

# Third District Court of Appeal

## State of Florida

Opinion filed November 26, 2025.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D25-1923  
Lower Tribunal No. 25-13457-CA-01

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**2010 NW 107 Ave LLC,**  
Appellant,

vs.

**Delta Bay Investments LLC,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Vivianne del Rio, Judge.

Recalde Law Firm, P.A., and Darcy Currey, and Rafael Recalde, for appellant.

Barakat + Bossa PLLC, and Angelique Gulla, and Nicholas J. Diego, for appellee.

Before FERNANDEZ, and MILLER, and GOODEN, JJ.

MILLER, J.

In this commercial eviction case, appellant, 2010 NW 107 Avenue, LLC, the tenant, seeks review of a final default judgment in favor of appellee, Delta Bay Investments, LLC, the landlord. On appeal, the tenant contends it was excused from complying with an emergency order requiring the deposit of rent into the registry of the court because the trial court failed to first conduct an evidentiary hearing. Under the unique circumstances presented here, we impute no error and therefore affirm.

I

On July 7, 2025, the landlord served the tenant with a five-day notice to pay or vacate, stating that \$20,230.00 of rent was due and owing. On July 16, 2025, the landlord filed a motion to deposit \$20,850.00 in rental payments received from the tenant following the expiration of the five-day notice into the registry of the court. The tenant filed an answer, contending the five-day notice improperly comingled past-due and future rents, and a motion to determine rent with an evidentiary hearing. In the motion, the tenant contended it was entitled to a \$30,000.00 offset for necessary repairs, which was purportedly acknowledged by the landlord in a string of written communications and authorized by the terms of the lease. The tenant further argued that the five-day notice was therefore defective, and so it was not in default.

The trial court did not set an evidentiary hearing. Instead, after a hearing on the motion to dismiss in mid-September 2025, the court deducted \$30,000.00 from the amount the landlord claimed was due and owing and ordered the tenant to immediately pay \$2,617.50 into the court registry and deposit future rental payments as due under the lease.

The tenant deposited \$2,617.50 in the court registry but did not deposit the October 2025 rent on the first of the month. The landlord moved for default. The tenant argued that the first was a court holiday and it was excused from compliance because the court failed to first conduct an evidentiary hearing on the rent-determination motion. But the tenant nonetheless deposited a partial payment on October 3, 2025.

## II

Aligning ourselves with our sister courts, we have observed that motions for rent determination are ordinarily disposed of by way of an evidentiary hearing. See e.g., Alfonso v. Maiuri, 405 So. 3d 527, 530 (Fla. 3d DCA 2025); Rowe v. Macaw Holdings I, LLC, 248 So. 3d 1178, 1179 (Fla. 4th DCA 2018) (reversing “a default final judgment of eviction for the failure of the trial court to hold the evidentiary hearing required by statute where there is a dispute regarding the amount of *rent* to be posted in the court registry in a commercial eviction action”); Hallandale Plaza, LLC v. New

Tropical Car Wash, LLC, 335 So. 3d 712, 721 (Fla. 4th DCA 2022) (“[T]he trial court shall make appropriate preliminary findings as to the amount of rent that the Tenant should pay into the court registry while the eviction action is pending.”); Ramirez v. Lopez, 357 So. 3d 1281 (Fla. 3d DCA 2023) (reversing “because the trial court should have set Tenant’s motion to determine rent for an evidentiary hearing to resolve the disputed issue of how much rent Tenant should have deposited into the court registry”). This general rule comports with the provisions of section 83.232(2), Florida Statutes (2025), which authorizes the trial court to conduct a limited evidentiary hearing. See § 83.232(2), Fla. Stat. (2025) (“If the tenant contests the amount of money to be placed into the court registry, any hearing regarding such dispute shall be limited to only the factual or legal issues concerning: (a) Whether the tenant has been properly credited by the landlord with any and all rental payments made; and (b) What properly constitutes rent under the provisions of the lease.”). And here, the trial court failed to conduct a rent-determination hearing.

But this case presents a unique factual scenario. The trial court gave the tenant the benefit of the doubt, operating as though the \$30,000.00 rent credit claimed by the tenant was bona fide. The court then deducted the credit from the accrued rent obligation and ordered the tenant to deposit the

\$2,617.50 remaining balance and all future rent as due and owing under the lease into the court registry. The tenant did not seek appellate review of the order.

The tenant tendered the initial deposit but failed to timely remit the October rent. Although the due date fell on a court holiday, the tenant did not remit payment the next day. Instead, the tenant waited until the third of the month and then only deposited a partial payment.

Under these circumstances, section 83.232(5) controls. The statute provides that “[f]ailure of the tenant to pay the rent into the court registry pursuant to court order shall be deemed an absolute waiver of the tenant’s defenses. In such case, the landlord is entitled to an immediate default for possession without further notice or hearing thereon.” § 83.232(5), Fla. Stat. (2025); see also § 83.232(1), Fla. Stat. (2025) (“Even though the defense of payment or satisfaction has been asserted, the court, in its discretion, may order the tenant to pay into the court registry the rent that accrues during the pendency of the action, the time of accrual being as set forth in the lease.”). Because the tenant did not timely comply with the underlying order, the trial court was divested of any discretion to deny the default. See Poal Wk Taft, LLC v. Johnson Medical Ctr. Corp., 45 So. 3d 37, 39 (Fla. 4th DCA 2010) (“Where the tenant has not paid the rent into the registry of the court in

accordance with court order and the statute, the landlord is entitled to a writ of possession without further hearing. The trial court exercises no discretion, and the landlord is entitled to the issuance of the writ of possession as a matter of right.”). We therefore are constrained to affirm.

Affirmed.