

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION

ERT 163RD STREET MALL, LLC,

Plaintiff,

v.

CASE NO.: 2013-CA-10209

NOEL ENTERPRISES, L.L.C.,
LINDA NOEL AND MERCY NOEL,

Defendants.

SUMMARY PROCEEDINGS
SOUGHT UNDER CHAPTER 51

PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT FOR POSSESSION
FOR FAILURE TO PAY RENT INTO THE COURT REGISTRY

Plaintiff, ERT 163RD STREET MALL, LLC ("Landlord"), pursuant to section 83.232 of the Florida Statutes and Rule 1.500 of the Florida Rules of Civil Procedure, moves for entry of a default judgment for possession against Defendant, NOEL ENTERPRISES, LLC ("Tenant"), on Landlord's claim to recover possession of real property, and states:

BACKGROUND

1. On or about March 20, 2013, Landlord filed its Complaint against Tenant and LINDA NOEL and MERCY NOEL ("Guarantors"). Count I of the Complaint is an action by Landlord against Tenant for possession of the Premises pursuant to sections 83.20 and 51.011, Florida Statutes.

2. In its Complaint, Landlord alleged Tenant was obligated to, among other things, pay minimum monthly rent in addition to Tenant's proportionate share of common area expenses, real estate taxes, and insurance pursuant to a written lease agreement (the "Lease") for the right to use and occupy about 1,163 square feet of commercial space (Store No. 1358) within the Mall at 163rd Street Shopping Center (the "Premises").

3. As of February, 1, 2013, Tenant owes to Landlord the sum of \$90,574.20, plus future rent through the expiration of the Lease (the "Past Due Rent").

4. Tenant was served with a copy of the Summons and Complaint on March 27, 2013. As such, Tenant was required to serve its Answer to Count I of the Complaint on or before April 2, 2013. Pursuant to section 83.232 of the Florida Statutes, Tenant also was required to pay into the Court Registry the Past Due Rent on or before April 2, 2013.

5. While Tenant filed an Answer ("Answer") to Landlord's Complaint on or about April 2, 2013, Tenant failed to pay the Past Due Rent into the Court Registry.

LEGAL ARGUMENT

6. This Court should enter a default judgment against Tenant. In order to defend against Landlord's claim for possession, Tenant was required to deposit the Past Due Rent into the Court Registry at the time it filed its Answer. *See* § 83.232(1), Fla. Stat. Specifically, section 83.232(1), Florida Statutes, provides:

Unless the tenant disputes the amount of accrued rent, the 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.

Id.

7. Failure to deposit into the Court Registry the amount alleged in the Complaint to be unpaid "shall be deemed an absolute waiver of the tenant's defenses," and "[i]n such cases, the landlord is entitled to an immediate default for possession without further notice or hearing." § 83.232(5), Fla. Stat. (emphasis added).

8. Indeed, Florida courts have universally recognized that a landlord is entitled to an immediate writ of possession upon a tenant's failure to deposit rent into the Court Registry at the time of filing its Answer. *See e.g., City of Miami v. Smith*, 698 So. 2d 320 (Fla. 3d DCA 1997);

Chartier v. Sherman, 672 So. 2d 604 (Fla. 3d DCA 1996); *Premici v. United Growth Props., LP*, 648 So. 2d 1241 (Fla. 5th DCA 1995).

9. Here, Tenant failed to deposit the Past Due Rent into the Court Registry on or before April 2, 2013. Accordingly, the Tenant's defenses have been waived and Landlord is entitled to an immediate default judgment for possession of the Premises without notice or hearing.

WHEREFORE, Plaintiff, ERT 163RD STREET MALL, LLC, requests this Court enter an order (i) granting final default judgment against Defendant, NOEL ENTERPRISES, LLC, on Count I of the Complaint for possession of the Premises, plus entitlement to attorneys' fees and costs pursuant to the Lease; and (ii) awarding all other relief to which Plaintiff is entitled at law or in equity.

Dated: April 8, 2013

SHUMAKER, LOOP & KENDRICK, LLP


By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 8, 2013, I served a true and correct copy of the foregoing, via FedEx Overnight, to:

NOEL ENTERPRISES, LLC
275 NW 157th Street
Miami, FL 33169



Attorney