

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

**THE HOUSING AUTHORITY OF
THE CITY OF ORLANDO, FLORIDA,**

Appellant,

v.

CASE NO.: CVA1 09-53
Lower Court Case No.: 2009-CC-11024-O

DEBRA REESE,

Appellee.

_____ /

Appeal from the County Court,
for Orange County,
John E. Jordan, Judge.

Rhonda E. Stringer, Esquire,
for Appellant.

No appearance for Appellee.

Before JOHNSON, LATIMORE, and ROCHE, J.J.

FINAL ORDER AND OPINION REVERSING TRIAL COURT

Appellant, The Housing Authority of the City of Orlando, Florida (“OHA”), timely appeals the trial court’s “Order and Release of Funds,” entered on September 30, 2009, denying OHA’s motion for immediate default judgment for possession and granting final judgment for possession in favor of the Appellee, Debra Reese (“Reese”). This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). Reese did not respond to the appeal. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Facts and Procedural History

OHA is the landlord of the dwelling in which Reese lives. OHA sued Reese for her failure to timely pay rent pursuant to the parties' lease agreement, seeking possession of the dwelling, damages for unpaid rent, and attorney's fees and costs.

Reese failed to timely pay rent for the month of May 2009. Under the lease agreement, rental payments are due on the first day of each month, and rent is deemed delinquent if not received before the end of business on the fifth day of each month, or the end of the next successive business day if the fifth day falls on a Saturday, Sunday, or legal holiday. On May 8, 2009, OHA served Reese with a fourteen-day notice, informing her that, unless her rent was paid in full on or before May 23, 2009, the lease agreement would be terminated and she would be evicted. Reese attempted to pay her rent on May 24, 2009, but OHA refused to accept payment.

OHA filed a two-count complaint on June 29, 2009, seeking possession of the dwelling and damages for unpaid rent. An Eviction Summons was sent to Reese on July 2, 2009, demanding that she deposit into the court registry "the amount of rent that [the complaint] claims to be due and any rent that becomes due until the lawsuit is over." The complaint claimed that rent was still due for May and June 2009 and continued to be due the first day of every month.

On July 9, 2009, Reese made a deposit into the court registry. However, the amount deposited was not enough to cover rent for May and June. Furthermore, July rent had since become due, and Reese failed to timely deposit enough money to cover it. On July 24, 2009, Reese made another deposit into the court registry, which was enough to bring her payments current through July, but not enough to cover rent for August. Reese did not make another deposit into the court registry until September 3, 2009.

At trial, OHA opened with a motion for immediate default judgment for possession,

pursuant to section 83.60(2), Florida Statutes, for failure to timely deposit rent payments into the court registry. The trial court denied the motion, reasoning that, because OHA motioned for a continuance and the court did not thereafter enter an order renewing Reese's duty to deposit rent payments into the court registry, the court would not "hold her to that." After a short hearing, the trial court ruled in favor of Reese as to possession and in favor of OHA as to damages for unpaid rent.

During the trial hearing, the court confirmed that Reese made a deposit into the court registry before the hearing, that same morning, and it was enough to cover her rent for August and September. OHA argued that the payment was late, and Reese still failed to timely deposit rent payments into the court registry. OHA renewed its motion for immediate default judgment for possession, and the trial court, again, denied it. In addition to its prior reasoning concerning OHA's motion for continuance, the court reasoned that Reese's September 3rd deposit satisfied her then due rent payments. This appeal followed.

Discussion of Law

On appeal, OHA argues that the trial court erred by denying its motion for immediate default judgment for possession and granting final judgment for possession in favor of Reese, pursuant to sections 83.56(5) and 83.60(2), Florida Statutes. OHA asserts that the statutory provisions are not discretionary, and they unequivocally entitle it to immediate default judgment for possession. OHA further argues that the trial court misinterpreted the statutes in finding that Reese was under no obligation to continuously deposit rent payments into the court registry after OHA motioned for a continuance, merely because the court did not, thereafter, order her to do so. Finally, OHA argues that Reese's attempt to cure by depositing the amount due on the day of trial did not change the fact that it was untimely.

The interpretation of a statute presents a purely legal matter. Ellis v. Hunter, 3 So. 3d 373, 378 (Fla. 5th DCA 2009) (citing Kephart v. Hadi, 932 So. 2d 1086, 1089 (Fla. 2006)). Therefore, a trial court's interpretation of a statute is subject to de novo review. Joseph L. Riley Anesthesia Assocs. v. Stein, 27 So. 3d 140, 142-43 (Fla. 5th DCA 2010) (citing Health Options, Inc. v. Palmetto Pathology Servs., P.A., 983 So. 2d 608, 612 (Fla. 3d DCA), review denied, 994 So. 2d 1104 (Fla. 2008)).

Section 83.56, Florida Statutes, governs the termination of residential rental agreements.

Subsection (5) provides in pertinent part:

Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes *shall* comply with the provisions in section 83.60(2). The court *may not* set a date for mediation or trial *unless* the provisions of section 83.60(2) have been met, but *shall* enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with section 83.60(2).

(Emphases added). Section 83.60(2), Florida Statutes, provides in pertinent part:

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 . . . 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.

(Emphases added).

The purpose of section 83.60(2) is to prevent the inequity that would occur if tenants were allowed to live rent-free, and landlords were forced to furnish housing without receiving rental payments, during the pendency of lawsuits for possession. See generally K.D. Lewis Enters. Corp. v. Smith, 445 So. 2d 1032, 1035 (Fla. 5th DCA 1984) ("We see no more reason to expect a landlord to continue furnishing housing without rent than to expect an oil supplier to

continue furnishing oil without payment during a period of litigation”); First Hanover v. Vazquez, 848 So. 2d 1188, 1190 (Fla. 3d DCA 2003) (“Under this provision, tenants in actions for possession for non-payment of rent are obligated to pay rent as a condition to remaining in possession irrespective of their defenses and counterclaims”); see also Premici v. United Growth Props., L.P., 648 So. 2d 1241, 1243 (Fla. 5th DCA 1995) (construing a similar statute, finding that its purpose is to remedy the problem of tenants remaining on the premises during litigation without paying rent). The terms of section 83.60(2) are absolute and unequivocal, and the courts have no discretion to excuse the late payment of rent into the court registry. Ward v. Rak Charles Towne Ltd. P’ship & Sterling Mgmt., 15 Fla. L. Weekly Supp. 419a (Fla. 9th Cir. Ct. Oct. 30, 2007) (citing 214 Main Street Corp. v. Tanksley, 947 So. 2d 490, 492 (Fla. 2d DCA 2006)); see also Blandin v. Bay Porte Condo. Ass’n, 988 So. 2d 666, 669 (Fla. 4th DCA 2008) (construing a similar statute to provide that, after a tenant fails to timely pay rent into the court registry pursuant to a court order, the court has no discretion to excuse a late payment, and it must enter an immediate default judgment for possession).

Because the purpose of section 83.60(2) is to ensure that tenants pay their rent during the pendency of litigation, a motion for continuance on behalf of the landlord does not extinguish the tenant’s duty to timely deposit rental payments into the court registry. Reese was not required to deposit any more rent into the court registry than she would have been legally required to pay under the lease agreement had this action never been filed. Rental payments made by tenants pursuant to section 83.60(2) do not constitute a court cost, legal fee, or penalty, and therefore OHA’s motion for continuance did not prejudice or place any undue burden on Reese, regarding her duty to deposit rental payments into the court registry.

Reese failed to timely deposit her rental payment for August 2009 into the court registry.

Prior to the payment's due date, neither OHA nor the court agreed to allow Reese a late deposit of her August rent into the court registry. Therefore, the court was without discretion to excuse Reese's late payment, and OHA was entitled to an immediate default judgment for possession.

Although Reese deposited her rental payments for August and September 2009 into the court registry before the trial hearing on September 3, 2009, her payment was still untimely, and thus she failed to comply with section 83.60(2). "While this [C]ourt appreciates that the trial court . . . sought to exercise its discretion out of fairness, a trial court may not decline to follow controlling law on the ground that it may consider its application inequitable in a particular case." Blandin, 988 So. 2d at 670 (citing Courthouse Tower, Ltd. v. Manzini & Assocs., 683 So. 2d 215, 215 (Fla. 3d DCA 1996)). Therefore, we find that the trial court should have granted OHA's motion for immediate default judgment for possession.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's "Order and Release of Funds," entered on September 30, 2009, is **REVERSED**, as to its denial of OHA's motion for immediate default judgment for possession and its final judgment for possession in favor of Reese; and this case is **REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this the ____3____ day of ____September_____, 2010.

JOHNSON and LATIMORE, J.J., concur.

_____/s/_____
ANTHONY H. JOHNSON
Circuit Judge

_____/s/_____
ALICIA L. LATIMORE
Circuit Judge

ROCHE, J., dissents without opinion.

_____/s/_____
RENEE A. ROCHE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: **Rhonda E. Stringer, Esq., Saxon, Gilmore, Carraway, & Gibbons, P.A.**, 201 East Kennedy Boulevard, Suite 600, Tampa, Florida 33602 and **Debra Reese**, 804 Dunbar Court #3, Orlando, Florida 32805 on the 3 day of September , 2010.

_____/s/_____
Judicial Assistant