

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

T PARK LLC,
a Florida limited liability company,

Petitioner,

v.

SUNSTATE PARTNERS LLC,
a Florida limited liability company,
and ROBERT BONNEWELL,

Respondents.

CASE NO.: 2016-CA-006607-O
Lower Court Case No.: 2015-CC-011778-O

Petition for Writ of Mandamus
from the County Court for
Orange County, Florida
Jeanette D. Bigney, Respondent County Court Judge

Christopher C. Cathcart, Esq.
for Petitioner

Thomas A. Valdez, Esq.
W. Cleveland Acree, II, Esq.
for Respondents.

BEFORE O'KANE, H. RODRIGUEZ, APTE, J.J.

PER CURIAM.

THIS MATTER came before the Court for consideration of the Petition for Writ of Mandamus, filed August 1, 2016. Petitioner, T Park LLC, seeks a writ of mandamus to compel County Court Judge Jeanette D. Bigney to enter a Default and a Final Judgment for Possession pursuant to section 83.232(5), Florida Statutes (2015). This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(3). We grant the Petition.

T Park LLC petitioned for a Writ of Mandamus pertaining to the trial court's denial of its Motion for Default on July 5, 2016. It claims that the trial judge denied the Motion even after the

Respondent, Sunstate failed to comply with the Order to Deposit Money into the Court Registry by making untimely and insufficient payments into the court registry. The Petitioner alleges that pursuant to section 83.232(5), Florida Statutes (2015), and the trial court's January 19, 2016 Order to Deposit Money into the Court Registry, it is entitled to immediate default for possession without further notice or hearing. The Petitioner claims that because of section 83.232(5), the trial court is without discretion or authority to consider any argument by the Respondent, and it has a ministerial duty to grant the Petitioner's Motion for Default.

Mandamus compels the performance of a ministerial act that the public official has a clear legal duty to perform. *Pace v. Singletary*, 633 So. 2d 516, 517 (Fla. 1st DCA 1994). The petitioner must have a clear legal right to the performance of the duty and "no other legal method for redressing the wrong or of obtaining the relief to which [the petitioner] is entitled." *Id.* at 517; *Holland v. Wainwright*, 499 So. 2d 21(Fla. 1st DCA 1986).

Section 83.232(5) provides in relevant part that failure of the tenant to pay the rent into the court registry entitles "the landlord to an immediate default for possession without further notice or hearing thereon." Fla. Stat. § 83.232(5) (2015). Additionally, "[w]here the tenant has not paid the rent into the registry of the court in accordance with the 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." *Poal Wk Taft, LLC v. Johnson Medical Center Corp.*, 45 So. 3d 37, 39 (Fla. 4th DCA 2010) (granting mandamus relief for the petitioner and ordering the trial court to issue the writ of possession to the landlord where the respondent did not pay into the court registry pursuant to court order and section 83.232(5)); *see also Kosoy Kendall Associates, LLC v. Los Latinos Restaurant, Inc.*, 10 So. 3d 1168, 1168 (Fla. 3d DCA 2009) (granting mandamus relief in favor of the petitioner when the trial court failed to issue the writ of possession after the respondent failed to timely deposit a monthly

rental payment into the registry as mandated by court order and section 83.232(5)); *Courthouse Tower, Ltd. v. Manzini & Associates*, 683 So. 2d 215, 215 (Fla. 3d DCA 1996).

Here, the Petitioner has demonstrated that the Respondent failed to timely deposit the rent into the court registry. The “Order to Deposit Money into the Court Registry” specified that the \$9,585 was to be deposited by the second day of each month by 4 p.m. On Tuesday, May 3, the Respondent deposited the rent into the court registry, which was late pursuant to the trial court order and section 83.232(5).¹ Pursuant to both section 83.232(5) and the trial court’s order, the Petitioner is entitled to the mandamus relief it seeks.

Based upon the foregoing, it is hereby **ORDERED** and **ADJUDGED** that the Petition for Writ of Mandamus to compel the trial court to issue the Final Judgment of Default for Possession and Writ of Possession is **GRANTED**. We trust the lower court will follow the directions of this Court; therefore, it is not necessary to issue the formal writ at this time. Additionally, the Petitioner’s Motion for Attorney’s Fees is **GRANTED**, and the assessment of those fees is **REMANDED** to the trial court.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 20th day of February, 2017.

/S/

JULIE H. O’KANE
Presiding Circuit Judge

H. RODRIGUEZ and APTE, J.J., concur.

¹ This Court recognizes that there was a very brief power outage on May 2, 2016. However, the outage lasted less than one hour in the afternoon, and section 83.232(5) is very clear that a landlord is entitled to immediate possession when the tenant does not timely pay into the court registry.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished on this 20th day of February, 2017, to the following: **Christopher C. Cathcart, Esq.**, Ossinsky & Cathcart, P.A., 2699 Lee Road, Suite 101, Winter Park, Florida 32789; **Thomas A. Valdez, Esq.**, 1410 N. Westshore Blvd., Suite 200, Tampa, Florida 33607; **W. Cleveland Acree, II, Esq.**, 255 S. Orange Ave., Suite 900, Orlando, Florida 32801; **Honorable Jeannette D. Bigney**, 425 N. Orange Avenue, Orlando, Florida 32801.

/S/ _____

Judicial Assistant