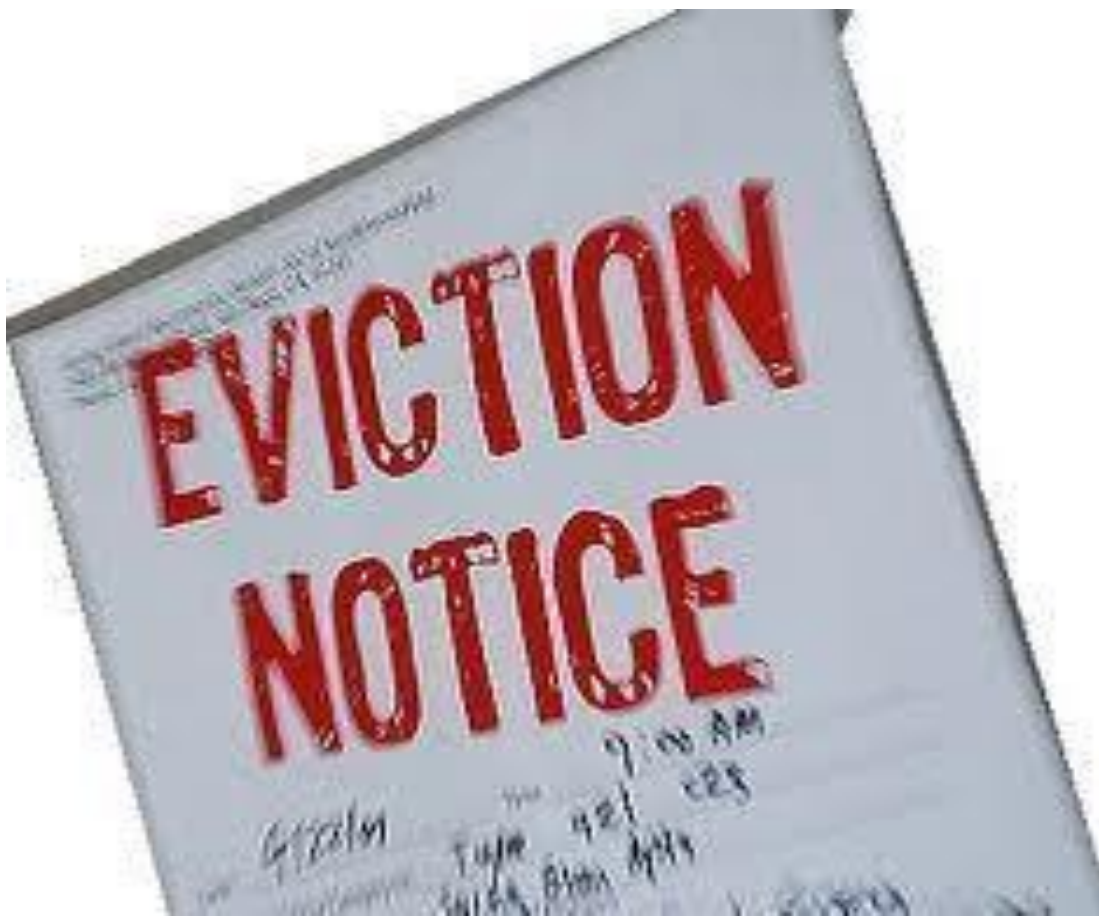


How to Answer Your Eviction During and After COVID-19



Legal Services of Greater Miami, Inc.
Tenants' Rights Project

SPECIAL CONSIDERATIONS DUE TO COVID-19

TEMPORARY COURTHOUSE CLOSURES

Some courthouses remain generally closed to the public. But, the public is allowed to enter the courthouse for emergency filings, to deposit rent, or to file an answer or claim of exemption. You must wear a mask when going to court. If there is a hearing in your case, it will likely be held by Zoom or over the telephone. However, you should follow up with the court personnel for more details regarding your particular case.

CENTERS FOR DISEASE CONTROL EVICTION MORATORIUM HAS NOW EXPIRED

The Center for Disease Control's (CDC) Eviction Moratorium has now ended, and there are presently no moratoriums that protect Florida tenants from evictions. The CDC's moratorium ended after the United States Supreme Court struck down the moratorium on August 27, 2021. This is the first time since March 2020 that there are no moratoriums in place to protect tenants from eviction in Florida.

COUNTY ORDINANCE:

Tenants that live in a **property owned by Miami-Dade County** (such as **Miami Dade Public Housing**), are protected by a County Ordinance that suspends evictions during a state of emergency.

Under this ordinance, the landlord cannot take "any action to facilitate the eviction of residents." This means that the landlord should not take any steps in the eviction process, including filing a lawsuit for eviction, if you live in public housing or county-owned housing.

ALL RENT REMAINS DUE AND OWING

Even if you were protected by the eviction moratoriums you still owe all of the rent. The moratoriums do not cancel any of your debt to the landlord.

WHAT IS AN "EVICTION"?

An eviction is a lawsuit where the landlord asks a court to remove you from your unit. Before filing a lawsuit for eviction in court, the landlord must give you a written notice. If you do not comply with the notice, the landlord can file a lawsuit for eviction in County Court.

NOTE: Your landlord cannot force you move out by changing the locks, turning off the utilities, or similar actions. These are "prohibited practices" under Florida law. A landlord may be ordered to pay three times the rent, or actual damages, whichever is higher, and

attorney's fees and costs. See our brochure on the Legal Services website: *"What to Do If Your Landlord Locks You Out or Shuts Off Your Utilities"*

REASONS WHY YOU CAN BE EVICTED

NOTE: If you live in certain types of affordable housing (such as public or subsidized housing), different rules and laws may apply. You need to speak with an attorney at Legal Services.

1. Non-Payment of Rent (under the normal rules)

Before filing a lawsuit for eviction, the landlord must give you a **Three-Day Notice**. The Three-Day notice must:

- list the total amount you owe for rent; and
- tell you to pay the rent or move out within three days; and
- clearly state the date you must pay or move out.

The three days cannot include the day you received the notice, Saturday, Sundays, or legal holidays. For example, if you get the notice on Thursday, then Friday is day one, Monday is day two, and Tuesday is day three -- the day you must pay or move out.

The Three-Day Notice should not include charges for late fees, repairs, or other charges that are not considered rent. Make sure you read your lease. If the lease says that late fees are considered rent, then the landlord can include late fees in the Three-Day Notice.

Once a Three-Day Notice has expired, the landlord can file a lawsuit for eviction in Court. If the Three-Day Notice is defective or has a mistake on it, the landlord will have the opportunity to fix the notice before the judge will dismiss the lawsuit. Even so, you should tell the judge if the notice is defective.

2. Breach of Lease or Violation of Rules and Regulations

A landlord may file a lawsuit for eviction when a tenant violates the lease/rules, or behaves in a way that threatens the health, safety, and welfare of the other tenants.

Under Florida law, the landlord must give you at least seven days written notice of the problem. If the problem is one that can be fixed, the landlord should give a **Seven-Day Notice to Cure**. The purpose of giving you the notice is so that you can stop doing what the landlord says is a violation. For example, your landlord sends you a notice that says your broken truck in the parking lot is a violation of the lease. If you move the truck, you have "cured" the problem and the landlord should not file a lawsuit for eviction. But if you move the broken truck back into the parking lot in the next twelve months, the landlord may file a lawsuit for eviction.

If the problem is one that cannot be fixed, the landlord can give a **Seven-Day Notice of Termination**. For example, if you severely damage the apartment, your landlord may give you notice telling you to move out in seven days. If you do not comply with the notice, your landlord may file a lawsuit for eviction.

3. Termination or Expiration of the Rental Agreement

You can be evicted because the rental agreement was terminated or expired.

If you do not have a written lease, the landlord can terminate the rental agreement for any reason (except for certain types of discrimination or retaliation). To terminate the rental agreement, the landlord must give you a written notice telling you to move out by within a certain number of days.

- If you pay the rent monthly, and you live in Miami-Dade County, you should get at least thirty days written notice to move out. This means the landlord should give you the notice at least thirty days before your next rent payment is due.
- If you pay the rent monthly, and you are a Florida tenant living outside of Miami-Dade County, your landlord may be allowed to terminate the rental agreement with a fifteen-day notice.
- If you pay rent weekly, then the landlord must give you a written notice to move out at least seven days before your rent is due.

If you are suffering from COVID-19 or your health condition puts you in a high-risk category for COVID-19 you may want to ask your landlord for a Reasonable Accommodation:

- Make a Reasonable Accommodation Request to your landlord asking for more for more time to find new housing if it is unsafe for you to leave your home due to your health condition.
- You will need to obtain medical documentation to support this request.
- In some situations, a landlord's failure to grant a Reasonable Accommodation Request may allow the tenant to assert a violation of the Fair Housing Act which requires the landlord to make certain accommodations due to a tenant's disability.

HOW TO WRITE YOUR ANSWER

1. At the end of this brochure is a sample Answer. Write the case number and the names of the parties at the top of the Answer. The landlord is the Plaintiff, and you are the Defendant.
2. Read the lawsuit for eviction (called a “complaint”) and respond to each of the paragraphs. You respond by writing in your answer that you either admit or deny what is in each paragraph. If you do not know whether to admit or deny the paragraph, you can state that you are “without knowledge.”
3. Write your defenses and explain why you should not be evicted (for example: the landlord is retaliating because I called the housing inspector; there are bad conditions; I already paid my rent).
4. You have a constitutional right to demand a trial by a jury of your peers. You can waive this right in your lease. If you want a jury trial, you should do it when you file your answer; otherwise, you may waive your right to demand a jury trial. There are pros and cons to demanding a jury trial. While it is your absolute right to demand a jury trial, it may be difficult to represent yourself at a jury trial. If you have questions about whether to demand a jury trial, you should speak with an attorney.
5. Sign your answer. Include your name, address, and telephone number.
6. File your original with the Court, mail a copy to your landlord (and to the landlord’s attorney, if any), and keep a copy for your records.

FILING A MOTION TO DETERMINE RENT **OR** **DEPOSITING MONEY INTO COURT REGISTRY**

You MUST do one of the following when you file your Answer:

1. Pay into the Court Registry the total amount of rent your landlord says you owe;
- OR
2. If you disagree with the amount your landlord says you owe, you can file a Motion to Determine Rent asking the judge to decide how much you owe.

You must also continue depositing your rent into the court registry each month while the lawsuit for eviction is pending.

If you do not pay the rent into the Court Registry or file a Motion to Determine Rent, you may lose your case automatically. This means you may be evicted from your home without ever talking to a judge.

A sample Motion to Determine Rent is included at the end of this brochure. You can also use this website to help you create an Answer and Motion to Determine Rent: floridaevictionanswerbuilder.org

Things you might include in your Motion to Determine Rent:

- The amount demanded by the landlord is wrong.
- The landlord demands extra amounts that are not rent.
- You already paid the rent.
- The landlord failed to make repairs and the rent should be reduced.
- The landlord has refused to participate in rental assistance applications such as ERAP and this constitutes source of income discrimination.
- Your landlord turned off water or electricity or has illegally locked you out of your home.

Whatever your reasons, you should include proof of why you are asking the Court to determine how much rent you owe.

- If you already paid your rent, include copies of the receipts.
- If you think your rent should be reduced for bad conditions in your home, include photographs. However, many judges will not consider a rent reduction until after you deposit all of the rent into the court registry.

WHEN AND WHERE TO FILE YOUR ANSWER

Your Answer (and Motion to Determine Rent) is due in court on the fifth day after the lawsuit for eviction (called a "Complaint") is served. You do not count Saturdays, Sundays, or holidays. Also, the day you are served does not count.

The Complaint is served when it is hand delivered to you or a member of your household, or it is taped on your door.

If you fail to meet a court deadline or attend a hearing, you may lose the lawsuit. The Judge may enter a Final Judgment of Eviction against you. This may be true even if you should be protected by the eviction moratorium.

There is an Answer and Motion to Determine Rent at the end of this brochure. You can also use this website to help you create an Answer and Motion to Determine Rent: floridaevictionanswerbuilder.org

Filing your answer means that you go to the Clerk of Court and say, "I want to file an Answer to an eviction lawsuit." Take the original Answer and 2 copies (one for yourself and one for the landlord). Make sure that the clerk date-stamps all copies.

Take your Answer to the courthouse where the eviction lawsuit was filed, which is usually the courthouse closest to your home. The “Summons” will tell you where your case is filed.

Here is a list of the Courthouses in Miami-Dade County:

Dade County Courthouse (05)
73 West Flagler Street
Miami, FL 33130

Coral Gables Branch Court (25)
3100 Ponce de Leon Boulevard
Coral Gables, FL 33134

North Dade Justice Center (23)
15555 Biscayne Boulevard
Miami, FL 33160

South Dade Justice Center (26)
10710 SW 211 Street
Miami, FL 33189

Hialeah Courthouse (21)
11 East 6 Street
Hialeah, FL 33010

Miami Beach Court Facility (24)
1130 Washington Avenue
Miami Beach, FL 33139

Joseph Caleb Center (20)
5400 NW 22nd Ave
Miami, FL 33142

If you are unable to get to the courthouse, you may be able to file through the online filing system:
<https://www.jud11.flcourts.org/coronavirus/ArtMID/2392/ArticleID/3445/COVID-19-Advisory-10-Self-Represented-Litigants-Urged-to-Sign-Up-on-Florida-Courts-e-Filing-Portal>

You can watch a video on how to file online here:
<https://www.youtube.com/watch?v=dXAS1qkXaiM&feature=youtu.be>

DEFENSES

You may be able to use these defenses in your Answer. Write them under “Defenses.” If any of these apply, you should argue that you win the case because of these defenses.

- *Failure to serve a proper, non-defective termination notice.* This means that the landlord’s notice did not comply with your lease or Florida law (Florida Statute § 83.56). However, If the notice is about non-payment of rent, the judge must allow the landlord to fix the defective notice.
- *Corporation not represented by an attorney.* A corporation cannot represent itself and cannot appear in court without an attorney.

- *Improper party.* Only the owner or lessor of the property may file an eviction lawsuit. Check the property records to see who owns the property. http://www.miamidade.gov/pa/property_search.asp
- *Failure to attach.* The landlord must attach certain documents to the complaint (i.e. the lease or three-day notice).
- *Payment.* If the landlord accepts rent after serving a three-day notice, he or she must follow special rules (Florida Statute § 83.56(5)(a)). The landlord cannot accept rent after the complaint has been filed.
- *Tender.* If you tried to make full payment during the three-day notice period, but the landlord rejected the payment, you can assert this defense.
- *Failure to maintain.* The landlord refuses to make repairs and has failed to maintain the property. (such as: no hot water, leaking roof, roach infestation, mold).
- *Retaliatory eviction.* Your landlord filed the eviction because you asserted your rights. For example, you contacted code compliance about conditions and then the landlord filed the eviction lawsuit.
- *Discriminatory conduct.* The landlord is discriminating based on race, color, national origin, religion, sex, disability, domestic violence, having children, sexual orientation, gender identity, source of income, or some other protected class. If your landlord has refused to accept ERAP funds you have applied for, this could constitute source of income discrimination.

If your landlord refuses to take rental assistance money or participate in the ERAP program, this could constitute *source of income discrimination* in violation of Miami Dade's county ordinance.

Specifically, Miami-Dade County's Civil and Human Rights Ordinance ("Human Rights Ordinance") codified as Chapter 11A of the Miami-Dade County Code, prohibits an owner or the owner's representatives from discriminating against a tenant based on the tenant's source of income.

Section 11A-11 and 11A-12 of the Human Rights Ordinance applies to any person, owner, financial institution, real estate broker, real estate agent or any of their representatives who is in the business of selling, purchasing, renting, leasing, financing, or negotiating housing in Miami-Dade County. Chapter 11A, Article II § 11A-12 (1).

COUNT FOR MONEY DAMAGES IN EVICTION CASES

Landlord's will sometimes add a "Count II" to their eviction case. This second count will usually seek money damages related to rent and late fees. This Count seeking money damages could lead to the court entering an order requiring you to pay money to the landlord, even if you move out of the property and return possession to the landlord.

A money damage order could affect your credit in the future. The landlord could seek to garnish your wages or seek other sanctions in their effort to collect this money. Some defenses you may be able to raise against a damages count are:

- *Lack of personal service.* The landlord tenant law requires a landlord to serve you personally in order to get money damages against you. This means that if the eviction case was posted on your door and it was never served on you personally, the landlord should not be able to get money damages.
- *Wrong amount demanded.* If the landlord is demanding the wrong amount and is not giving you credit for the rent due, you should outline the amounts the landlord is overcharging in your Answer.
- *Failure to maintain.* The landlord refuses to make repairs and has failed to maintain the property. (such as: no hot water, leaking roof, roach infestation, mold). This could allow you to argue there should be a diminution in value and the court should not require you to pay the full rent amount.
- *Set-Off.* Your landlord may owe you money which should off-set any rent due. An example of this would be a security deposit which was not returned. These amounts should be deducted from any amount of rent the landlord is suing you for.

WHAT HAPPENS NEXT?

If you filed a Motion to Determine Rent, the court will either schedule a hearing on the motion or enter an order requiring you to deposit rent. If there is a hearing, be prepared to tell the judge why the rent is wrong and how much you should deposit. If the court orders you to deposit rent, you must do it or you will lose your case automatically.

If you deposit the rent ordered by the court, you will probably go to "mediation." This is a meeting between you, the landlord, the landlord's attorney, and a mediator. While the courthouses are closed to the public, the mediation will be done by phone or using Zoom (online).

The mediator is a neutral person trained to help you and the landlord work out your problem. Mediation means that you try to compromise; but, do not agree to anything that you will not be able to do.

If you reach an agreement at mediation, then you sign a paper called a “Stipulation.” The judge signs it too. This is a binding legal document. It is unlikely that you will be able to get out of this agreement if you change your mind. It is important that you understand the agreement before you sign it.

If you and the landlord cannot agree at mediation, then sometimes you may go directly to your final hearing or trial. Until the courthouse is open to the public, trials will be held remotely using Zoom (online).

At the trial, the landlord goes first and presents his or her case. You can question the landlord and his witnesses. This is called cross examination. When the landlord is done, you present your case. You can have your own witnesses testify and submit your own evidence and documents. The landlord or his attorney can question you and your witnesses.

After hearing the witnesses and looking at all the evidence, the judge then makes a decision. If the judge rules for you, there is no eviction and you remain living there. However, sometimes the judge may put conditions in the ruling. Make sure you understand the judge’s decision before you leave.

Sometimes a judge will try to get the parties to reach an agreement. For example, a judge may ask the landlord to agree that the case will be dismissed if you move out by a certain date to avoid a final judgment.

If you lose the hearing, or if you did not file an Answer or Motion to Determine Rent, the judge may enter a Final Judgment of Eviction.

If the landlord sued you for unpaid rent, the judge may enter a judgment against you stating that you owe money to your landlord. The judge may also order you to pay the landlord’s attorney’s fees and court costs.

To appeal the decision, you must file a Notice of Appeal within thirty days. An appeal will not stop you from being evicted unless the judge gives you a “Stay Pending Appeal.” Typically, you must have the rent to get a stay during the appeal.

WRIT OF POSSESSION

After the judge enters a Final Judgment of Eviction, the court will tell the Sheriff remove you and all your belongings from the unit.

The notice that the Sheriff will post on your door is called the “Writ of Possession.” It gives you 24 hours’ notice to move out.

If you have not moved out by the time the Sheriff comes back, the landlord or the landlord’s agent may remove your belongings from the unit. The landlord will also change the locks when the Sheriff is there. They can do this even you are home or not, have children, or are sick.

In Miami-Dade County, the Sheriff typically returns several days after posting the Writ of Possession on the door – not the next day. But, you cannot count on this extra time.

The Sheriff’s office is presently executing Writs of Possession. Presently, the County is moving forward with physically evicting tenants at the end of the court process. The County *may* review the case to see if the case can be resolved with the landlord accepting rental assistance. However, this is not a guarantee. If a Writ is posted on your door, you will have a very limited amount of time to move from the unit.

HOW TO DO I CHECK THE STATUS OF THE CASE?

You can check the status of the eviction lawsuit online, by looking at the “docket.”

To check the case online:

- Go to <https://www2.miami-dadeclerk.com/ocs/>
- Click on “Standard Case Search.”
- Click on the “Local Case Number” tab.
- Enter the case number. You will also have to enter the code in the image.
- Click “Search” Then, click on “Docket” to **get the latest update on your eviction case**

ANSWER FORM

Attached is An Answer for you can use to prepare the Answer which must be filed with the court.

You should write in any defenses as to why you should not be evicted. If any of the listed defenses or arguments in the motion to determine rent applies to you- you should check the boxes that apply.

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: _____
CIVIL DIVISION

Plaintiff(s),

vs.

Defendant(s).

_____/

**ANSWER TO EVICTION,
DEFENSES, AND MOTION TO DETERMINE RENT**

ANSWER

1. I ADMIT paragraphs _____ of the Plaintiff's Complaint for Eviction.
2. I DENY paragraphs _____ of the Plaintiff's Complaint for Eviction.
3. I am without knowledge of paragraphs _____ of the Plaintiff's Complaint for Eviction.
4. I want to recover my attorney's fees and costs under Fla. Stat. 83.48 and 83.59 if I prevail.

DEFENSES

☐ Miami-Dade County's Civil and Human Rights Ordinance ("Human Rights Ordinance") codified as Chapter 11A of the Miami-Dade County Code, prohibits an owner or the owner's representatives from discriminating against a tenant based on the tenant's source of income.

Section 11A-11 and 11A-12 of the Human Rights Ordinance applies to any person, owner, financial institution, real estate broker, real estate agent or any of their representatives who is in the business of selling, purchasing, renting, leasing, financing, or negotiating housing in Miami-Dade County. Chapter 11A, Article II § 11A-12 (1).

My landlord has violated this ordinance by refusing to accept funds from the Emergency Rental Assistance Program (ERAP) and/or has refused to participate and cooperate with the program. This is unlawful source of income discrimination.

- ☐ My landlord has waived the right to evict me for non-payment of rent because they have accepted rent payments through the Emergency Rental Assistance Program. (ERAP). Because the landlord has accepted these funds the eviction should be dismissed due to waiver and there is no requirement for me to post funds into the court registry.

- ☐ My landlord has agreed to accept funds from the Emergency Rental Assistance Program (ERAP) program. As part of this ERAP process the landlord has agreed to stay the eviction as they wait for ERAP payments. Because the landlord has agreed to accept these funds the eviction should be stayed until the funds are made by the ERAP program. Once the funds are paid the eviction should be dismissed.

- ☐ I asserted my rights. As a result, the Landlord is retaliating against me and filing this eviction in violation of Florida Statute 83.64.

Other Defenses:

MOTION TO DETERMINE RENT

I am respectfully requesting that this Court determine what amount, if any, should be deposited into the Court Registry (check all that apply):

- ☐ The landlord has refused to participate in the ERAP program which constitutes unlawful source of income discrimination (see defenses above). Since the landlord has not received the funds owing due to their misconduct there should not be a requirement to post funds into the court.
- ☐ My landlord has waived the right to evict me for non-payment of rent because they have accepted rent payments through the Emergency Rental Assistance Program. (ERAP). Because the landlord has accepted these funds the eviction should be dismissed due to waiver and there is no requirement for me to post funds into the court registry.
- ☐ My landlord has agreed to accept funds from the Emergency Rental Assistance Program (ERAP) program. As part of this ERAP process the landlord has agreed to stay the eviction as they wait for ERAP payments. Because the landlord has agreed to accept these funds the eviction should be stayed until the funds are made by the ERAP program. Once the funds are paid the eviction should be dismissed.

☐ I already paid my rent. My receipts are attached.

☐ The amount of money the Plaintiff is demanding is incorrect, because:

☐ There are bad conditions in my rental unit and my rent should be reduced. I have attached photographs and/ or described the conditions below:

☐ Other:

WHEREFORE, I respectfully request that this Court set a hearing to determine how much money I should deposit into the Court Registry (if any), and for all other relief as this Court deems just and proper.

DEFENSES TO COUNT FOR DAMAGES

☐ The landlord has maintained the unit in bad conditions, and I did not receive the full benefited of the property I was renting. Therefore the landlord should not be permitted to seek a money judgment for the full rent against me.

Specifically, the bad condition of the property which lessened the value of the property include:

☐ The landlord has refused to return my security deposit and this amount should be deducted from any rent owed.

☐ The landlord did not give me full credit for the rent I paid and the amount the landlord is alleging is wrong.

MOTION TO QUASH (COUNT II)

☐ Plaintiff's Complaint (Count II for Damages) was filed in the eviction case. Defendant was served the Summons and Complaint by posting only.

Without personal service the Court lacks the ability to award damages, fees or costs in this matter under *Springbrook Commons, Ltd. v. Brown*, 761 So. 2d 1192 (Fla. 4th DCA 2012). In addition, personal service is required to award damages to a landlord pursuant to Fla. Stat. 83.625 "...no money judgment shall be entered unless service of process has been effected by personal service..." No other exception to service applies to Count II.

No personal service was made in this case and Plaintiff has not filed a Return of Service evidencing personal service.

WHEREFORE, I respectfully request that this Court quash service of process for Count II and dismiss for lack of personal jurisdiction and improper service of process, and for all other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

- ☐ I am demanding a jury trial.
☐ I am not demanding a jury trial.

CERTIFICATE OF SERVICE

I CERTIFY that I sent a copy of this Answer, Defenses, Motion to Stay, and Motion to Determine Rent to Plaintiff via First Class U.S. Mail to:

on this ____ day of _____, 2020.

Defendant's Name: _____

Address: _____

Telephone: _____

Email (if any): _____

THIS IS A SAMPLE FORM CREATED BY LEGAL SERVICES OF GREATER MIAMI