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Landlord-tenant -- Return of security deposit -- Action by former tenants against landlord's former rental agent for return of security deposit that agent transferred to landlords when agent unilaterally terminated agency relationship due to its inability to contact landlords or gain access to inspect property -- Statutory provision requiring transfer of any security deposits or advance rents to new agent upon change in rental agent does not relieve rental agent from liability to former tenants for security deposit where there was no change in agents as contemplated by statute -- Since security deposit belonged to former tenants until such time as landlords made claim against it, agent should have retained deposit and returned it to former tenants when time for making claim against deposit expired -- No merit to argument that trial court should have dismissed action due to former tenants' failure to join landlords as indispensable parties

STRESS FREE PROPERTY MGMT, INC., Appellant, vs. CHUCK JONES and ROBERTA JONES, Appellees. Circuit Court, 13th Judicial Circuit (Appellate) in and for Hillsborough County. Case No. 14-CA-6343, Division X. L.T. Case No. 14-CC-102. March 19, 2015. On review of a final judgment of the County Court for Hillsborough County. Honorable Gaston Fernandez, County Court Judge. Counsel: Patrick M. Singer, for Appellant. George C. Bedell, III, Tampa, for Appellee.

(FOSTER, Judge.) Stress Free Property Management (Stress Free) asks this Court to review a judgment awarding damages to Chuck and Roberta Jones (the Joneses) for Stress Free's alleged mishandling of the Joneses' rental security deposit. At the expiration of the lease, Stress Free sent the security deposit to its principal, the landlords,[1] despite the fact that there was no claim against it, rather than returning it to the Joneses. Stress Free first contends that the case should have been dismissed for the Joneses' failure to join an indispensable party. Stress Free also maintains that the trial court failed to apply the correct law, specifically §83.49(7), Florida Statutes, to the dispute. Section 83.49(7), Fla. Stat. sets forth requirements for handling security deposits in the event a new owner or new property manager takes over during the term of a lease. Stress Free suggests that having abided by the foregoing statute's terms, it was relieved of further obligation to the Joneses under §83.47(3), Fla. Stat. We disagree that §83.49(7), Fla. Stat. is applicable because there was no new owner and no new agent to receive the deposit. With regard to the claim that the case should have been dismissed for failing to join an indispensable party, on the authority of *W.R. Cooper, Inc. v. City of Miami Beach,* 512 So. 2d 325 (Fla. 3d DCA 1987), we conclude that the property owners were not indispensable parties to the proceedings. Accordingly, we affirm the judgment below.

Because the question presented involves only questions of law, our review is *de novo. Collier County v. Hussey,* 147 So. 3d 35 (Fla. 2d DCA 2014).

The facts are not disputed. Chuck and Roberta Jones entered into a residential lease with the McConnells (the homeowners) through their agent, Stress Free Property Management, Inc. The Joneses never met the McConnells. The lease ran from February, 2012 through Jan. 31, 2013. On Dec. 31, 2012, the Joneses, in accordance with the terms of their lease, communicated their intent not to renew the lease. There is no dispute that this was correctly done. On or before Jan. 31, 2013, the Joneses returned the key to Stress Free and made their first written request for the return of their security deposit. Stress Free was made several attempts to conduct an inspection between Feb. 5-8, 2013, but was unable to

gain access to the property because of security measures in place at the subdivision. Moreover, the McConnells failed to respond Stress Free's repeated requests for access to the property.[2] On Feb. 8, 2013, more than a week after the lease ended, Stress Free terminated its contract with the McConnells, returning the keys and the entire security deposit to them on Feb. 14, 2013. In so doing, Stress Free notified the McConnells of their obligations to the Joneses with regard to the deposit. Despite never having made a claim on the deposit, the McConnells cashed the check on April 1, 2013.

The Joneses inquired a second time about their deposit around March 25, 2013, long after it was due to be returned to them in the absence of a claim against it. *See* §83.49(3)(a), Fla. Stat. In response, Stress Free told the Joneses that Stress Free no longer had a contract with the McConnells and that the McConnells had their security deposit. Stress Free gave the Joneses the McConnells' phone number and told the Joneses to contact them. Not surprisingly, the Joneses were unsuccessful in reaching the McConnells. As it happens, the property was in foreclosure beginning in Jan. 2010, before the lease was ever entered into. A consent judgment in foreclosure was entered April 5, 2013. The Joneses filed the underlying lawsuit against Stress Free on Dec. 27, 2013. After an evidentiary hearing, the trial court entered judgment for the entire deposit, plus attorney's fees and costs, to the Joneses. Stress Free filed this timely appeal.

This appeal involves the relationship between §§83.49(3) and 83.49(7), Fla. Stat. Stress Free argues that the trial court erred when it applied §83.49(3), Fla. Stat. to the dispute because Stress Free, by following the requirements of §83.49(7), Fla. Stat., had no further responsibility to the Joneses. The Joneses counter that the trial court correctly applied §83.49(3), Fla Stat., which states:

> (3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant.[3] *For all other deposits:*
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> (a) *Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. . . .*
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> If the landlord fails to give the required notice within the 30-day period, *he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.*
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> (d) *Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and sales associates, constitutes compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship.* Enforcement personnel shall look *solely to this section to determine compliance.* This section prevails over any conflicting provisions in chapter 475 *and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse*

> *security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).*

(Emphasis ours.) The foregoing statute shows that money held in escrow belongs to the tenant until earned or claimed by the landlord. *Cf.* §83.49(7), Fla. Stat., which states:

> (7) *Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each tenant account.* Upon the transfer of such funds and records to the new owner or agent, and upon transmittal of a written receipt therefor, the transferor is free from the obligation imposed in subsection (1) to hold such moneys *on behalf of the tenant. . . .This subsection does not excuse the landlord or agent for a violation of other provisions of this section while in possession of such deposits.*

We disagree with Stress Free's contention that it followed the statute's subsection (7). Section 83.49(7), Fla. Stat. says that "[u]pon the sale or transfer of title of the rental property *from one owner to another,* or upon *a change in the designated rental agent,* any and all security deposits or advance rents being held *for the benefit of the tenants* shall be transferred to the *new owner or agent. . . .*" Here, title to the property had not changed, so there was no *new* owner. Nor did the rental agent *change.* Stress Free was not fired or replaced by the McConnells; Stress Free *unilaterally* terminated its agency -- *after* the lease ended -- when it was unable to contact the owners or gain access to inspect the property. There was no *new* agent or *new* owner to transfer the funds to. Instead, Stress Free transferred the funds to the *original* owner. The statute doesn't contemplate a unilateral termination of the agency relationship by the agent as much as a replacement of specified parties. It also contemplates that such a transfer would occur during the lease term, not after its expiration. Indeed, the transfer of disputed funds *after* the lease expires, when certain rights vest, is at odds with the intent of the statute's subsection (7), as indicated by the provision that it "does not excuse the landlord or agent for a violation of other provisions of this section while in possession of such deposits." In addition, subsection (3) indicates that "enforcement personnel shall look solely to this section to determine compliance" with regard to security deposits after termination of a lease. It controls here.

Stress Free's error was in assuming that the funds were being held for the benefit of the landlords. In fact, the money belonged to the tenants until such time as the landlords made a claim on it. After the lease expired, Stress Free, as custodian of the deposit, had a responsibility to both parties. Since the McConnells failed to cooperate with their agent so as to trigger a right to retain any of the security deposit under subsection (3), the money should have been retained and returned to the Joneses at the appropriate time.[4] Had any damage been discovered, the McConnells had a remedy under §83.49(3)(a), Fla. Stat.

We are also asked to consider whether the trial court should have dismissed the case for the Joneses' failure to join the McConnells as indispensable parties. An indispensable party is a person with such an interest in subject matter of action that final adjudication cannot be made without affecting his/her interests or without leaving controversy in such a situation that its final resolution may be inequitable. *W.R. Cooper, Inc. v. City of Miami Beach,* 512 So. 2d 325, 326 (Fla. 3d DCA 1987). In the foregoing case, the City of Miami Beach awarded a contract to a prime contractor, Garcia-Allen Construction

Company (Garcia-Allen) to install a sprinkler system. Garcia-Allen subcontracted with W.R. Cooper to install the system, and Cooper performed the work. Grievances were filed with the U.S. Dept. of Labor alleging that Cooper, the subcontractor, underpaid its workers. The Secretary of Labor twice directed the City to withhold payment of part of the money until the grievances were resolved. Without Cooper's consent, Garcia-Allen authorized the City to release the disputed money to the Secretary of Labor, which, in turn, disbursed the money to pay the workers' claims. Cooper sued the City, Garcia-Allen, and the Secretary of Labor. The Secretary of Labor was dismissed when the case was removed to federal court. On remand to state court, the City moved to dismiss for failure to join the Secretary of Labor as an indispensable party. The appellate court concluded that the Secretary of Labor was not an indispensable party. The suit was a breach of contract action based on Garcia-Allen's failure to pay Cooper and that the Secretary of Labor had no interest in the dispute between Cooper, Garcia-Allen and the City about the release of the money to the Secretary. The court said that the possibility that Cooper could sue the Secretary in a claims court "does not moot or render premature Cooper's claim concerning the primary liability of Garcia-Allen on its contractual obligation." *Id.*

Here, the Joneses' position is similar to that of Cooper in the foregoing case, and the McConnells are comparable to Secretary of Labor's. Stress Free's position is comparable to that of the City's. Indeed, the question presented was the same as it is here -- whether there was a breach of the escrow agreement. *Id.* Given that the Secretary of Labor was not an indispensable party in the foregoing case, the McConnells are not indispensable here.

It is therefore ORDERED that the judgment of the trial court is AFFIRMED. It is further ORDERED that Appellees' Motion for Award of Appellate Attorney's Fees is GRANTED. The motion for costs is DENIED without prejudice to re-file a motion in the County Court. (BERGMANN and BARBAS, JJ., concur.)

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[1]The McConnells were the title owners of the property, and, as such, Stress Free's principal.

[2]It is unknown why Stress Free didn't conduct a walk-through before the lease expired.

[3]Although this case does not present an "advance rent" situation, this language emphasizes that tenant money is not to be dispersed to landlords until it is due or earned.

[4]Stress Free could have protected itself with a certified letter to the McConnells, directing them to make their claim or Stress Free would return the money to the Joneses.

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