

IN THE COUNTY COURT, IN AND FOR SEMINOLE COUNTY, FLORIDA

STEPHEN ROGERS & YVETTE
CUPELES-ROGERS
Plaintiffs

vs.

CASE NO.: 2010-CC-3831-21-S
JURY DEMANDED

JAMES ***** & JACLYN *****
Defendants

ANSWER AND AFFIRMATIVE DEFENSES

COME now the Defendants, JAMES ***** & JACLYN *****, [herein after Tenants] by and through their undersigned attorney and file this, their Answer, and Affirmative Defenses.

Count I

1. Admit to the allegations in Paragraph 1.
2. Admit to the allegations in Paragraph 2.
3. Admit to the allegations in Paragraph 3.
4. Admit to the allegations in Paragraph 4.
5. Admit the allegations in Paragraph 5, 6, 7, 8, and 9.
6. Deny the allegations in Paragraph 10.
7. Deny the allegations in Paragraph 11.
8. Paragraph 12 should be struck as an affidavit as to the status of military service is required by law.
9. Admit that the Plaintiffs are entitled to summary procedure as alleged in Paragraph 13.
10. Without knowledge and therefore deny the allegations in Paragraph 14.
11. Deny the allegations in Paragraph 15.

FIRST AFFIRMATIVE DEFENSE

FAILURE TO PROPERLY DELIVER NOTICE

12. A Landlord must terminate a tenancy by delivery of a proper written three day notice to pay rent or deliver possession, by mail, hand delivery or in the Tenant's absence, by posting at the residence.

13. The three day notice was posted on the Defendants' door when the Tenant was present in the rental dwelling.
14. The Plaintiff failed to deliver to the Defendants any termination notice as required by Florida Statute §83.56(3) in the manner prescribed by Florida Statute §83.56(4).
15. A proper three day notice is a precondition to filing a complaint for eviction.
16. Since the Landlord has failed to deliver a proper notice in accordance with Florida Statute §83.56(4) the complaint fails to state a cause of action.

WHEREFORE, for the above stated reasons the Defendants demand this case be dismissed with prejudice for failure to state a cause of action and request this Court to award attorney's fees and costs as the statute requires and any other relief the Court deems necessary.

SECOND AFFIRMATIVE DEFENSE

BAD FAITH

17. Pursuant to §83.45 of the Florida Statutes, a rental agreement and the Residential Landlord-Tenant Act impose an obligation of good faith in the performance or enforcement of a duty.
18. Plaintiff has clearly breached this duty and has come into this Court with unclean hands and should be sanctioned by the Court.
19. On April 1, 2010, the landlord and tenants entered into a written lease agreement.
20. The landlord failed to disclose major defects in the structure of the rental dwelling which has caused undue hardship on the Defendants.
21. Landlord has failed to make repairs to some preexisting water damages which has caused mold.

WHEREFORE, for the above stated reasons the Defendants demand this case be dismissed with prejudice and request this Court to award attorney's fees and costs as the statute requires and any other relief the Court deems necessary.

THIRD AFFIRMATIVE DEFENSE

RENT WITHHOLDING

22. The Landlord has failed to maintain the rental dwelling in accordance with the lease and Florida Statute §83.51(1).
23. Pursuant to Florida Statute §83.60(1), the Tenants delivered a written notice to the Landlord of the Landlord's failure to make repairs pursuant to the lease which were not made.
24. Instead of making the necessary repairs, the Landlord has chosen to act in bad faith and bring suit for nonpayment of rent.

WHEREFORE the Defendants demand this Court to dismiss this case with prejudice, determine the amount of rent to be reduced to reflect the diminution in value of the

dwelling unit, and to award attorney fees and costs and any other relief the Court deems proper and just.

FOURTH AFFIRMATIVE DEFENSE

OFFSET

25. The Landlord has failed to maintain the rental dwelling in accordance with the lease and Florida Statute §83.51(1).

26. The failure to maintain the rental dwelling has caused thousands of dollars of damage to the Defendants' personal property.

WHEREFORE the Defendants request this Court to reduce the value of the rent for the dwelling in an amount reflecting the damage caused by the landlord's willful negligence.

DEMAND FOR JURY TRIAL

27. Defendants request a Jury on all issues triable.

ATTORNEY FEES AND COSTS

28. To defend this action the Defendants have retained an attorney and request fees and costs associated with defending this action as Florida Statute 83.48 requires.

Respectfully submitted by,

Leonard P. Cabral, Esq.
(407) 330-4998

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been provided by postage paid first class U.S. Mail delivery on , Esq., , Orlando, FL 32853 this 8th day of

Leonard P. Cabral, Esq.

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vs.

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Defendants

MOTION TO DISMISS

COME NOW the Defendants, James ***** & Jaclyn *****, by and through undersigned counsel, and file this Motion to Dismiss and state as grounds the following:

FAILURE TO PROPERLY DELIVER NOTICE

1. This action should be dismissed pursuant to Rule 1.140(b)(6), Fla. R. Civ. P. because the complaint fails to state a cause of action.
2. Termination of the tenancy is a necessary element of a cause of action in an eviction proceeding.
3. To terminate a tenancy the Landlord must deliver a proper three day notice terminating the tenancy pursuant to Florida Statute §83.56(4).
4. The Defendant was present in the rental dwelling at the time the three day notice was posted on the rental dwelling.
5. The Plaintiff has failed to deliver the Defendants with a termination notice as required by Florida Statute §83.56(3) in the manner prescribed by Florida Statute §83.56(4).
6. Proper delivery of a three day notice is a precondition to filing a complaint for eviction.
7. Because the action was filed without notice to the tenant, the preconditions for a residential eviction have not been fulfilled, the tenancy was not properly terminated and the complaint fails to state a cause of action.

WHEREFORE, for the above stated reasons the Defendants demand this case be dismissed without prejudice and without leave to amend and to be awarded attorney's fees and costs and any other relief the Court deems necessary.

Respectfully submitted by,

Leonard P. Cabral, Esq.
Florida Bar # 0115312
212 N. Park Ave., Suite 14
Sanford, FL 32771
Ph. 407-330-4998

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been provided by postage paid first class U.S. Mail delivery on Jaisen J. Stango, Esq. LLC, P.O. Box 532082, Orlando, FL 32853, this September 8, 2010.

Leonard P. Cabral, Esq.

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vs.

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Defendants

MOTION TO DETERMINE RENT OR WAIVE POSTING

COME NOW the Defendants, James ***** & Jaclyn *****, hereinafter Tenants, by and through their undersigned attorney and file their Motion to Determine Rent to determine the amount of rent, if any, to be paid into the registry of the court, and state:

1. This Court has the authority to determine the amount of rent, if any, to be deposited into the registry of the court pursuant to Florida Statute §83.60.2.
2. Defendants are not required to pay rent into the registry of the court if the complaint fails to state a cause of action. Brooks v Narine; Case no.: CVA1 07-84, 9th Cir. Ct. 2010; Rogers v Smorkes, 8 Fla. L. Weekly Supp. 400b Fla. 17 Cir. Ct. 2001). See Barbara Banks v Housing Authority of Brevard County, 18th Judicial Circuit Appellate, Brevard County Case No.: 85-8213, 1985. (Failure to state a cause of action is not a defense, no registry deposit required).
3. An element to a cause of action is termination of the tenancy by delivery of a proper three day notice.
4. The Landlord's three day notice was not properly delivered to the Defendants and is therefore defective and fails to terminate the tenancy.
5. The law is well settled that a default judgment may not be entered against a defendant on a complaint which wholly fails to state a cause of action against Defendant. Morales v All Right Miami, Inc., 25 Fla. L. Weekly D980 (Fla. 3 DCA 2000).

WHEREFORE, Defendants respectfully request this Court to determine the amount of rent, if any, to be paid into the registry of the court during the pendency of this action or waive posting until the pending motion to dismiss is heard.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been provided by postage paid first class U.S. Mail delivery on Attorney. LLC, P.O. Box 532082, Orlando, FL 32853, this September .

Respectfully submitted by,

Leonard P. Cabral, Esq.
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