

IN THE CIRCUIT COURT  
IN AND FOR BROWARD COUNTY, FLORIDA

THE COVE & DEERFIELD BEACH, LLC

Plaintiff,

Case No.: CACE20004831 (14)

v.

R FAST, INC., HECTOR ALICIA, AND ALL  
OTHERS IN POSSESSION

Defendants.

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**PLAINTIFFS' EX-PARTE MOTION FOR DEFAULT FINAL JUDGMENT AGAINST  
DEFENDANTS AS TO PLAINTIFF'S COMPLAINT FOR TENANT EVICTION**

Plaintiff, The Cove & Deerfield Beach, LLC (“Plaintiff”, “Landlord”, or the “Cove”), by and through its undersigned counsel, respectfully requests ex-parte entry of a default final judgment as to Plaintiff’s Complaint for Tenant Eviction against Defendants R Fast, Inc. (“R Fast”), Hector Alicia (“Alicia”), and all others in possession (collectively "Defendants"), and as grounds therefor state as follows:

1. On April 24, 2020 the Court granted Defendants’ Motion to Determine Rent (“Rent Order”). A true and correct copy of the Rent Order is attached hereto as Exhibit “A”.
2. Paragraph 2 of the Rent Order provides that “Defendants shall deposit rent of \$848.00 per month from January 1, 2020 – April 1, 2020 in the amount of \$3,392.00 into the Court Registry by April 29, 2019. On May 1, 2020 and the First day of each month thereafter, Defendants’ *shall deposit* the monthly rent of \$848.00 into the Court Registry.” *Id.* (emphasis added).

3. Defendants failed to timely deposit the \$848.00 rent payment that was due by Wednesday, July 1, 2020. Instead, Defendants deposited the \$848.00 rent payment one day later, on Thursday July 2, 2020. Although the Clerk no longer posts deposits into the Court registry on the public docket, the undersigned confirmed with the registry department of the Clerk of Court on July 16, 2020 that the payment was not received until July 2, 2020. This can be confirmed by calling the registry department of the Clerk of Court at its direct phone number which is 954-831-5659.

4. Florida Statute Section 83.232(5) provides that: “Failure of the tenant to pay the rent into the court registry pursuant to court order shall be deemed an absolute waiver of the tenant's defenses. In such case, the landlord is entitled to an immediate default for possession without further notice or hearing thereon.”

5. The Fourth District Court of Appeal and other Florida appellate courts have consistently held that an untimely deposit of rent into the Registry of the Court — irrespective of the reason for the untimeliness, and even only a day or two late — automatically entitles a landlord to immediate eviction of a tenant, and the trial court has no discretion to rule otherwise:

Where the tenant has not paid the rent into the registry of the court in accordance with court 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 . . .* Although the result may seem harsh in a case like this, there is no equitable exception to the statute.

*Poal Wk Taft, LLC v. Johnson Med. Center Corp.*, 45 So. 3d 37, 39 (Fla. 4th DCA 2010) (emphasis added); *Park Adult Resid. Facility, Inc. v. Dan Designs, Inc.*, 36 So. 3d 811 (Fla. 3d DCA 2010); *Palm Beach Marketplace, LLC v. Aleyda's Mexican Restaurante, Inc.*, 103 So. 3d 911 (Fla. 4th DCA 2012); *DTRS Intercontinental Miami, LLC v. A.K. Gift Shop, Inc.*, 77 So. 3d 785 (Fla. 3d DCA 2011).

6. A proposed default final judgment against Defendants as to Plaintiff's Complaint for Tenant Eviction is attached hereto as Exhibit "B".

WHEREFORE, Plaintiff respectfully requests ex-parte entry of default final judgment against Defendants as to Plaintiff's Complaint for Tenant Eviction, along with issuance of a writ of possession forthwith, and such other and further relief as the Court deems just and proper.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 16, 2020 I electronically filed the foregoing document with the Clerk of the Court using E-Filing Portal.

**BECKER & POLIAKOFF**

*Attorneys for Plaintiff*

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By: /s/ Evan Berger  
EVAN BERGER  
Florida Bar No.: 71479

# EXHIBIT “A”



**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE20004831 DIVISION 14 JUDGE Carlos A Rodriguez

**The Cove & Deerfield Beach LLC**

Plaintiff(s) / Petitioner(s)

v.

**Hector Alicia, et al**

Defendant(s) / Respondent(s)

**ORDER GRANTING DEFENDANTS' MOTION TO DETERMINE RENT**

THIS CAUSE came before the Court upon the Defendants' Motion to Determine Rent ("subject Motion"). Having reviewed the Subject Motion, having heard argument from counsel at the April 22, 2020 hearing, and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED that the subject Motion is GRANTED and the Defendants shall deposit rent of \$848.00 per month from January 1, 2020 - April 1, 2020 in the amount of \$3,392.00 into the Court Registry by April 29, 2019. On May 1, 2020 and the First day of each month thereafter, Defendants' shall deposit the monthly rent of \$848.00 into the Court Registry.

**DONE and ORDERED** in Chambers, at Broward County, Florida on 04-24-2020.

  
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Hon. Carlos A Rodriguez

**CIRCUIT JUDGE**

Electronically Signed by Carlos A Rodriguez

**Copies Furnished To:**

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# EXHIBIT ‘B’

IN THE CIRCUIT COURT  
IN AND FOR BROWARD COUNTY, FLORIDA

THE COVE & DEERFIELD BEACH, LLC

Plaintiff,

Case No.: CACE20004831 (14)

v.

R FAST, INC., HECTOR ALICIA, AND ALL  
OTHERS IN POSSESSION

Defendants.

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**[PROPOSED] ORDER GRANTING PLAINTIFFS' EX-PARTE  
MOTION FOR DEFAULT FINAL JUDGMENT  
AS TO PLAINTIFF'S COMPLAINT FOR TENANT EVICTION**

THIS CAUSE having come on before the Court without hearing on Plaintiffs' Ex-Parte Motion for Default Final Judgment against Defendants as to Plaintiff's Complaint for Tenant Eviction (the "Motion"), and the Court having reviewed Plaintiffs' Motion, having confirmed with the Clerk of Court that the July rent payment was not received until July 2, 2020, and being otherwise duly advised in the premises, it is, thereupon, ORDERED AND ADJUDGED that:

1. Plaintiffs' Motion is hereby GRANTED.
2. Defendants failed to timely pay \$848.00 into the Registry of the Court on or before Wednesday, July 1, 2020 as was required by the April 24, 2020 Order Granting Defendants' Motion to Determine Rent ("Rent Order"). The payment was instead untimely deposited on Thursday, July 2, 2020.
3. Pursuant to Florida Statute Section 83.232(5), Defendants untimely rent payment is deemed an absolute waiver of all of Defendants' defenses to Plaintiff's Complaint for Tenant

Eviction, and Plaintiff is automatically entitled, without further notice or hearing, to entry of a default final judgment as to Plaintiff's Complaint for Tenant Eviction and entitled to a writ of possession for Unit 103A at the building located at the street address of 201 S.E. 15<sup>th</sup> Terrace, Deerfield Beach, Florida.

4. Plaintiff, The Cove & Deerfield Beach, LLC shall recover the real property located at Unit 103A at the building located at 201 S.E. 15<sup>th</sup> Terrace, Deerfield Beach, Florida for which a Writ of Possession shall issue forthwith.

5. The Court reserves jurisdiction as to the disposition of rent monies deposited into the Registry of the Court and the other damages claims.

DONE and ORDERED in Broward County, Florida on this \_\_\_\_\_ day of July, 2020.

\_\_\_\_\_  
THE HONORABLE CARLOS A. RODRIGUEZ  
CIRCUIT COURT JUDGE

Copies furnished to:

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