

**IN THE COUNTY COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA**

SPICLIFF, INC.

nka Morguard Woodcliff Apartments, Inc.

dba Woodcliff Apartments

4301 Creighton Rd.

Pensacola, FL 32504

Plaintiff,

vs.

Case No. 2020 CC 003778

Division 5

STEVEN COWLEY

4301 Creighton Rd., Apt 81

Pensacola, FL 32504

Defendant

ORDER GRANTING PLAINTIFF'S MOTION TO LIFT CDC STAY

At a Zoom hearing on plaintiff's Motion to Lift the CDC Stay in this eviction case, both parties were represented by counsel. The relevant and material facts in this case are not in dispute. Plaintiff/landlord leased a residential property to defendant in exchange for \$825.00 per month. Defendant/tenant failed to pay the rent as agreed and is now more than \$5,000.00 in arrears.

Defendant was given Notice pursuant to §83.56(3), Florida Statutes, to either bring the rent current within three days or move out by September 21, 2020. Defendant did not pay, nor did he move. Plaintiff filed this eviction case October 8, 2020, when defendant continued to violate his lease by failing to pay the October rent. Plaintiff/landlord seeks return of his property based on non-payment of rent.

Defendant/tenant was personally served with the Complaint and Summons on October 13, 2020. The Summons contained clear and unambiguous language that the tenant must file a written Answer with the Clerk of Court within five business days or "you may be evicted without a hearing or further notice." Again, defendant/tenant did nothing.

On October 21, 2020, the Clerk of Court issued a Default and the court entered Final Judgment returning possession to the landlord. A Writ of Possession was issued to the Escambia County Sheriff's Office on October 23, 2020, instructing law enforcement to notify the tenant he had 24 hours to vacate the premises.

It was not until a Deputy Sheriff served the Writ of Possession giving defendant/tenant 24 hours to move that defendant finally filed a response. He sent an email to the court and plaintiff's attorney with a copy of the CDC Agency Order Declaration Affidavit attached stating, "I emailed the this (sic) to management early this morning."

In summary, defendant failed to take advantage of the safe harbor created by the plaintiff/landlord's Three Day Notice to bring the rent current or move to avoid eviction. After being personally served with the Complaint and Summons he failed to respond to the eviction lawsuit by filing a written Answer in which he could raise any legally sufficient defense to eviction. He did nothing until given 24 hours to move when the sheriff served the Writ of Possession.

Upon receiving tenant's email the court, as required by the CDC Agency Order 4163-18-P "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," immediately entered a Stay of Eviction to the Sheriff's Office to stop tenant's removal. The plaintiff/landlord responded by filing a motion to lift the Stay.

Plaintiff alleges the CDC Agency Order violates the Fifth Amendment of the United States Constitution. The Fifth Amendment protects persons from being deprived of property without due process of law and just compensation. The Fourteenth Amendment applies this provision to the States. Plaintiff argues the landlord "has not been afforded any due process of law with respect to the CDC Stay and that the Order is confusing, vague and unenforceable."

If the federal government forces landlords to house tenants during the COVID-19 pandemic because tenants are allegedly unable to pay rent, the government must do so within Constitutional restraints. Permitting tenants to avoid eviction by merely signing a pre-printed form, which is then notarized and delivered their landlord deprives landlords of due process as landlords have no re-

course but to “house” tenants without compensation until at least January 1, 2021, or until further Notice.

A lawful alternative would have had tenants sign the pre-printed forms which, after notarization, would have been submitted to the CDC. The CDC would have then had the rent paid by the federal government directly to landlords. Absent payments to landlords, landlords have had their property “taken” without just compensation, which is prohibited by the Fifth Amendment.

The time-honored right of a person to be protected from a government *taking* without due process and just compensation goes back to the Colonists’ protestations against being forced to “house” British soldiers under the Quartering Act of 1765. The British government required Colonists to provide housing to soldiers in privately owned public inns or barracks that the Colonists were required to build at their own expense.

As punishment for the Boston Tea Party, the Quartering Act of 1774 expanded this requirement to include unoccupied private homes. Not only was there no “compensation” for the takings, Colonists were not afforded a process in which they could contest the takings. Obviously, this was an important consideration for our Founders because they included protection against such a “taking” in our Constitution.

There is no dispute over whether or not the CDC Agency Order constitutes an action in the “public interest.” No one wants to make any citizen homeless or create a burden on their extended families or shelters during a pandemic. However, neither the federal government nor state governments have the authority to force private citizens to “house” persons in their private property without just compensation or due process of law.

Perhaps most striking in the Agency Order is the simplicity of the “taking.” Tenants need only print the form, sign the form in front of a Notary, and give it to the landlord to receive instant protection from an eviction for non-payment of rent.

There is no requirement in the Agency Order for a finding that the tenant qualifies for CDC Agency Order protection. . . the only action required is that the

tenant sign the pre-printed form in front of a notary and hand it to the landlord. The form does not require details or factual information from the tenant, only a signature. The mere signing of the “form” deprives landlords of their property and the economic benefits therefrom without due process and without just compensation.

Landlords typically try to work with tenants before initiating eviction proceedings. As a result of the Florida Governor’s Moratorium on evictions, which was extended by the CDC Agency Order, many landlords have been forced to house tenants without due process or just compensation for a year or more. With spikes in COVID-19 cases nationwide, it is not unreasonable to foresee an extension on the CDC Agency restriction on evictions beyond January 1, 2021.

Assuming that the Agency Order will, at some point in the future be rescinded, some may argue this is a *temporary* taking and therefore not a violation of the Fifth Amendment to the United States Constitution and Article X, Section 6(a) of the Florida Statute Constitution. However, it is well-established that even a temporary taking can rise to the level of requiring due process and just compensation based on the “severity of the burden that the government imposes upon private property rights.” See Lingle v. Chevron U.S.A., Inc., 544 U.S. 528 (2005). Even when a regulation, as here, is not a *permanent* physical taking by the government, the scope of the regulation can so deprive a property owner of the economically beneficial use of their property that it rises to the level of a compensable taking.

It is instructive to consider that if a person seeks financial benefits for VA benefits or Social Security disability, it is not unusual for the citizen to wait months, if not years, while completing a “mountain of paperwork” and probably having to hire an attorney to actually complete the process before seeing a benefit from the federal government.

In contrast, landlords are deprived of their property when a tenant signs a simple two-page form that has already been completed by the government. The delinquent tenant simply prints the form from the Internet and signs the form in front of a Notary to obtain full benefits under the Agency Order. No hearing is required and there is no due process or just compensation for the landlord.

The court also finds no merit in the argument that this is not a "taking" because past due rent continues to accrue and can later be collected by the landlord with late fees and other charges. It is not reasonable to believe tenants who are so affected by the pandemic that they cannot pay rent will be financially able to pay landlords thousands of dollars of past due rent once the Agency Order is rescinded.

In this case the past due rent is almost \$6,000.00. Assuming the Agency Order is rescinded in January, defendant will be more than \$7,000.00 in arrears by the time plaintiff is able to reclaim possession of its property. It is inconceivable tenants will be able to resume paying monthly rent while also repaying large amounts of past due rent.

Landlords affected by the Agency Order risk losing their properties permanently through foreclosure unless they are able to continue paying their mortgages while they are forced to house tenants without due process or just compensation. This rises to the level of a regulatory deprivation of substantial economic benefits deserving of protection under the Fifth Amendment of the United States Constitution and Article X of the Florida Constitution. This is especially true when the unconstitutionality could have been so easily avoided by having the Agency Order require the tenant serve the CDC with the Declaration Affidavit and the federal government then provide just compensation (the rent) directly to the landlord.

While the court is mindful of the plight of tenants who have truly been adversely affected by the COVID-19 pandemic, this Agency Order is not a legally appropriate solution to their financial problems. Citizens enjoy the fundamental right that neither federal nor state governments can take property from them without due process and just compensation. Governments, regardless of how well-intentioned, cannot force landlords to house persons in their properties due to the pandemic without due process and just compensation. Therefore, it is:

ORDERED AND ADJUDGED that the Agency Order violates the Fifth Amendment to the United States Constitution and Article X of the Florida Constitution and as a result, plaintiff's motion to lift the CDC Agency Stay imposed on this eviction case is granted.

DONE AND ORDERED in chambers, Pensacola, Escambia County, Florida.



esign by COUNTY COURT JUDGE PAT KINSEY
on 11/24/2020 17:24:14 gS+pT PV

cc: Stephen M. Guttman, Attorney for Plaintiff
Christine A. Kelly-Fausel, Attorney for Defendant