

Commercial Eviction (FL)

A Lexis Practice Advisor® Practice Note by Meghan O. Serrano, Shumaker, Loop & Kendrick, LLP



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This practice note outlines the requirements for bringing a commercial eviction action under Florida law and explains how to ensure compliance with all pre-suit requirements. Although the note is written from the landlord's perspective, the information provided is also relevant to the tenant and tenant's counsel.

For guidance on residential evictions in Florida, see [Residential Eviction \(FL\)](#). For a compilation of Florida eviction resources, see [Eviction Resource Kit \(FL\)](#).

Pre-suit Requirements

Part I of Chapter 83 of the Florida Statutes (ss. 83.001–83.251) governs nonresidential tenancies, and outlines the notice required prior to filing an action to evict a commercial tenant from the landlord's property. However, if the tenancy is governed by a written lease, it is imperative to review the lease and abide by any specific or additional notice provisions included in that contract to ensure compliance with all conditions precedent to filing an action for possession.

Notice of Default Due to Failure to Pay Rent

Prior to filing any action to evict a tenant for failure to pay rent, the landlord must serve the statutorily required three-day notice demanding payment of rent or possession of the premises within three days from the date of delivery of the notice. Fla. Stat. Ann. § 83.20(2). For an annotated version of this form, see [3-Day Notice \(Commercial Eviction\) \(FL\)](#).

The notice may be mailed to the tenant, personally served, or, if the tenant is absent from the premises, a copy may be left at the leased property. Fla. Stat. Ann. § 83.20(2). Because compliance with the statutory notice requirements is a precondition to obtaining a judgment for possession, it is advisable to send the notice in a manner that will confirm delivery and receipt by the tenant, such as by sending via Federal Express, certified mail, or through a process server who can prepare an affidavit attesting to service if necessary.

If the tenant cures the default by paying the past due rent, the landlord cannot bring an action for possession based on the prior default. Fla. Stat. Ann. § 83.202.

Notice of Default for Any Reason Other Than Failure to Pay Rent

If a tenant is in default of any lease obligation other than the payment of rent, Florida law provides that if the lease is silent on the issue or if the lease is oral, the tenant should be given at least 15 days' written notice requiring the cure of the breach or possession of the premises. Fla. Stat. Ann. § 83.20(3). If the lease includes a provision regarding the manner in which such notices must be provided, that provision controls, otherwise, the notice must be by mail, hand delivery, or, if the tenant is absent from the premises, by posting the notice at the premises. Fla. Stat. Ann. § 83.20(3). Here, too, because notice is a precondition to obtaining a judgment for possession in the event that the default is not cured, it is advisable to send the notice in a manner that will confirm delivery and receipt by the tenant, such as by sending via Federal Express, certified mail, or through a process server who can prepare an affidavit of service if the tenant later claims that service was defective or no notice was received.

For a form, see [15-Day Notice \(Commercial Eviction\) \(FL\)](#).

Actions for Possession

Jurisdiction

If the landlord seeks only to recover possession of the property, the action must be filed in the county court. Fla. Stat. Ann. § 83.21. Until December 31, 2019, if the landlord seeks to recover possession of the property and damages that exceed \$15,000, the action must be filed in circuit court. Effective January 1, 2020, the circuit court has jurisdiction of matters where the amount in controversy exceeds \$30,000, and for matters in which the amount in controversy is less than \$30,000, the county court has jurisdiction. Effective January 1, 2023, the circuit court has jurisdiction of matters where the amount in controversy exceeds \$50,000, and for matters in which the amount in controversy is less than \$50,000, the county court has jurisdiction. See Fla. Stat. § 26.012, as amended in 2019.

Complaint for Possession

If the tenant fails to cure a default for the nonpayment of rent after notice, the lease is terminated and the landlord may file an action seeking possession of the property (eviction). Fla. Stat. Ann. §§ 83.21, 83.231. See Fla. R. Civ. P. Form 1.947 for the statutory form. For an annotated version of this form, see [Complaint for Eviction \(Failure to Pay Rent\) \(FL\)](#). (For a form complaint based on a default other than the nonpayment of rent, see [Complaint for Eviction \(Default other than Failure to Pay Rent\) \(FL\)](#).) Attorney's fees and court costs are recoverable under Florida law in an action to enforce the terms of the lease. Fla. Stat. Ann. § 83.231.

The court is required by statute to “advance the cause on the calendar” and the landlord is entitled to summary procedure provided for in Section 51.011, Florida Statutes, which means that at least five days (excluding Saturdays, Sundays, and legal holidays) from the date of service must have elapsed before a judgment for final removal of the tenant may be entered. Fla. Stat. Ann. §§ 83.22 (2), 51.011; Fla. R. Jud. Admin. 2.514(a) (3).

As discussed below, Florida law provides that a tenant must deposit all past due rent into the court registry in order to defend the eviction action. Because this procedure provides a prompt and effective mechanism to obtain a judgment for possession quickly, the practitioner should avoid any issues or delay and confirm prior to filing that the complaint accurately summarizes all rent due.

Complaint for Possession and Damages

The landlord can include a claim for damages for breach of the lease in the same lawsuit as the eviction claim, but this claim is not governed by summary process and the tenant will have the standard 20 days to file and serve a response

to a damages claim. Fla. R. Civ. P. 1.140(a)(1). For a form, see [Complaint for Eviction and Damages \(FL\)](#).

Service of Complaint

Because the landlord is entitled to summary process under Chapter 51, the summons served on the tenant, along with the complaint seeking possession of the property, notifies the tenant that to defend an eviction proceeding on any basis other than payment, the tenant must (1) file a motion to determine rent, or (2) deposit all past due rent described in the complaint with the registry of the court and serve an answer stating the legal basis for the defense within five days of being served (excluding Saturdays, Sundays, and legal holidays). Fla. Stat. Ann. § 83.232(1), Fla. R. Jud. Admin. 2.514(a)(3). Although the requirements vary by county, typically, funds deposited to the court registry must be in cash, cashier's check, or money order, and clerk fees apply.

The landlord can include a claim for damages for breach of the lease in the same lawsuit as the eviction claim, but this claim is not governed by summary process and the tenant will have the standard 20 days to file and serve a response to a damages claim. Fla. R. Civ. P. 1.140(a)(1). The landlord need only serve the tenant with one summons for the lawsuit provided that the summons specifies that the tenant has five days to answer the claim for possession and 20 days to respond to the money damage claim. *Stein v. Hubbs*, 439 So. 2d 1005 (Fla. Dist. Ct. App. 1983) (noting that it “would be duplicative of court time and costs to require service of both a five-day and a 20-day summons in such cases [where a complaint seeks remedies of possession and damages]”). For a sample summons that specifies the different time periods for a response to claim for eviction and damages, see [Summons \(Eviction and Damages\) \(FL\)](#). For a summons for use when the landlord only seeks eviction, see [Summons \(Eviction\) \(FL\)](#).

Tenant's Failure to Respond to Complaint

If the tenant fails to answer the complaint for possession after the expiration of five business days after personal service on the tenant or, if service is by posting, five business days after service is effective (the date of posting or mailing, whichever occurs later), the landlord may file a motion for entry of a default. In order to obtain entry of a default, the landlord must file the return of service with the clerk of court and for any party who is an individual, confirm that he or she is not in the military. Upon the entry of the default, the landlord may file a motion for final judgment for possession. Fla. Stat. Ann. §§ 51.011, 48.031(1)(a). See Fla. R. Civ. P. 1.500.

For forms, see [Motion for Clerk's Default \(Possession\) \(Eviction\) \(FL\)](#), [Motion for Clerk's Default \(Damages\) \(Eviction\) \(FL\)](#), and [Non-Military Affidavit \(Eviction\) \(FL\)](#).

Tenant's Obligation to Deposit Past Due Rent to Defend Eviction

After the complaint is filed, the clerk of court will issue a summons that notifies the tenant that to defend an eviction proceeding on any basis other than payment, the tenant must (1) file a motion to determine rent, or (2) deposit all past due rent described in the complaint with the registry of the court and serve an answer stating the legal basis for the defense within five days of being served (excluding Saturdays, Sundays, and legal holidays). Fla. Stat. Ann. §§ 83.232, 51.011(1); Fla. R. Jud. Admin. 2.514(a)(3). For forms, see [Summons \(Eviction\) \(FL\)](#) and [Summons \(Eviction and Damages\) \(FL\)](#). Although the requirements vary by county, typically, funds deposited to the court registry must be in cash, cashier's check, or money order, and clerk fees apply.

Although the clerk's summons issued in an eviction action will include notice to the tenant regarding its obligation to deposit all past due rent into the court registry in order to defend the eviction action, note also that Section 83.232(3), Florida Statutes states that "[t]he court, on its own motion, shall notify the tenant of the requirement that rent be paid into the court registry by order, which shall be immediately issued upon filing of the tenant's initial pleading, motion, or other paper." Thus, there is a discrepancy between the tenant's obligation to deposit the past due rent into the registry of the court "on or before the date on which his or her answer is due"—that is, within five days of being served (excluding Saturdays, Sundays, and legal holidays) as outlined in Section 83.232(1), Florida Statutes—and Section 83.232(3), Florida Statutes, which states that the court is to notify the tenant of the obligation to deposit the rent by order "upon filing of the tenant's initial pleading, motion, or other paper." In some jurisdictions in Florida, the courts will require that the tenant be served with the order directing the payment of past due rent into the court registry, and therefore, the practitioner is well served to seek entry of such an order as early as possible in the case.

If the tenant fails to file a motion to determine rent or deposit the past due rent into the court registry within five days of service or entry of an order (Fla. Stat. Ann. § 83.232(3)), the tenant has absolutely waived his or her defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing. Fla. Stat. Ann. § 83.232(5). If the tenant contests the amount of money required to be placed into the court registry, the court must hold an evidentiary hearing to determine "(a) [w]hether the tenant has been properly credited by the landlord with any and all rental payments made and (b) [w]hat properly constitutes rent under the provisions of the lease." Fla. Stat. Ann. § 83.232(2). The

tenant's filing of a counterclaim for money damages does not relieve the tenant of its statutory obligation to deposit the rent due into the registry of the court. Fla. Stat. Ann. § 83.232(4).

If the tenant deposits the past due rent into the court registry, and the landlord is in actual danger of losing the property or other personal hardship due to the loss of rent, the landlord may apply to the court for the disbursement of all or part of the funds deposited and for a prompt final hearing. Fla. Stat. Ann. § 83.232(1).

Tenant's Defenses

The tenant may raise any legal or equitable defense that he or she has to the action for possession. Possible defenses include the landlord's failure to comply with the notice provisions under the lease, or that there is no default in payment because the tenant has properly withheld rent due to the landlord's failure to keep the premises in tenantable condition. See Fla. Stat. Ann. § 83.201.

If a tenant asserts a defense to an eviction claim alleging that the landlord has failed to maintain the premises as required under Fla. Stat. Ann. § 83.201, the tenant must demonstrate that at least 20 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason of the condition. Fla. Stat. Ann. § 83.201. After consideration of all other relevant issues, the court shall enter appropriate judgment. Fla. Stat. Ann. § 83.231. For a form of notice, see [Tenant's Notice of Intention to Withhold Rent \(FL\)](#).

Final Judgment and Writ of Possession

Judgment for Possession

As explained above, if the tenant has failed to respond to the complaint for possession, the landlord should file a motion for entry of a default by the clerk. Upon entry of the default, the landlord can file a motion for final judgment of possession. The form judgment for possession states that the landlord is entitled to possession of the property and must include a description of the property. It is imperative that the property description is accurate because any writ of possession issued will be based on the final judgment.

For forms, see [Motion for Clerk's Default \(Possession\) \(Eviction\) \(FL\)](#), [Motion for Default Final Judgment \(Possession\) \(Eviction\) \(FL\)](#), and [Final Judgment \(Possession\) \(Eviction\) \(FL\)](#).

Judgment for Damages

If the tenant has failed to respond to the complaint for damages, the landlord should file a motion for entry of a default by the clerk. Upon entry of the default, the landlord can file a motion for final judgment awarding damages. If the amount of damages has changed since the complaint was filed, the landlord can prepare an affidavit outlining damages.

For forms, see [Motion for Clerk's Default \(Damages\) \(Eviction\) \(FL\)](#), [Motion for Default Final Judgment \(Damages\) \(Eviction\) \(FL\)](#), [Affidavit of Damages \(Eviction\) \(FL\)](#), and [Final Judgment \(Damages\) \(Eviction\) \(FL\)](#).

The landlord is entitled to pursue the tenant for any damages owed as a result of the breach of the terms of the lease. If the lease includes an acceleration clause, the landlord can also seek to recover future rent from the tenant. *Jimmy Hall's Morningside, Inc. v. Blackburn & Peck Enterprises, Inc.*, 235 So. 2d 344 (Fla. Dist. Ct. App. 1970) (holding that acceleration clauses in leases are valid and enforceable). The landlord "has a duty to mitigate the tenant's damages by making a good faith effort to release the property at a fair rental. And, the landlord must credit the tenant for any rents obtained from another tenant, during the lease term." *Hudson Pest Control, Inc. v. Westford Asset Mgmt., Inc.*, 622 So. 2d 546, 549 (Fla. Dist. Ct. App. 1993). It is reversible error for a court to enter a judgment that includes accelerated rent without a reservation of jurisdiction to consider a motion for an accounting should the landlord relet the premises during the remainder of the lease term. *Horizon Med. Group v. City Center of Charlotte Cty.*, 779 So. 2d 545 (Fla. Dist. Ct. App. 2001).

Writ of Possession, Removal of the Tenant, and the Tenant's Personal Property

Upon the entry of the judgment for possession, the clerk may issue a writ of possession. Fla. R. Civ. P. 1.580. The writ of possession directs the sheriff of the county where the property is located to put the landlord in possession of the property after service of the writ. Fla. Stat. Ann. § 83.241. Because the writ issued will be based on the description of the property included in the complaint, it is imperative that this description is accurate to avoid delays. The writ must be served by the sheriff, who charges a fee, typically about \$100. For the statutory form, see Fla. R. Civ. P. Form 1.915. For an annotated form, see [Writ of Possession \(Eviction\) \(FL\)](#).

Disposal of Personal Property Left after Conclusion of Tenancy

If the tenant leaves personal property at the premises following the expiration of the lease or his or her abandonment of or eviction from the premises, the landlord must give notice to the tenant or presumed owner of its intent to dispose of the personal property. The notice must describe the personal property sufficiently to allow the owner of the property to identify it. The notice must also advise the owner that the reasonable costs of storage may be charged before the property is returned and state where the property may be claimed and the date before which the claim must be made, which shall be a date not fewer than 10 days after the notice is personally delivered or, if mailed, not fewer than 15 days after the notice is deposited in the mail. The notice must be personally delivered or sent first class mail to the owner's last known address or any other address where the owner can reasonably be expected to receive it. Fla. Stat. Ann. § 715.104(2), (3).

The statute provides the form of the notice notifies the owner where the property can be claimed and if it is not claimed, it can be disposed of. Fla. Stat. Ann. § 715.105. For an annotated version of the form, see [Notice to Tenant Regarding Abandoned Property \(Residential Lease\) \(FL\)](#). The notice must also specify what will happen to the personal property if it is not claimed, which depends on the value of the property. Fla. Stat. Ann. § 715.105(1), (2).

If the owner fails to claim the personal property after notice, the landlord can sell it at a properly noticed public sale, and the owner may claim and proceeds of the sale from the county after the costs of storage, advertising, and sale are deducted. Fla. Stat. Ann. §§ 715.109, 111, 105(2)(a). If the owner pays all costs associated with the storage, advertising, etc., of the property before the date specified in the notice, the property can be released to him or her and the sale canceled. Fla. Stat. Ann. § 715.108. If the owner fails to claim the personal property after notice and the landlord reasonably believes that the personal property is worth less than \$500, it can be kept, sold or destroyed. Fla. Stat. Ann. § 715.105(2)(b). The landlord must exercise "reasonable care" in storing the personal property but "is not liable to the tenant or any other owner for any loss unless caused by the landlord's deliberate or negligent act." Fla. Stat. Ann. §§ 715.107, 715.11.

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