FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-218

RYAN HANDY,

Appellant,

v.

MW-RESERVE AT ST. JOHN'S 1, LLC, a Florida limited liability company, as successor in interest to Conam Management Corporation, as manager for The Reserve at St. John's River,

Appellee.

On appeal from the County Court for Duval County.
Mose L. Floyd, Judge.

November 16, 2022

PER CURIAM.

AFFIRMED. *See* § 83.60(2), Fla. Stat. (2021); *Huddleston v. Chaney St. Place, LLC*, 334 So. 3d 732 (Fla. 1st DCA 2022); *1560-1568 Drexel Ave., LLC v. Dalton*, 320 So. 3d 965, 969 (Fla. 3d DCA 2021) ("Section 83.60(2) is not discretionary; it compels a tenant defending against an eviction to pay into the court registry either (i) the amount of rent alleged to be due, or (ii) the amount of rent

determined by the court, plus all rent that accrues during the case's pendency.").

ROWE, C.J., and RAY, J., concur; MAKAR, J., dissents with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

MAKAR, J, dissenting.

In this case, the landlord filed a cursory one-count, one-page complaint on October 7, 2021, to evict the tenant, who allegedly failed to pay three months' rent. Less than three weeks later, a default was entered on October 26, 2021. The pro se tenant filed a hand-written answer *the next day* explaining various defenses and contesting the amount of rent claimed by the landlord as inconsistent with the landlord's notice; the tenant agreed to pay an amount he asserted was owed if mold and other claimed problems were remediated, tendering $2,605.00 into the court's registry that same day. In the hand-written answer, the tenant said he had hired a lawyer who thereafter filed a notice of appearance on November 9, 2021, and a verified motion to set aside default based on excusable neglect on November 13, 2021, along with a revised answer and counterclaims. Nothing in the record contradicts the verified motion for relief from the default. The trial court denied the motion to set aside the default, disallowed the revised answer and counterclaims, ordered the tenant to vacate the apartment in six weeks, and awarded rent alleged to be due, including the funds in the court's registry. The tenant has appealed the order; the landlord failed to file an answer brief.

Under the circumstances, it was error to deny the tenant relief from the default judgment and to not allow the matter to be resolved on the merits. *Allstate Ins. Co. v. Ladner*, 740 So. 2d 42, 43 (Fla. 1st DCA 1999) ("The longstanding policy in Florida is one of liberality toward vacating defaults, and any reasonable doubt

with regard to setting aside a default should be resolved in favor of vacating the default and allowing trial on the merits."); *Freedman v. Geiger*, 314 So. 2d 189, 190 (Fla. 3d DCA 1975) ("As a general rule, the policy of the courts of Florida in setting aside defaults in order to permit a trial on the merits is one of liberality."). The landlord could not have plausibly suffered any prejudice due to the one-day-late hand-written answer. Because the tenant had numerous valid defenses, and deposited funds into the court's registry, substantial compliance with statutory requirements was met. § 83.60(2), Fla. Stat. (2022); *see also K.D. Lewis Enters. Corp., Inc. v. Smith*, 445 So. 2d 1032, 1036 (Fla. 5th DCA 1984).

Moreover, the statutory provision at issue is limited to the remedy of eviction, making it improper for the trial court to both evict the tenant and enter other relief under the default. *See Geiger*, 314 So. 2d at 190 (concluding that entering a default in a landlord's favor was erroneous in an action not based solely on eviction relief under section 83.60, Florida Statutes). As in *Geiger*, the cause in this case "is not an action solely for possession in which the statute could be applied to afford complete and appropriate relief." *Id.; see Smith*, 445 So. 2d at 1035 (noting that a tenant "loses only his right to retain possession of the premises if he fails to pay the rent to the landlord or into the registry of the court. Any cause of action against the landlord to which he may be otherwise entitled is still available to him."); *see also First Hanover v. Vazquez*, 848 So. 2d 1188, 1191 (Fla. 3d DCA 2003) (same). For all these reasons, reversal is appropriate to allow a trial on the merits of both the landlord's and tenant's claims, including potential damages.

Preston H. Oughton of Law Office of Preston H. Oughton, Jacksonville, for Appellant.

Meghan Edwards of Edwards & Edwards, P.A., Jacksonville, for Appellee.