

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

XXXXXXXX TITLE HOLDER, LLC,
Plaintiff,

CASE NO. 200X-CC-XXXX

v.

Division 73

XXXX XXXX,
Defendant.

**ORDER OF DEFAULT AND
DETERMINATION OF RENT TO BE DEPOSITED**

This Court is well aware of the county court decisions which hold that three day notices are conditions precedent which may foreclose the maintenance of an eviction action. However, there are no district court of appeal cases which make this finding. This Court agrees with Trawick's *Florida Practice*, 31.6 that the "correct result was reached in *Bell v. Kornblatt*, 705 So.2d 113 (Fla. 4th DCA 1998)" which stated that defective three day notices are not jurisdictional. See also, *Kaplan v. McCabe*, 532 So.2d 1354 (Fla. 5th DCA 1988); *Boudreau v. M & H Food Corporation*, 895 So.2d 501 (2nd DCA 2005); *Matter of Fontaine Janitorial Supply & Service*, Bkrtcy. M.D. Fla. 1982 and Fla. Jur. Landlord Sec. 272, all of which can be cited for the proposition that the purpose of the three day notice requirement is to inform the tenant how to cure the default in order to avoid eviction. There is no reason to believe that the legislature intended to afford tenants a technical mechanism to litigate defenses without paying rent into the court registry. This Court has continuously held that Tenant may litigate 3-day notice issues, but must first pay rent into the court registry.

The statutory requirement that Tenant pay rent into the court registry to litigate any defense other than payment is found in *Florida Statutes*, Sec. 83.60(2). This Court's requirement that rent be paid or default be suffered was recently reaffirmed in *Peggy Ward v. Rak Charles Towne Ltd. Partnership*, CVA1-06-46 (9th Cir. App., Oct. 2007) holding that;

"Appellant=s failure to deposit the rents entitled Appellee to an immediate default judgment and writ of possession. See Section 83.60, Fla. Stat.. There is no language in section 83.60, Florida Statutes, that grants a trial court any discretion to excuse non-compliance with its provisions. This conclusion is bolstered by the court=s decision in *Main Street Corp. v. Tanksley*, 947 So.2d 490 (2nd DCA 2006)."

Review was denied on the *Tanksley* decision at 956 So.2d 457 (Fla. 2007), and two district court of appeal decisions have recently been entered in accord with *Tanksley*, which are; *Key Largo Watersports, Inc. v. Whitehurst Family Partnership*, (Fla. 3rd DCA 2007), and *Miami Subs Real Estate v. Manhattan House, Inc.*, 973 So.2d 593 (Fla. 3rd DCA 2008). Thus, it is becoming increasingly clear that Tenants must place disputed rent into the court registry in order to avoid default and final eviction.

Based on the failure to thus far post rent into the registry, the Court Hereby enters a DEFAULT in regard to possession. Base rent for the overdue month(s) is required.

DONE AND ORDERED this XXth day of December, 200X in Chambers in Orlando, Orange County, Florida.

DEB SAMMONS BLECHMAN
Orange County Judge

I HEREBY CERTIFY that a true copy of the foregoing was furnished this ____ day of December, 200X to: Xxxx Xxxx, 0000 Orlando Parkway, Apt. 0000, Orlando, Fl. 328XX; and to Xxxx X. Xxxx, Esq., 000 N. Orange Ave., Ste. 000, Orlando, Fl. 32801.

Judy Ball, Judicial Assistant