

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

5501 NE 2ND AVENUE, LLC,
a Florida limited company,

CIVIL DIVISION

Plaintiff,

CASE NO.:

vs.

DISTRICT LIVE, LLC,
a Florida limited company,
and all others in possession,

Defendant.

**MOTION TO ORDER FUNDS TO BE PAID
INTO COURT REGISTRY AND FOR RELEASE OF SAID FUNDS**

Plaintiff, 5501 NE 2ND AVENUE, LLC, (“Plaintiff”), through its undersigned counsel and pursuant to Florida Statute § 83.232, hereby moves this honorable Court to order the Defendant to pay monies set forth in the (3) Three Day Notice into the Court Registry and requests that the Court enter an order directing the Clerk of Courts to release these rental monies from the Court registry forthwith.

As grounds therefore Plaintiff says:

1. Plaintiff, a commercial landlord, has filed suit for summary eviction against the Defendant under Chapters 83 and 51 of the Florida Statutes.¹

2. The summary procedure statutes envision an expedited process to determine the right to possession promptly without the necessity of deciding all other issues between the parties. See Courthouse Tower, Ltd., v. Manzini & Associates, 683 So. 2d 215, 215 (Fla. 3d DCA 1996) (citing Premici v. United Growth Props., L.P., 648 So. 2d 1241, 1243 (Fla. 5th DCA 1995) (“The statute is designed to remedy the problem of commercial tenants remaining on the premises for the duration of litigation without paying the landlord rent.”); see also Comcoa, Inc. v. Coe, 587 So. 2d 474 (Fla. 3d

¹. Specifically, § 83.21 provides that the landlord seeking removal of the tenant shall file a complaint and is entitled to summary procedure set for in § 51.011, Fla. Stat.

DCA 1991); Nordberg v. Green, 638 So. 2d 91, 93 (Fla. 3d DCA 1994) (trial court may not decline to follow controlling law on ground it considers its application “inequitable” in particular case), review denied, 649 So. 2d 233 (Fla. 1994).

3. As part of this process, Florida Statute § 83.232(1) requires that a “tenant must pay the amount alleged in the complaint into the court registry on or before the date on which his or her answer to the claim for possession is due.”

4. Florida Statute § 83.232(1) states in that “[t]he court, on its own motion, shall notify the tenant of the requirement that rent be paid into the court registry by order, which shall be issued immediately upon filing of the tenant's initial pleading, motion, or other paper.” Since Courts are overburdened and cannot always follow this process, by way of this motion, the Defendant is on notice of this requirement.

5. It should be further noted that the filing of a claim for money damages does not relieve the tenant from depositing rent due into the registry of the court. Florida Statute §83.232(4).

6. Most important is the fact that the “[f]ailure of the tenant to pay the rent into the court registry . . . shall be deemed an absolute waiver of the tenant's defenses.” 214 Main Street Corp. v. Tanksley, 947 So. 2d 490 (Fla. 2d DCA 2006). In fact, a trial court does not have discretion to excuse the late payment of rent into the court registry based on a finding of excusable neglect. Id. Pursuant to the mandatory terms of Florida Statute § 83.232(5), a county court judge is required to issue an immediate writ of possession for noncompliance. Courthouse Tower, Ltd., 683 So. 2d 215, 215 (Fla. 3d DCA 1996), and cases cited therein.

7. As such, Plaintiff requests that Defendant be ordered to deposit the monies into the Court Registry as per the Florida Statute § 83.232. If not, Plaintiff requests that a final judgment be entered against the Defendant.

8. In addition, Plaintiff requests that this Court release the rental monies once they have been paid into the Court registry to it. Notably, Florida Statute § 83.232 states in pertinent part that

“If the landlord is in actual danger of loss of the premises or other hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds so held in the court registry.” The Plaintiff is facing financial hardship as a result of the loss of income from the premises rented by the Defendant. If necessary, the Plaintiff will provide testimony at a hearing as to this hardship as over \$105,864.03 in past due rent is due to it. Given these circumstances, it is requested that the monies in the Court registry be released forthwith.

9. No party will be prejudiced by the granting of this motion, which is made in good faith. However, the Plaintiff will be prejudiced if the requested relief is not granted.

WHEREFORE, Plaintiff requests that this Court grant the relief requested herein, as well as any further relief this Court deems just and appropriate.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of this pleading was served on the Defendant with the Complaint for Eviction.

By: /s/ Hilary Zalman
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