

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION
CASE NO.

LANDLORD

Plaintiff,

-vs-

TENANT
AND ALL OTHERS IN POSSESSION,

Defendant(s).

_____ /

**ANSWER, DEFENSES, MOTION TO DISMISS,
MOTION TO DETERMINE RENT AND DEMAND FOR JURY TRIAL**

Defendant answers Plaintiff's Complaint for Removal of Tenant and states:

1. Defendant admits the allegations in paragraphs (#) of the Complaint.
2. Defendant denies the allegations in paragraphs (#) of the Complaint.
3. Defendant is without knowledge as to the allegations in paragraphs (#) of the Complaint and demands proof of the allegations.
4. Defendant reavers the responses to the paragraphs referenced in paragraphs (#) of the Complaint.
5. Defendant will seek to recover attorney's fees and costs as the prevailing party pursuant to Fla Stat. §83.48, §83.59(4) and the lease, if applicable.

(FIRST) DEFENSE
CARES ACT

6. On March 27, 2020, the federal Coronavirus Aid, Relief, and Economic Security Act (“CARES ACT”) was signed into law.

7. Section 4024 of the CARES Act imposes a 120-day moratorium on the filing of evictions from tenants living in covered properties.

8. Defendant resides in a covered property because the property participates in a federal housing program or the property has a federally backed mortgage loan.

9. This case is motivated by non-payment protected by the CARES Act and my landlord is misrepresenting the basis for eviction to circumvent the CARES Act protections.

10. Plaintiff is not entitled to evict Defendant because the CARES’ Act eviction moratorium.

(SECOND) DEFENSE
FAILURE OF CONDITION PRECEDENT
(Defective Notice)

11. Defendant’s tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.

12. The Notice attached to the Complaint is defective for the following reasons:

- a. A Three-Day Notice for non-payment of rent must demand the precise amount due from the tenant and failure to do so renders the notice defective and legally insufficient to support an action for eviction. *See Baker v. Clifford-Matthew Inv. Co.*, 128 So. 827 (Fla. 1930); *Peninsular Real Estate v. Juan and Bethzaida Granizo*, 6, Fla. L. Weekly Supp. 292a (Miami-Dade Cty. 1999); *Koster v. Cornado*, 16 Fla L. Weekly Supp. 1073a (Miami-Dade Cty. 2009).

- b. The Notice is defective because Defendant resides in a “covered property” under the CARES Act and Plaintiff must provide Defendant with a 30-day notice to vacate after the 120-day eviction moratorium expires.
- c. The Notice is defective because Defendant resides in a “covered property” under the CARES Act and Plaintiff is seeking fees and penalties related to unpaid rent charged during the 120-day eviction moratorium.
- d. The Notice is defective since it fails to state the manner or date of service.
- e. A Three-Day Notice for non-payment of rent must include the landlord’s address and telephone number and the failure to do so renders the notice defective and legally insufficient to support an action for eviction. *See Brooks v. Narine*, 17 Fla. L. Weekly Supp. 72a (9th Cir. App., Orange Cty., 2009); *Anderson v. Dubois*, 17 Fla. L. Weekly Supp. 271a (Broward Cty., 2009).
- f. When a landlord serves a notice on a tenant, the landlord must comply with the requirements of Fla. R. Civ. P 1.090(a) and Fla. R. Jud. Admin. 2.514. *See Investment and Income Realty, Inc. v. Bentley*, 480 So. 2d 219 (Fla. 5th DCA1985). Since Plaintiff’s Notice expired on a weekend, the Notice is facially defective.
- g. Pursuant to Fla. R. Civ. P. Rule 1.090(a) and Fla. Jud. A. Rule 2.514(b), “When a party must act within a specified time after service and service is made by mail, 5 days are added after the period...”. Plaintiff mailed the Notice to Defendant and failed to add five additional days for mailing time.

- h. Pursuant to Fla. R. Civ. P. Rule 1.090(a) and Fla. Jud. A. Rule 2.514(b), “When a party must act within a specified time after service and service is made by mail, 5 days are added after the period...”. Plaintiff’s Notice demands that rent be mailed to a P.O. Box and it failed to add five additional days for mailing time.
- i. Pursuant to Fla. R. Civ. P. Rule 1.090(a) and Fla. Jud. A. Rule 2.514(b), “When a party must act within a specified time after service and service is made by mail, 5 days are added after the period...”. Plaintiff’s Notice demands that rent be mailed to an address outside Miami-Dade County and it failed to add five additional days for mailing time.
- j. A Three-Day Notice for non-payment of rent must demand the precise amount due from the tenant and failure to do so renders the notice facially defective and legally insufficient to support an action for eviction. *See Baker v. Clifford-Matthew Inv. Co.*, 128 So. 827 (Fla. 1930); *Peninsular Real Estate v. Juan and Bethzaida Granizo*, 6, Fla. L. Weekly Supp. 292a (Dade Cty. 1999); *Koster v. Cornado*, 16 Fla L. Weekly Supp. 1073a (Dade Cty. 2009).
- k. The Notice fails to provide the tenant with an opportunity to cure the non-compliance. *Miami Property Group v. Gooden*, 17 Fla. L. Weekly Supp. 36a (Fla. Miami-Dade Cty. 2009).
- l. The Notice is vague and fails to provide the tenant with enough specificity to adequately prepare a defense. *Tacolcy Garden Walk v. Navarro*, 17 Fla. L. Weekly Supp. 36b (Fla. Miami-Dade Cty. 2009); *Winter Haven*

Housing Authority v. Wampler, 24 Fla. L. Weekly Supp. 70a (Fla. Polk Cty. 2016).

- m. The Notice terminating a month-to-month tenancy must expire at the end of the monthly rental period. *See* 83.57(3).
- n. The Notice terminating a month-to-month tenancy in the City of Miami Beach or the City of Miami must provide at least 30 days' notice. City of Miami Beach Code § 58-386 and City of Miami Code § 47-1.

13. The service of a proper, non-defective termination notice is a statutory condition precedent to the filing of an eviction action. *See Investment and Income Realty v. Bentley*, 480 So. 2d 219, 220 (Fla. 5th DCA 1985).

14. A statutory cause of action cannot be commenced until Plaintiff has complied with all conditions precedent. *See Ferry Morse Seed Co. v. Hitchcock*, 426 So. 2d 958 (Fla. 1983).

15. A proper and non-defective notice is a statutory condition precedent and the service of a defective notice by the Plaintiff gives the Court no power to grant a landlord relief based on the defective notice.

DEFENSE:
PLEADINGS OF A CORPORATION MUST BE SIGNED BY AN ATTORNEY

16. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.

17. Plaintiff is a corporation registered in the state of Florida.

18. Plaintiff is not represented by a licensed Florida attorney.

19. A corporation, unlike a natural person, cannot represent itself and cannot appear

in a court of law without an attorney. *See Szeinbaum v. Kaes Inversiones y Valores, C.A.*, 476 So. 2d 247, 248 (Fla. 3d DCA 1989).

20. Since Plaintiff's Complaint was not signed by an attorney, Plaintiff's Complaint is deficient as a matter of law.

DEFENSE:
CURE

21. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Part II.

22. Plaintiff's Notice demanded that Defendant cure the alleged noncompliance.

23. Defendant cured any lease violation by the deadline.

24. Plaintiff is not entitled to evict Defendant because Defendant cured any alleged noncompliance by the deadline.

DEFENSE:
EQUITY IN FORFEITURE

25. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.

26. Defendant has all of the rent owed under the lease agreement.

27. A court may refuse to declare forfeiture of a lease when the circumstances would render it unconscionable, inequitable, or unjust. *Miami-Dade County v. Carolyn Jackson*, 13 Fla. L. Weekly Supp. 1006b (Miami-Dade Cty. 2006); *Rader v. Prather*, 100 Fla. 591, (Fla. 1930); *Sharpe v. Sentry Drugs, Inc.*, 505 So. 2d 618 (Fla. 3d DCA 1987), *Smith v. Winn Dixie Stores, Inc.*, 448 So. 2d 62 (Fla. 3d DCA 1984).

28. Defendant's family would be in immediate danger of becoming homeless if they were to be evicted.

29. It would be unconscionable, inequitable, and unjust to evict Defendant's family from their home, rendering them homeless.

DEFENSE:
FAILURE TO ATTACH LEASE

30. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.

31. Rule 1.130(a) Fla. Rules of Civil Procedure requires that all documents upon which an action is based shall be incorporated or attached to the pleading.

32. Plaintiff has failed to attach a copy of the lease between Plaintiff and Defendant, the terms of which govern Defendant's tenancy.

33. Since Plaintiff has failed to attach a copy of the lease to its Complaint, the Complaint is deficient as a matter of law.

DEFENSE
FAILURE TO MAINTAIN UNIT

34. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.

35. Pursuant to Florida law, a landlord is obligated to maintain the tenant's home in a habitable condition pursuant to Fla. Stat. Sec. 83.51.

36. Plaintiff has failed to maintain Defendant's home in a habitable condition and as a result, defective conditions exist in Defendant's home.

37. The following defective conditions exist in the unit:

- a. [List Conditions];
- b. [List Conditions];

38. Defendant notified Plaintiff of all these defective conditions, yet nothing has been

done to repair or fix the defective conditions. [Attach rent withholding letter]

39. Despite actual knowledge of these defective conditions, Plaintiff has failed to maintain Defendant's home in a decent, safe, and sanitary condition in violation of Fla. Stat. Sec. 83.51.

40. Plaintiff's failure to comply with Defendant's request to make repairs is a complete defense to an eviction for non-payment of rent.

DEFENSE
IMPROPER PARTY

41. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II

42. The eviction complaint was filed by [Plaintiff].

43. Miami-Dade County Property Records indicate that the property is owned by [Owner].

44. Plaintiff is not the owner or lessor of the property.

45. Therefore, Plaintiff is not required to bring a complaint for eviction against Defendant.

DEFENSE
VIOLATION OF OBLIGATION OF GOOD FAITH

46. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.

47. Pursuant to Fla. Stat. § 83.44, a landlord has an obligation of good faith in its performance of the rental agreement between landlord and tenant.

48. Plaintiff violated its obligation of good faith by attempting to evict Defendant based on the facts and circumstances of this case.

49. Plaintiff violated its obligation of good faith by failing to comply with the requirements of state law and/or attempting to resolve the alleged problems with Defendant prior to instituting this action.

DEFENSE:
PAYMENT

50. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.

51. Defendant paid the rent to Plaintiff.

52. Despite Defendant's payment of all the rent due and owing, and Plaintiff's acceptance of the full amount of rent owed, Plaintiff proceeded to evict Defendant for the alleged failure to pay rent.

53. Plaintiff is not entitled to evict Defendant because Defendant paid the rent to Plaintiff.

DEFENSE
RETALIATORY EVICTION

54. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat.

55. Defendant contacted [government, landlord] to complain about the conditions in the unit.

56. Plaintiff filed its Complaint for Eviction in retaliation for Defendant [action].

57. Defendant has acted in good faith.

58. Pursuant to Fla. Stat. Section 83.64(1), it is unlawful for Plaintiff to retaliate against Defendant.

59. Fla. Stat. Section 83.64(2) states that “evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.”

DEFENSE
TENDER

60. Defendant’s tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.

61. Defendant attempted to tender all of the rent due and owing before the Three Day Notice expired, but Plaintiff refused to accept it.

62. Plaintiff cannot proceed with the eviction if it refused to accept the rent that Defendant tendered.

DEFENSE
WAIVER

63. Defendant’s tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.

64. Plaintiff accepted Defendant’s rent with knowledge of the non-compliance.

65. Plaintiff has waived its right to evict Defendant for the alleged non-compliance.
See Fla. Stat. § 83.56(5).

MOTION TO DISMISS

66. [INCLUDE ANY DEFENSES FROM 4 CORNERS OF COMPLAINT]

67. Plaintiff failed to comply with Administrative Order 20-10 because it has not filed a declaration under the penalty of perjury verifying that the property is not a “covered property” under the CARES Act.

68. Plaintiff filed this eviction for non-payment of rent (or served a notice to pay rent) while the eviction cause of action was suspended by the Governor’s Executive Orders No. 20-94

and No. 20-121

WHEREFORE, Defendant respectfully moves this Court to dismiss this Complaint with prejudice and recover attorneys' fees and costs pursuant to Fla. Stat. § 83.48, § 83.59, and the lease.

MOTION TO DETERMINE RENT

69. Fla. Stat. § 83.60(2) states that Defendant "shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by court..."

70. The amount alleged in the Complaint and demanded in the three-day notice is in error.

71. [EXPLANATION] [ATTACH DOCUMENTS]

72. Defendant lives in a property covered by the CARES Act. Under federal law, Defendant cannot be evicted for non-payment of rent during the 120-day eviction moratorium. The CARES Act preempts Florida Statute § 83.60.

73. Defendant requests a hearing on the Motion to Determine Rent.

WHEREFORE, Defendant respectfully moves this Court to determine the amount of rent which must be deposited in the registry of the Court.

DEMAND FOR JURY TRIAL

Defendant demands trial by jury on all issues so triable.

Respectfully submitted,

BY _____
ATTORNEY
FL BAR NO.:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via notice of electronic filing on the ___ day of _____, 2020 to:

BY _____
ATTORNEY