IN THE COUNTY COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

ELIZABETH ALEXIS,	
Plaintiff,	Case No.: 50 2022-CC-004107-XXXX-SB Division: RD
v.	
PHILIPPE JONES,	
Defendant.	

<u>DEFENDANT'S MOTION TO DISMISS, ANSWER & AFFIRMATIVE DEFENSES,</u> <u>& MOTION TO DETERMINE RENT</u>

Defendant hereby responds to Plaintiff's complaint and states as follows:

MOTION TO DISMISS

- 1. Plaintiff is barred from their current action because of unclean hands and estoppel.
- 2. Unclean hands may be asserted by a defendant who claims that the plaintiff acted toward a third party with unclean hands with respect to the matter in litigation. *See Yost v. Rieve Enters., Inc.*, 461 So.2d 178 (Fla. 1st DCA 1984).
- 3. Plaintiff claims in their Complaint that "Defendant failed to pay rent due March 8, 2022."
- 4. Plaintiff has accepted funds from third-parties and Defendant that cover all monies owed under the lease.
- 5. Plaintiff is using that agreement to form the basis for his damages. However, Plaintiff has received all funds owned under the lease.

WHEREFORE, we respectfully request that Plaintiff's complaint be dismissed due to his unclean hands and estoppel and for any further relief that this Court deems just and proper.

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

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

- 1. Defendant admits to none of the allegations in the Complaint.
- 2. Defendant denies the allegations in paragraphs 4, 5, 6, and 9 of the Complaint.
- 3. Defendant is without knowledge as to the allegations in paragraph 1, 2, 3, 7, and 8 of the Complaint.
- 4. Defendant intends 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.

AFFIRMATIVE DEFENSE FAILURE OF CONDITION PRECEDENT

(Defective Notice)

- 5. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.
 - 6. 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 (Dade Cty. 1999); *Koster v. Cornado*, 16 Fla L. Weekly Supp. 1073a (Dade Cty. 2009).

- b. 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).
- c. 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).
- 7. 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).
- 8. 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).
- 9. 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 and therefore this case should be dismissed.

AFFIRMATIVE DEFENSE: CURE

- 10. Defendant's tenancy is a subsidized tenancy governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Part II.
 - 11. Plaintiff's Notice demanded that Defendant cure the alleged noncompliance.
 - 12. Defendant was prepared to cured any lease violation by the deadline.

13. Plaintiff is not entitled to evict Defendant because Defendant was prepared to cured any alleged noncompliance by the deadline. However, Plaintiff has refused to take funds.

AFFIRMATIVE DEFENSE VIOLATION OF OBLIGATION OF GOOD FAITH

- 14. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.
- 15. 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.
- 16. Plaintiff violated its obligation of good faith by attempting to evict Defendant based on the facts and circumstances of this case.
- 17. 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.

AFFIRMATIVE DEFENSE: PAYMENT

- 18. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., Part II.
 - 19. Defendant was prepared to pay the rent to Plaintiff.
 - 20. Plaintiff has refused to take payment.
- 21. Plaintiff is not entitled to evict Defendant because Defendant was prepared to pay rent through the Housing Authority to Plaintiff.

AFFIRMATIVE DEFENSE TENDER

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

- 23. Defendant attempted to tender all of the rent due and owing before the Three Day Notice expired, but Plaintiff refused to accept it.
- 24. Plaintiff cannot proceed with the eviction if it refused to accept the rent that Defendant tendered.

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 and for any further relief that this Court deems just and proper.

MOTION TO DETERMINE RENT

- 25. Fla. Stat. Section 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"
- 26. The amount alleged in the Complaint and demanded in the three-day notice is in error.
 - 27. Defendant is only obligated to pay \$195 pursuant to the previous agreement.
- 28. Defendant has attempted to tender rent through the Housing Authority and Plaintiff has refused to accept.
 - 29. Defendant request 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 and for any further relief that this Court deems just and proper.

REQUEST FOR REASONABLE ACCOMMODATION PURSUANT TO THE FAIR HOUSING ACT

30. Defendant notified Plaintiff of a Reasonable Accommodation request pursuant to the Fair Housing Act.

- 31. To date, Defendant's request has gone unanswered.
- 32. Under the FHA, discrimination includes a "refusal to make a reasonable accommodation in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B).
 - 33. Defendant needs more time to move given her husband's disability needs.

WHEREFORE, Defendant respectfully requests additional time before the setting of a dispositive hearing and for any further relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Defendant demands trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished through the efiling system on this 25th day of April 2022 to Plaintiff Counsel Patrick Dyer.

LEGAL AID SOCIETY OF PALM BEACH COUNTY

Respectfully Submitted,

/s/ Joseph Grant
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