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

Circuit Case No. 19-AP-9
Lower Tribunal No. 19-CC-600

SEBRINNA MORRISON,

Appellant,
v.

BETHANY COURT-PIERCE
APARTMENTS, LTD.,

Appellee.
_____/

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

Decision filed October 15, 2019.

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

Melanie Barker, Florida Rural Legal Services, Inc., Fort Pierce, for appellant.

Amy Shevlin, The Koblegard Law Firm, Fort Pierce, for appellee.

PER CURIAM.

MIRMAN, C.J.

Bethany Court-Pierce Apartments, Ltd ("Bethany Court") is a Section 8 rental complex governed by the Department of Housing and Urban Development ("HUD"). Sebrinna Morrison ("Morrison") was a tenant under a written lease. HUD subsidized Morrison's entire monthly rent payment. Morrison's annual lease term ended on January 31, 2019. However, by the terms of the lease, it thereafter became a month-to-month lease, unless otherwise terminated. The language of the lease tracked 24 C.F.R. §983.256(f), which requires automatic renewal after the initial term of the lease.

In January 2019, Morrison accidentally caused a fire by removing the smoke detector from the ceiling and placing its battery in her kitchen drawer, with other metal items, resulting an arcing.

In her pleadings, Morrison alleged that before the fire incident, she asked Bethany to replace the battery, but her requests were ignored.

Bethany Court sought to evict Morrison on grounds of causing the fire, not for non-payment. Bethany Court filed a complaint for possession and damages in county court. Morrison answered the complaint, provided affirmative defenses, and requested a jury trial. She also filed a motion to dismiss the complaint. The trial court denied the motion to dismiss without a hearing, stating "notice was proper under the lease, and the lease term expired." The trial court also rendered a final judgment of eviction without a hearing.

Claims of violations of procedural due process are reviewed under the de novo standard. *Sawaya v. Thompson*, 204 So. 3d 586, 587 (Fla. 4th DCA 2016).

It is first noteworthy that when the court granted the final judgment, there was no extant motion for judgment pending, either by motion for summary judgment or judgment on the pleadings. Even assuming, arguendo, that a motion for judgment on the pleadings had been pending, the trial court could only grant judgment upon a finding that based on the pleadings, the movant is entitled to judgment as a matter of law. *Urribari v. 52 SW 5th CT WHSE, LLC,* 266 So. 3d 1257, 1262 (Fla. 4th DCA 2019) (quoting *Krieger v. Ocean Props., Ltd.*, 387 So.2d 1012, 1013-14 (Fla. 4th DCA 1980)). It is improper to enter judgment on the pleadings if there are factual issues to be resolved. *Id*.

Here, the pleadings themselves raised a factual issue to be resolved. Bethany Court, in justifying eviction, relied upon an allegation that stated:

> Disconnecting of the smoke/fire/carbon monoxide alarm(s) is strictly prohibited…It is the resident's responsibility to notify management if the smoke/fire/carbon monoxide alarm becomes faulty….Any tampering with smoke/carbon monoxide detectors is considered a lease violation and may result in the termination of your lease.

(Lease paragraph 13 section e subsection d). Though Morrison admitted in her answer that she removed the battery, she also asserted that prior to doing so, she contacted Bethany Court and requested replacement of the battery, as required by her lease. Whether or not she did so was a factual issue to be resolved, and it was error for the trial court to render a final judgment without a hearing. *See Urribari,* 266 So. 3d at 1261.

Morrision also alleged that the trial court improperly denied her constitutional right to a jury trial. §51.011(3), Fla. Stat. (2018), which applies to evictions, stated in relevant part that "if a

jury trial is authorized by law, any party may demand it in any pleading or by a separate paper served not later than 5 days after the action comes to issue." Bethany Court cannot point to any law prohibiting a jury trial in an eviction case, so Art. I., §22, Fla. Const.[1] and §51.011(3), Fla. Stat. (2018) prevail. Therefore, the trial court improperly ignored the Tenant's demand for a jury trial.[2]

Reversed and remanded for further proceedings consistent with this opinion.

BAUER, J. and WATERS, Acting Circuit Judge, concur.

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

[1] "The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law."

[2] The complaint in this case was filed on March 4, 2019 (R4). The demand for jury trial was filed ten days later on March 14, 2019 (R67, 70). The record on appeal does not contain a return of service showing when Morrison was served with the complaint. Therefore, it is possible that if the trial court possessed a return of service not present in the record, it determined that Morrison's demand for jury trial was untimely if it was filed more than five days after service of process. However, based on this record, it is unknown when Morrison was served the complaint.