

Payment of Rent After Breach: Both a Trap for the Unwary and a Trick of the Trade

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Once a tenant breaches his or her lease, understanding when and how payment of rental amounts should be made can make or break a landlord's eviction case. Pursuant to Florida Statutes §83.56(5), "If a landlord accepts rent with actual knowledge of a noncompliance by the tenant ... the landlord ... waives his or her right to terminate the rental agreement or bring a civil action for that noncompliance" It is important to note that waiver can occur even prior to the time that the landlord has served the tenant with a lease termination notice or even decided to evict the tenant. For example, acceptance of rent from a tenant after the landlord learns that the tenant has engaged in drug-related criminal activity could act as a waiver under §83.56(5), despite the fact that the landlord has not yet sent a notice of termination, and could prevent the landlord from evicting the tenant based on this offense. What does this mean for public housing authorities (PHAs)?

1. PHAs should consider implementing procedures to ensure that no rent is accepted from a tenant after a property manager becomes aware of a breach by that tenant, a member of the tenant's household, a guest or other person under the tenant's control.
2. If any rent is inadvertently accepted after the PHA becomes aware of a tenant's breach, the rent should be immediately returned to the tenant via certified mail or another reasonable delivery method that allows the PHA to obtain a written receipt from the tenant evidencing such return.
3. A PHA must be cautious during implementation of its grievance procedures as mandated under 24 Code of Federal Regulations §966.50 - §966.57 in light of the requirements of Florida landlord tenant law and should consult a knowledgeable lawyer for guidance, if necessary.

While improper acceptance of rent prior to commencement of an eviction proceeding can be a stumbling block for many landlords, requirements for payment of rent during eviction proceedings can be a useful tool for the quick resolution of an eviction proceeding. Florida Statutes §83.56(5), provides:

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

sion to issue immediately if the tenant fails to comply with §83.60(2).

Florida Statute §83.60(2) further provides:

[I]f the tenant interposes any defense [in an eviction proceeding] 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.

Furthermore, if the tenant fails to pay the rent into the registry, or to file a document disputing the amount due, within five business days of service in the eviction proceedings, the tenant waives all defenses to the eviction action, other than

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Federal Law Requires New Employee Rights Poster

As of Nov. 14, 2011, most private sector employers are required to post a notice advising employees of their rights under the National Labor Relations Act. The 11-by-17-inch notice should be posted in a conspicuous place, where other notifications of workplace rights and employer rules and policies are posted. View the final rule in the Federal Register at <http://federalregister.gov/a/2011-21724>.

The posters are available for download and printing at www.nlrb.gov/poster. Copies also are available from any of the National Labor Relations Board's regional offices. In addition, employers should publish the notice on an internal or external website if other personnel policies or workplace notices are posted there.

For further information about the posting, including a detailed discussion of which employers are covered by the NLRA, and what to do if a substantial share of the workplace speaks a language other than English, please see the NLRB's Frequently Asked Questions at www.nlrb.gov/faq/poster.



payment, and the landlord is entitled to an immediate default judgment for possession without any further notice or hearing (Fla. Stat. §83.60(2)). Moreover, if the tenant does timely dispute the amount due, §83.60(2) requires that the tenant include documentation in support of the tenant's allegation that the rent as alleged in the eviction complaint is in error. A landlord's ability to obtain an immediate default judgment if the tenant fails to abide by the requirements of §83.56(5) and §83.60(2) can be a powerful tool for the PHA to resolve eviction cases quickly and to avoid additional legal fees and costs, even when it is unlikely that the PHA will ultimately recover any of the delinquent rent from the tenant being evicted. What does this mean for PHAs?

1. PHAs should always include a count for rent (damages) in addition to a count for possession in their eviction complaints when the tenant is

obligated to pay monthly rent under the dwelling lease. When rent is due during the eviction proceedings, if a tenant fails to deposit rent into the registry of the court (as alleged in the eviction complaint) for any month during the pendency of an eviction action, the PHA should file a motion for an immediate default judgment and obtain a writ of possession in the case.

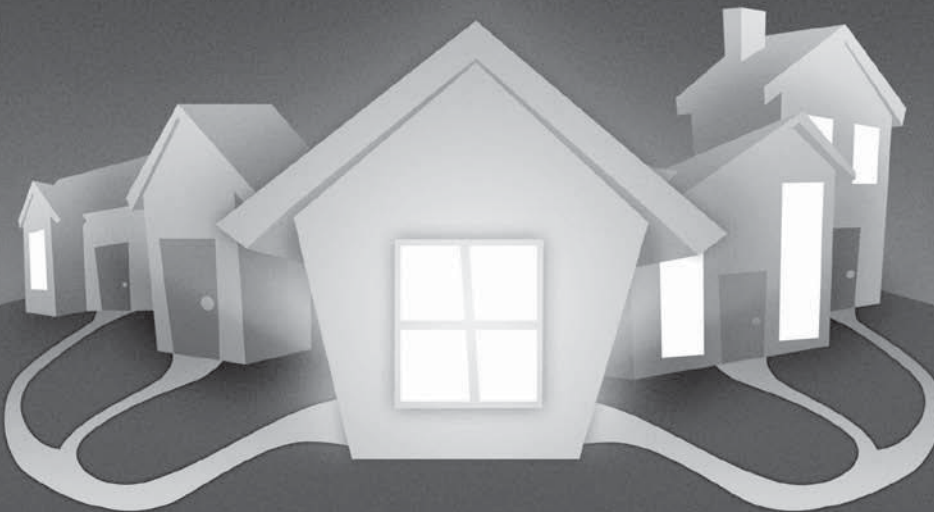
2. When a tenant has filed a motion to determine rent, PHAs should take steps to ensure that the motion is quickly heard by the court so that the court can make a determination as to how much rent the tenant should promptly deposit into the registry of the court. If the tenant fails to deposit the rent as ordered by the court (or fails subsequently to make any other monthly rent deposits during the pendency of the eviction action), the PHA should seek an immediate

default judgment for possession as authorized under §83.60(2).

3. When appropriate, PHAs should consider appealing county court judges that do not strictly follow the mandates of §83.56(5) and/or §83.60(2), to ensure the law will be properly applied in future cases the PHA may file.

As discussed above, understanding when and how rent is to be paid after a tenant's lease violation is of paramount importance for the landlord to avoid common pitfalls and to take full advantage of a landlord's rights under Florida law. Application of many of these legal principles can be complicated in light of federal law and regulations that PHAs are mandated to implement, and usually should be discussed with a qualified attorney. However, when applied properly, they can avoid potential waiver of a PHA's rights to proceed with an eviction and can provide valuable tools for efficient eviction proceedings. 🌿

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