS

(Corrected as to citation to section 83.56(3), Florida Statutes)

Lawrence Brooks (Appellant) timely appeals the trial court's final judgment of possession in favor of Ghyandeo Narine (Appellee), entered on October 22, 2007, and the trial court's order denying defendant's motion for rehearing, entered on October 29, 2007. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We find that errors occurred during the litigation of this residential tenant eviction case which require reversal of the final judgment for possession and costs.¹

¹ In light of the decision we make here, we decline to address Appellant's other arguments that Appellee had no standing to bring this action and that the rent deposit provisions of Section 83.60(2), Florida Statutes, are unconstitutional.

We find that the three-day statutory notice, required by section 83.56(3), Florida Statutes, and attached to Appellee's complaint, was fatally defective for several reasons. First, paragraph 5 of the complaint states that the three-day notice was served on Appellant on September 10, 2007. The notice gave Appellant until September 10, 2007, that same day, to pay the delinquent rent. Thus, the notice did not give Appellant three days in which to pay the delinquent rent and it deprived him of the legal right afforded him under the statute. Second, the three-day notice did not contain a proper address where the delinquent rent was to be paid. Although the notice set forth a street address, it did not contain the name of the city and state wherein the street was located. Third, there was a substantial discrepancy between the amount of delinquent rent said to be overdue and the amount of monthly payments called for in the lease attached to and incorporated in the complaint. The notice stated that \$1,320 was overdue; however, the lease stated that the monthly payment amount was \$1,050 – a difference of \$170.

Since the three-day notice was defective, it did not terminate the tenancy, and for this reason, we find that the complaint failed to state a cause of action. See Rogers v. Smorkes, 8 Fla. L. Weekly Supp. 400b (Fla. 17th Cir. Ct. March 23, 2001); Spry v. Budau, 7 Fla. L. Weekly Supp. 631a (Fla. 17th Cir. Ct. June 26, 2000); Hodgson v. Jones, 6 Fla. L. Weekly Supp. 758a (Fla. 17th Cir. Ct. Sept. 24, 1999). We agree entirely with the reasoning of the above cited cases.

The court in Hodgson said it best:

While the record does not indicate that Appellant raised an issue below as to any defects in the three-day notices, the Court finds that such error is nonetheless reviewable on appeal. Section 83.59(1), Florida Statutes, clearly makes termination of the rental agreement a condition precedent to filing suit for possession. [citation omitted]. Since the rental agreement in this case was not terminated prior to suit because the three day notices were defective, Appellee had no cause of action for eviction at the time of filing suit. Consequently, with no right to bring an action for eviction, no judgment could be entered in her favor.

Finally, the defects in Appellee's notice cannot be corrected on remand. Where an action requires statutory notice prior to suit and that notice is defective, the defects cannot be corrected in the same case. Under such circumstances, the landlord must file a new action based upon a new and valid notice. [citations omitted].

Lastly, even though the complaint requested only possession, Appellant was not required to pay rent into the registry of the court since the complaint failed to state a cause of action. See Rogers, 8 Fla. L. Weekly Supp. 400b.

For the reasons set forth above, we find that it was error to: (1) enter the default; (2) require rent payment into the registry; (3) enter the final judgment for possession and costs; (4) issue the writ of possession; and (5) deny Appellant's motion to set aside the final judgment. Accordingly, it is hereby **ORDERED AND ADJUDGED** that the lower court's Final Judgment is **REVERSED**; the Default and Writ of Possession are **VACATED**; Appellant's motion for appellate attorney's fees and costs is **GRANTED**, the assessment of which is **REMANDED** to the lower court; Appellant's motion for clarification is **GRANTED**; and this case is **REMANDED** for further proceedings consistent with this opinion. Upon receipt of the mandate, the lower court is **DIRECTED** to enter an order dismissing the complaint with prejudice.

DONE and ORDERED at Orlando, Florida this ___13___ day of _____November___, 2009.

_____/s/_____
ROM W. POWELL
Senior Judge

_____/s/_____
REGINALD WHITEHEAD
Circuit Judge

_____/s/_____
LISA T. MUNYON
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this ____13____ day of __November____, 2009, to the following: **Michael L. Resnick, Esquire**, Legal Aid Society, 100 E. Robinson St., Orlando, FL 32801 and **Ghyandeo Narine**, 431 Field Stream West Blvd., Orlando, FL 32825.

_____/s/_____
Judicial Assistant