

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL)  
Case No.: 502012AP000053XXXXMB  
L.T.: 502012SC005785XXXXMB  
Division: 'AY'

KAREN KUTCHULIS,

Appellant,

v.

JCJB ENTERPRISES, INC., AND  
JERRY BLACK,

Appellee(s).

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Opinion filed: **MAY - 6 2013**

**Appeal from the County Court in and for Palm Beach County,  
Judge Laura Johnson.**

For Appellant: John J.R. Skrandel, Esq.  
Jerome F. Skrandel, P.A.  
300 Prosperity Farms Road  
Suite D  
North Palm Beach, FL 33408  
JFSPA@msn.com

For Appellees: Martha S. Eskuchen, Esq.  
4442 Lafayette St.  
Marianna, FL 32446  
mselaw@gmail.com

PER CURIAM.

REVERSED and REMANDED. On appeal, Appellant/Plaintiff, Karen Kutchulis (hereinafter referred to as "Tenant") raises several issues, however, we only address the issue of whether the trial court erred in allowing a setoff to Appellees/Defendants, JCJB Enterprises, Inc.,

and Jerry Black (hereinafter collectively referred to as "Landlord") against the security deposit because Landlord never filed a counterclaim or setoff in writing for damages or unpaid rent as required by Florida Small Claims Rule 7.100. For the reasons stated below, we reverse the trial court's finding that Tenant was not entitled to the return of her security deposit.

Tenant entered into a one-year lease agreement with Landlord for the time period of December 11, 2009 to December 10, 2010. The terms of the lease relevant to this appeal were that rent was \$695.00 per month and a deposit of first month's rent and a security deposit of \$695.00 each were required. After the expiration of the one-year lease, Tenant, with the permission of Landlord, continued her tenancy on a month to month basis. In a separate action, Landlord filed an eviction action against Tenant for failing to pay rent. However, Tenant vacated the property around January 21, 2012 before the court decided on the eviction action. On January 26, 2012, Tenant notified Landlord that she vacated the premises and provided her forwarding address. Subsequently, on February 17, 2012, Landlord sent Tenant a handwritten letter itemizing the claims against the security deposit. As a result, Landlord did not return the security deposit to Tenant. Tenant sued Landlord in small claims court on two counts: Count 1 for failing to return the security deposit pursuant to section 83.49, Florida Statutes, and Count 2 for violation of the Florida Consumer Collection Practices Act.

After trial in small claims, the trial court found that the evidence showed that Tenant left without paying last month rent of \$695.00, and therefore, Tenant's claim to the security deposit failed. On appeal, Tenant argued that the trial court erred in allowing a setoff to Landlord against the security deposit because Landlord never filed a claim for setoff in writing as required by Florida Small Claims Rule 7.100.

Rule 7.100(c) states: "[c]ounterclaims and setoffs shall be filed in writing. . . ." Fla. Sm. Cl. R. 7.100(c). There is nothing in the record indicating that Landlord filed a counterclaim or setoff in writing for damages or unpaid rent in the underlying action. Therefore, the portion of the judgment below which denied Tenant the return of her security deposit is reversed, and the matter remanded to the trial court with instructions that the court enter judgment in favor of Tenant in the amount of her security deposit. Tenant's Motion for Appellate Attorney's Fees is GRANTED and the matter is remanded to the lower court to determine the reasonable amount thereof. Tenant's Motion for Costs is DENIED without prejudice for Tenant to file a motion in the lower court. See Fla. R. App. P. 9.400(a).

Kelley, Small, and Rosenberg, JJ., concur.