IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT IN AND
FOR ST LUCIE COUNTY, FLORIDA.
APPELLATE DIVISION

Circuit Case No. 17-AP-10
Lower Tribunal No. 17-CC-521

MARC WEIG AND HELENE WEIG,

Appellants,

v.

JAIME MATOS,

Appellee.
_____/

Not final until time expires for filing motion for rehearing, and if filed, disposed of.

Decision filed April 26, 2018.

Appeal from the County Court for St. Lucie County; Edmond Alonzo, Judge.

Marc and Helene Weig, Port St. Lucie, for appellants.

Jaime Matos, Bronx, New York, for appellee.

PER CURIAM.

On March 1, 2017, the Appellee ("Landlord") filed a complaint for eviction for failure to pay rent and attached the lease that expired on March 1, 2017 and a three day notice. On March 6, 2017, the trial court granted the Appellants' ("Tenants'") motion to dismiss, stating that the complaint and three day notice were facially defective if the rent was due on March 1, 2017 and the complaint was filed the same day. It allowed the Landlord ten days to amend if the property is still occupied. The Landlord filed an amended complaint on March 8, 2017 containing a letter to the judge stating that the Tenants still occupied the property, an email exchange between the Landlord and Tenants, and the same complaint, lease, and three day notice that were originally filed on March 1, 2017. On March 9, 2017, the trial court entered an amended[1] final judgment of eviction, which granted the Landlord's complaint. The Tenants filed a motion for reconsideration,

[1] The final judgment was amended to correct a clerical mistake.

which was denied, and on March 17, 2017, the clerk issued the writ of possession. The same day, the Tenants filed a notice of appeal.

Questions of statutory interpretation are reviewed de novo. *Stanley v. Quest Intern. Inv., Inc.*, 50 So. 3d 672, 673 (Fla. 4th DCA 2010).

The Landlord and Tenants had a lease from March 1, 2016 to March 1, 2017. Because the Tenants refused to vacate the property after March 1, 2017 and admitted as much in an email to the Landlord on March 7, 2017, §83.58 applies:

> If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

§83.59(2) states in relevant part that "the landlord is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar." When referring to §51.011(1) governing pleadings, it states:

> Plaintiff's initial pleading shall contain the matters required by the statute or rule prescribing this section or, if none is so required, shall state a cause of action. **All defenses of law or fact shall be contained in defendant's answer which shall be filed within 5 days after service of process.** If the answer incorporates a counterclaim, plaintiff shall include all defenses of law or fact in his or her answer to the counterclaim and shall serve it within 5 days after service of the counterclaim. No other pleadings are permitted. All defensive motions, including motions to quash, shall be heard by the court prior to trial.

(Emphasis added). In the instant case, the Landlord filed an amended complaint on March 8, 2017. The trial court rendered its amended final judgment of eviction on March 9, 2017, one day later, which did not allow the Tenants their five day window to file an answer, as provided by §51.011(1). It is also problematic that though there are three returns of service in the record, none show that the amended complaint was served on the Tenants. Since the record does not reflect that the Landlord and the trial court complied with the summary procedure outlined in §51.011(1), this case must be reversed.

In their initial brief, the Tenants ask this court to award them their appellate costs. However, Fla. R. App. P. 9.400(a) states "costs shall be taxed by the lower tribunal on a motion served no

later than 45 days after rendition of the court's order." Therefore, the issue of the Tenants' appellate costs is not properly before this court at this time. The motion to tax appellate costs is denied.

Reversed.

ROBY, BUCHANAN, JJ., and STEELE, Acting Circuit Judge, concur.

Copies of above decision
were furnished to the attorneys/parties
of record on the same date
the decision was filed.