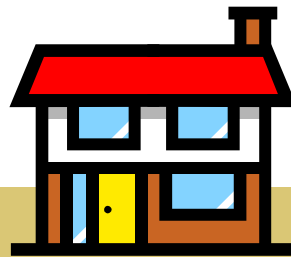


Citizen Dispute Settlement Program

**LANDLORD &
TENANT
HANDBOOK**



***Twentieth Judicial Circuit of Florida
Administrative Office of the Courts***

Revised October, 2002 Revised September 2003

Table of Contents

<u>Introduction.....</u>	<u>iii</u>
<u>The Basic Rental Agreement</u>	<u>1</u>
<u>Disclosure of Information to the Tenant.....</u>	<u>1</u>
<u>Deposit Money or Advance Rent.....</u>	<u>2</u>
<u>Landlord’s Claim on Security Deposit</u>	<u>3</u>
<u>Tenancy without Specific Term</u>	<u>4</u>
<u>Landlord’s Access to the Dwelling</u>	<u>5</u>
<u>Casualty Damage</u>	<u>5</u>
<u>Landlord’s Obligation to Maintain the Dwelling</u>	<u>6</u>
<u>Remedial Action Available to the Tenant</u>	<u>7</u>
<u>Remedies for Material Noncompliance</u>	<u>7</u>
<u>Termination of Rental Agreement.....</u>	<u>7</u>
<u>Withholding Rent.....</u>	<u>8</u>
<u>Conditions Under Which the Tenant should Not Pay Rent?</u>	<u>8</u>
<u>What happens if the Landlord attempts to evict for non-payment of rent?</u>	<u>9</u>
<u>Remedies for General Noncompliance.....</u>	<u>9</u>
<u>Civil Action to Force Compliance</u>	<u>9</u>
<u>Suit for Damages</u>	<u>9</u>
<u>Tenant’s Obligation to Maintain the Premises.....</u>	<u>10</u>
<u>Remedial Action Available to the Landlord.....</u>	<u>11</u>
<u>Eviction.....</u>	<u>11</u>
<u>Notices</u>	<u>13</u>
<u>Members of the United States Armed Forces</u>	<u>13</u>
<u>Appendix - Chapter 83, Florida Statutes, Part II, Residential Tenancies.....</u>	<u>A-1</u>

Introduction

The following pages are a synopsis of the Florida Residential Landlord and Tenant Act (Landlord-Tenant Act), the complete version of which can be found in Chapter 83 of the Florida Statutes. Included in this booklet are sections outlining the obligations that both the tenant and landlord must meet when they enter into a rental agreement, as well as the remedies that may be taken if the rental agreement is broken by either party.

This booklet is not intended to be a substitute for legal advice and does not address every provision of the Florida Residential Landlord and Tenant Act. It is only intended to give a basic understanding to tenants and landlords of their rights and responsibilities under the law.

The Basic Rental Agreement

A basic rental agreement is any written agreement, or oral agreement if for less than one year, which provides for “use and occupancy of the premises.” At the time that a rental agreement is made, a tenant should ask about and identify any additional rules and regulations that might apply to his or her occupancy. Such rules and regulations might include additional fees or specific restrictions applying to occupancy other than those stated in the written lease.

Within the basic rental agreement, the tenant may encounter an “unconscionable” clause. Such a clause must be determined to be “unconscionable” by a court of law and usually refers to a provision within the rental agreement that is so unfair that it shocks the court. The court may refuse to enforce, in whole or in part, a rental agreement that includes an “unconscionable” clause.

In addition, except under limited circumstances, rights specified by the Landlord-Tenant Act cannot be waived by the rental agreement, nor may the agreement provide that the landlord is not liable for his or her own negligence. Such clauses which limit the landlord’s liability for personal negligence, or which waive rights specified under the Landlord-Tenant Act are generally unenforceable, and damages as a result of such clauses may be recovered in court.

If the rental agreement provided by the landlord specifies that attorney’s fees must be awarded to *the landlord* for any action necessary to enforce the agreement, the tenant may also be allowed attorney’s fees if the tenant prevails in any action by or against the landlord. Even in the absence of any attorney’s fee provision in the rental agreement, the Landlord-Tenant Act provides that the prevailing party may recover reasonable costs and attorney’s fees from the non-prevailing party.

Disclosure of Information to the Tenant

Certain facts must be disclosed by the landlord to the tenant when beginning tenancy in a dwelling unit.

The landlord, or a person authorized to enter into a rental agreement on the landlord’s behalf, must disclose in writing to the tenant at or before the commencement of the tenancy the name and address of the landlord or the landlord’s agent. Should the name and address of this person change, the tenant must be notified. The person initially authorized to receive demands and notices retains authority until the tenant is otherwise notified.

The landlord is also required to give notice of the manner in which the tenant’s security deposit or advance rents are being held. This is discussed in more detail below.

Deposit Money or Advance Rent

Whenever money is given by a tenant as a security deposit or as advance rent for other than the next immediate rental period (for example, last month’s rent), the landlord is required to hold that money in a separate non-interest-bearing or interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord cannot commingle that money with any other funds and cannot make use of that money in any way until it actually becomes due to the landlord. If the money is held in an interest-bearing account, the tenant is entitled to interest in an amount of at least 75% of the annualized average interest rate payable on the account or interest at the rate of 5% per year, simple interest, whichever the landlord chooses.

In the alternative to depositing the money in a non-interest-bearing or interest-bearing account, the landlord has the option of posting a surety bond.* If the landlord chooses to post a surety bond, the landlord shall pay the tenant interest at the rate of 5% per year, simple interest.

Within 30 days of receipt of a security deposit or advance rent, the landlord must notify the tenant in writing of the manner in which the money is being held, the rate of interest (if any) which the tenant is to receive, and the time at which interest payments (if any) are to be paid to the tenant. Such written notice must be given in person or by mail to the tenant, must state the name and address of the depository where the money is being held, and must state whether the money is being held in a separate account for the benefit of the tenant or is commingled with other funds of the landlord, and if commingled, whether such funds are deposited in an interest-bearing account in a Florida banking institution. In addition, the landlord must also include with the written notice a copy of subsection (3) of Fla. Stat. §83.49, which explains how the landlord can make a claim on the security deposit once the lease terminates, and how the tenant can object to a claim.

* A Surety Bond is a bond guaranteeing performance of a contract or obligation.

If the landlord later changes the manner or location in which the security deposit or advance rent is being held, the landlord must notify the tenant in writing within 30 days of the change and must provide the same information as set forth above.

Failure of the landlord to provide notice as to the manner in which the security deposit or advance rent is being held cannot be used as a reason for not paying rent when due.

Furthermore, it should be noted that these notice requirements do not apply to landlords who rent fewer than 5 individual dwelling units. Nor do the provisions involving the manner in which the security deposit and advance rent are held apply to transient rentals by hotels or motels or to certain public or federally administered or regulated housing projects.

Landlord's Claim on Security Deposit

Once the premises are vacated upon termination of a lease, if the landlord does not intend to make any claim on the security deposit, the landlord has 15 days to return the deposit (with interest, if required). If the landlord does intend to make a claim on the security deposit, the landlord has 30 days to give the tenant written notice of the landlord's intent and reason for imposing the claim. The notice must be given by certified mail to the tenant's last known address and must be substantially in the following form:

This is a notice of my intention to impose a claim for damages in the amount of _____ upon your security deposit, due to _____. It is sent to you as required by s.83.49(3), Florida Statutes. You are hereby notified that you must object in writing to the deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to __(landlord's address)___.

IMPORTANT: If the landlord fails to give the required notice within the 30 day period, the landlord forfeits any right to impose a claim on the security deposit.

Unless the tenant objects to the imposition of the landlord's claim on the security deposit within 15 days after receipt of the landlord's notice, the landlord may then deduct the amount of the claim and remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim.

If it is necessary for either the landlord or tenant to file a lawsuit to determine their right to the security deposit, the winning party is entitled to receive court costs, plus reasonable attorney's fee.

Tenancy without Specific Term

Many rental agreements, particularly those that are oral, do not specifically provide for the length or duration of the tenancy. If no term is specified, the duration is determined by the periods for

which rent is payable. If the rent is payable weekly, then the tenancy is from week-to-week; if payable monthly, it is from month-to-month; if payable quarterly, it is from quarter-to-quarter; and, if payable yearly, it is from year-to-year. Year-to-year and quarter-to-quarter tenancies are rare in residential situations.

A tenancy without a specific duration, as defined above, may be terminated by either party giving written notice in the following manner:

- When the tenancy is from year-to-year, by giving not less than 60 days notice prior to the end of any annual period;
- When the tenancy is from quarter-to-quarter, by giving not less than 30 days notice prior to the end of any quarterly period;
- When the tenancy is from month-to-month, by giving not less than 15 days notice prior to the end of any monthly period; or
- When the tenancy is from week-to-week, by giving not less than 7 days notice prior to the end of any weekly period.

The tenancy without specific term is the easiest type of rental agreement to break. By giving the proper amount of notice of intent to terminate, the tenant may simply break the agreement. It should be remembered, however, that the landlord could also break the agreement with the tenant. The tenant should consider this when entering into a tenancy without specific term. In many cases, the landlord may rent property with the intent to sell the property in the near future. By offering a tenancy without specific term, the landlord is able to have the property vacant at the time of sale or should the dwelling unit be slated for demolition or business use.

Landlord's Access to the Dwelling

A tenant cannot unreasonably withhold consent to allow a landlord to enter the dwelling unit from time to time in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

For the purpose of making repairs, the landlord may enter the unit upon reasonable notice to the tenant (at least 12 hours prior to entry) and at a reasonable time (between the hours of 7:30 a.m. and 8:00 p.m.). For other purposes, as listed above, the landlord may enter the unit under the following circumstances:

- With the consent of the tenant;
- In case of emergency;
- When the tenant unreasonably withholds consent; or
- If the tenant is absent from the premises for a period of time equal to 1/2 the time for periodic rental payments. However, if rent is current and the tenant notified the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

It should be noted, however, that the landlord may enter the dwelling unit *at any time* for the purpose of "protection or preservation of the premises."

Casualty Damage

If the premises are damaged or destroyed by something other than the wrongful or negligent acts of the tenant, and if the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and may immediately vacate the premises. Alternately, the tenant may vacate the part of the premises rendered unusable by the damage, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises which has been damaged or destroyed.

The term “premises” is defined as “a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities and property held out for the use of tenants generally.” As such, the “premises” may include, for example, a recreation hall or swimming pool, as well as other facilities provided for the use of the tenant.

Landlord’s Obligation to Maintain the Dwelling

One of the most important sections of the Landlord-Tenant Act is §83.51, which outlines the landlord’s obligations to maintain the dwelling unit.

Subsection (1) of Fla. Stat. §83.51 states that the landlord must:

Comply with the requirements of applicable building, housing and health codes; or where there are no applicable building, housing or health codes, maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads, and maintain the plumbing in reasonable working condition.

The landlord, however, is not required to maintain a mobile home or other structure owned by the tenant. Even though, in general, the obligations under subsection (1) cannot be waived, they may be altered or modified in writing with respect to a single family home or duplex dwelling.

Subsection (2) of Fla. Stat. §83.51 states that, for dwelling units other than a single family home or duplex, and unless otherwise agreed in writing, the landlord must make reasonable provisions for:

the extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs;
locks and keys;
the clean and safe condition of common areas;
garbage removal and outside receptacles; and
heat during winter, running water, and hot water.

Subsection (2) also requires that, unless otherwise agreed in writing, the landlord of a single-family home or duplex must install working smoke detection devices.

It should be noted that even though the landlord is required to provide the above services, there is nothing, which prohibits the landlord from including in the rental agreement a provision requiring that the tenant pay the costs or charges for garbage removal, water, fuel, or utilities.

Failure of a landlord to comply with the requirements of subsection (1) constitutes a “material” noncompliance, and may be asserted by the tenant as a defense to an action brought by the landlord for possession of the dwelling unit based upon nonpayment of rent or to an action for the recovery of unpaid rent. Failure of a landlord to comply with the requirements of subsection (2) will not be considered “material”, will not justify the tenant’s nonpayment of rent or termination of the rental agreement, and will not constitute a defense to an action brought by the landlord for possession.

Remedial Action Available to the Tenant

If the landlord fails to maintain the premises in accordance with Fla. Stat. §83.51, four different types of remedial action may be taken by the tenant. These remedial actions are: *Termination of Rental Agreement; Withholding Rent; Civil Action to Force Compliance; and, Suit for Damages.* The type of remedial action to be used depends upon whether the landlord’s noncompliance is considered “material” or “general.”

Remedies for Material Noncompliance

Two of the four types of remedial action, *Termination of Rental Agreement* and *Withholding Rent*, may only be used if a material noncompliance exists. A material noncompliance is not actually defined by the Act, but generally would refer to a serious noncompliance. Noncompliance with the requirements of subsection (1) of Fla. Stat. §83.51 will be considered material. Noncompliance with subsection (2) is not considered material and cannot be used as a reason for nonpayment of rent or termination of the rental agreement.

Termination of Rental Agreement

To rectify a material noncompliance with subsection (1) of Fla. Stat. §83.51 or a term of the rental agreement, the tenant may send written notice to the landlord specifying the noncompliance and the tenant's intention to terminate the rental agreement. If the landlord materially fails to come into compliance within 7 days after delivery of the written notice, the tenant may then terminate the rental agreement. The effect of this type of remedial action is that if the landlord's noncompliance continues beyond the 7 day waiting period, the tenant is no longer bound by the rental agreement and may vacate the premises without further liability. In addition, the tenant could sue the landlord for damages connected with having to move.

Withholding Rent

If there is a material noncompliance by the landlord, the tenant has the option of terminating the rental agreement or withholding rent. The alternative of rent withholding is not available if there is a separate material noncompliance with the rental agreement by the tenant. If the tenant is in full compliance with the terms of the rental agreement and elects to utilize the remedy of withholding rent, the tenant should first give the landlord 7 days notice, as further explained below.

Tenants are cautioned that the Landlord-Tenant Act also protects the landlord from a tenant who withholds rent with the intention of not remitting rent even after the noncompliance is rectified. If the tenant opts to withhold rent, he or she should be prepared to pay that rent into the registry of the court should the landlord choose to take the tenant to court.

Conditions under Which the Tenant Should Not Pay Rent

If the tenant pays rent with actual knowledge of a material noncompliance on the part of the landlord, or if the tenant accepts performance by the landlord of any other part of the rental agreement that is not in accordance with its provisions, the tenant waives the right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any later or continuing noncompliance.

If the tenant is aware that a material noncompliance on the part of the landlord exists, in order to bring civil action against the landlord or to terminate the rental agreement, the tenant should give the appropriate written notice and then withhold rent. Alternatively, the tenant could pay rent and specifically notify the landlord of the noncompliance and of the tenant's intent not to waive any right to take action to remedy the noncompliance. For example, if the roof caves in during the middle of January, the tenant must not pay rent for the following month (February) if the tenant is going to take remedial actions to rectify the noncompliance on the part of the landlord.

What Happens if the Landlord Attempts to Evict for Non-Payment of Rent?

In any action by the landlord for possession of a dwelling unit based upon non-payment of rent, the landlord's material noncompliance with subsection (1) of Fla. Stat. §83.51 will

constitute a complete defense. The defense, however, may only be raised if 7 days have passed since delivery of written notice by the tenant to the landlord specifying the noncompliance and intention of the tenant to withhold rent. This is why written notice should always be given prior to withholding rent. Written notice alerts the landlord to the fact that a material noncompliance exists and gives the landlord an opportunity to correct the problem. The tenant may not simply withhold rent for unspecified reasons.

Remedies for General Noncompliance

The Landlord-Tenant Act specifically prohibits *Termination of Rental Agreement* or *Withholding Rent* as remedies for the landlord's noncompliance with any portion of subsection (2) of Fla. Stat. §83.51. However, the tenant may bring a *Civil Action to Force Compliance* or may file a *Suit for Damages*.

Civil Action to Force Compliance

The tenant may seek civil action through the court in order to rectify a noncompliance on the part of the landlord. The courts may order that the landlord comply with the section or sections of the Landlord-Tenant Act which are being violated. Even though claims for money may be submitted to the small claims court, an action asking that the court order the other party to do something or cease doing something generally must be submitted to the circuit court.

Suit for Damages

Should conditions from the noncompliance become excessive and result in some type of loss to the tenant, the tenant may sue for monetary damages. Also, should such conditions become serious enough, they could constitute a material noncompliance with subsection (1) of Fla. Stat. §83.51, in that the conditions could violate building, housing or health codes. In such a case, remedial action to rectify a material noncompliance (*Termination of Rental Agreement* or *Withholding Rent*) may be taken.

Tenant's Obligation to Maintain the Premises

The Landlord-Tenant Act also places the tenant under certain obligations to maintain the dwelling unit. The landlord is not responsible for damage caused by negligent or wrongful acts of the tenant or the tenant's guests. In addition, Fla. Stat. §83.52 states that the tenant must:

- comply with all obligations imposed upon tenants by applicable provisions of building, housing and health codes;
- keep that part of the premises which he or she occupies and uses clean and sanitary;
- remove from the tenant's dwelling unit all garbage in a clean and sanitary manner;
- keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair;
- use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, elevators;
- not destroy, deface, damage, impair or remove any part of the premises or property therein belonging to the landlord, nor permit any person to do so; and
- conduct himself or herself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

***Note:** Part 4 above, which requires that the tenant keep all plumbing fixtures in repair, seems to conflict with subsection (1) of Fla. Stat. §83.51, which states that the landlord must maintain the plumbing in reasonable working condition, and also could be in conflict where local codes require that

the landlord maintain plumbing in reasonable working condition. It is unclear how a court would handle this conflict, but it is unlikely that full maintenance would be required at the expense of the tenant.

Remedial Action Available to the Landlord

The Landlord-Tenant Act makes it possible for the landlord to take remedial action if the tenant fails to comply with the rental agreement or the guidelines which govern the tenant's obligation to maintain the dwelling unit. Failure to comply with the above provisions of Fla. Stat. §83.52 (1 through 7) constitutes noncompliance on the part of the tenant. The landlord may take remedial action against the tenant if there is a material noncompliance on the part of the tenant. Again, a material noncompliance is not actually defined by law, but would probably refer to any act by the tenant, which would significantly alter the value of the dwelling unit. To rectify a material noncompliance, the landlord should send written notice to the tenant specifying the noncompliance and the intent of the landlord to terminate the rental agreement. If the tenant materially fails to come into compliance within 7 days after delivery of the written notice, then the landlord may terminate the rental agreement.

If the landlord accepts rent with actual knowledge of a noncompliance by the tenant, or if the landlord accepts performance by the tenant of any other part of the rental agreement that is not in accordance with its provisions, the landlord waives the right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. The landlord cannot accept a month's rent and then retroactively terminate the rental agreement based upon a material noncompliance.

Eviction

Unless the tenant has abandoned the premises or surrendered them to the landlord through such actions as returning keys, telling the landlord that he or she is leaving, etc., the tenant cannot be put out of the dwelling unit except pursuant to a court order obtained by the landlord in an eviction proceeding.

An eviction proceeding is a lawsuit where the landlord sues the tenant and asks the court to enter an order directing that the premises be returned to the possession of the landlord. The effect of such action, should it proceed that far, would be that the sheriff would be ordered to physically remove the tenant from the premises.

If the landlord wants to evict a tenant based upon the tenant's failure to comply with the terms of the rental agreement or failure to pay rent, the landlord must first provide the tenant with written notice. If the tenant's noncompliance is of a nature that the tenant should not be given an opportunity to cure (for example, destruction, damage, or misuse of property, continued unreasonable disturbances, or continued noncompliance), the landlord may terminate the lease, but must give the tenant 7 days written notice to vacate the premises. If the tenant's noncompliance is of a nature that the tenant should be given the opportunity to cure (for example, unauthorized pets, guests, or vehicle, or failing to keep the premises clean and sanitary), the landlord must give the tenant 7 days written notice to remedy the noncompliance before the lease can be deemed terminated.

If the tenant fails to pay rent on time or within 3 days of the due date (excluding weekends and legal holidays), the landlord must give the tenant 3 days written notice (excluding weekends and legal holidays) to pay the past due rent before the lease can be deemed terminated.

An eviction suit is started by the landlord filing a complaint, or a lawsuit, in the county court where the premises are located. If the eviction is for one of the reasons for which the law requires the landlord to give the tenant notice, a copy of the notice must be attached to the complaint. Next, the

sheriff will deliver a copy of a court summons and a copy of the complaint to the tenant. Under certain narrow circumstances, if the tenant cannot be found at the dwelling unit, the sheriff may attach the summons and complaint to the door of the dwelling unit.

After these papers are delivered to the tenant, the tenant has 5 days, excluding the day upon which the papers were delivered and excluding weekends and holidays, to file a written answer responding to each paragraph of the complaint. If the tenant asserts any defense other than payment, the tenant must also pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court.

After the answer is filed, the court will hold a hearing to decide whether the landlord has reasonable grounds to evict the tenant. Such grounds would include non-payment of rent, damage or misbehavior by the tenant. It should be remembered that if the tenant has a written lease, the landlord will have to prove a breach of that lease before the tenant can be evicted. Furthermore, this would have to be a material or serious breach to justify eviction.

If the court decides in favor of the tenant, the eviction action will be dismissed, and the tenant may stay. If however, the court rules in favor of the landlord, it will issue a final judgment stating that the landlord has won the case and will issue an order to the sheriff, called a writ of possession, directing that the sheriff put the landlord into possession of the premises. This means that the sheriff is authorized to physically remove the tenant and the tenant's possessions from the premises. The sheriff must give the tenant 24-hours notice before actually carrying out such physical removal, and the notice must be conspicuously posted on the premises.

In sum, when the landlord gives a tenant written notice to vacate, that does not necessarily mean that the tenant must vacate the premises within that time. If the tenant disagrees with the landlord's actions, the landlord will have to prove the allegations in court and obtain a court order to remove the tenant.

If the tenant does not wish to defend or challenge the eviction, it is not necessary for the tenant to respond to the court summons. In this case the landlord will win the case by default and the court will order the sheriff to return possession of the premises to the landlord. The tenant will then have to move out or be put out by the sheriff.

Notices

If the landlord sends a tenant written notice, such notice must be by mailing or delivery of a true copy or, if the tenant is absent from his or her last or usual place of residence, by leaving a copy thereof at the residence. In the case of intent to impose a claim on the tenant's security deposit, notice must be by certified mail.

Members of the United States Armed Forces

Fla. Stat. §83.682 provides exceptions which would allow for the early termination of a rental agreement by a member of the United States Armed Forces who is required to move pursuant to permanent change of station orders to depart 35 miles or more from the location of a rental premises or who is prematurely or involuntarily discharged or released from active duty.

APPENDIX
Florida Statutes
Chapter 83 Part II
Residential Tenancies

**Florida Statutes
Chapter 83
PART II**

RESIDENTIAL TENANCIES

- 83.40 Short title.
- 83.41 Application.
- 83.42 Exclusions from application of part.
- 83.43 Definitions.
- 83.44 Obligation of good faith.
- 83.45 Unconscionable rental agreement or provision.
- 83.46 Rent; duration of tenancies.
- 83.47 Prohibited provisions in rental agreements.
- 83.48 Attorney's fees.
- 83.49 Deposit money or advance rent; duty of landlord and tenant.
- 83.50 Disclosure
- 83.51 Landlord's obligation to maintain premises.
- 83.52 Tenant's obligation to maintain dwelling unit.
- 83.53 Landlord's access to dwelling unit.
- 83.535 Flotation bedding system; restrictions on use.
- 83.54 Enforcement of rights and duties; civil action.
- 83.55 Right of action for damages.
- 83.56 Termination of rental agreement.
- 83.57 Termination of tenancy without specific term.
- 83.58 Remedies; tenant holding over.
- 83.59 Right of action for possession.
- 83.595 Choice of remedies upon breach by tenant.
- 83.60 Defenses to action for rent or possession; procedure.
- 83.61 Disbursement of funds in registry of court; prompt final hearing.
- 83.62 Restoration of possession to landlord.
- 83.625 Power to award possession and enter money judgment.
- 83.63 Casualty damage.
- 83.64 Retaliatory conduct.
- 83.67 Prohibited practices.
- 83.681 Orders to enjoin violations of this part
- 83.682 Termination of rental agreement by a member of the United States Armed Forces.

83.40 Short title.--This part shall be known as the "Florida Residential Landlord and Tenant Act."

History.--s. 2, ch. 73-330.

83.41 Application.--This part applies to the rental of a dwelling unit.

History.--s. 2, ch. 73-330; ss. 2, 20, ch. 82-66.

83.42 Exclusions from application of part.--This part does not apply to:

Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.

Occupancy under a contract of sale of a dwelling unit or the property of which it is a part.

Transient occupancy in a hotel, condominium, motel, rooming house, or similar public lodging, or transient occupancy in a mobile home park.

Occupancy by a holder of a proprietary lease in a cooperative apartment.

Occupancy by an owner of a condominium unit.

History.--s. 2, ch. 73-330,

83.43 Definitions.--As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

"Building, housing, and health codes" means any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.

(2) "Dwelling unit" means:

(a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.

(b) A mobile home rented by a tenant.

(c) A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

(3) "Landlord" means the owner or lessor of a dwelling unit.

(4) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

(5) "Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.

(6) "Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.

(7) "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

(8) "Good faith" means honesty in fact in the conduct or transaction concerned.

(9) "Advance rent" means moneys paid to the landlord to be applied to future rent payment periods, but does not include rent paid in advance for a current rent payment period.

(10) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary.

(11) "Deposit money" means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.

(12) "Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof.

(13) "Legal holiday" means holidays observed by the clerk of the court.

History.--s. 2, ch. 73-330; s. 1, ch. 74-143; s. 1, ch. 81-190; s. 3, ch. 83-1 r1; s. 17, ch. 94-170.

83.44 Obligation of good faith.--Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

History.--s. 2, ch. 73-330.

83.45 Unconscionable rental agreement or provision.

(1) If the court as a matter of law finds a rental agreement or any provision of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and effect to aid the court in making the determination.

History.--s. 2, ch. 73-330.

83.46 Rent; duration of tenancies.

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

(3) If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy, the duration is determined by the periods for which wages are payable. If wages are payable weekly or more frequently, then the tenancy is from week to week; and if wages are payable monthly or no wages are payable, then the tenancy is from month to month. In the event that the employee ceases employment, the employer shall be entitled to rent for the period from the day after the employee ceases employment until the day that the dwelling unit is vacated at a rate equivalent to the rate charged for similarly situated residences in the area. This subsection shall not apply to an employee or a resident manager of an apartment house or an apartment complex when there is a written agreement to the contrary.

History.--s. 2, ch. 73-330; s. 2, ch. 81-190; s. 2, ch. 87-195; s. 2, ch. 90-133; s. 1, ch. 93-255.

83.47 Prohibited provisions in rental agreements.

(1) A provision in a rental agreement is void and unenforceable to the extent that it:

- (a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.
- (b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.

(2) If such a void and unenforceable provision is included in a rental agreement entered into, extended, or renewed after the effective date of this part and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover those damages sustained after the effective date of this part.

History.--s. 2, ch. 73-330.

83.48 Attorney's fees.--In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney's fees, from the nonprevailing party.

History.--s. 2, ch. 73-330; s. 4, ch. 83-151.

83.49 Deposit money or advance rent; duty of landlord and tenant.

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord or the landlord's agent shall either:

(a) Hold the total amount of such money in a separate non-Interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or \$50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest. A landlord, or the landlord's agent, engaged in the renting of dwelling units in five or more counties, who holds deposit moneys or advance rent and who is otherwise subject to the provisions of this section, may, in lieu of posting a surety bond in each county, elect to post a surety bond in the form and manner provided in this paragraph with the office of the Secretary of State. The bond shall be in the total amount of the security deposit or advance rent held on behalf of tenants or in the amount of \$250,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of this section. In addition to posting a surety bond, the landlord shall pay to the tenant interest on the security deposit or advance rent held on behalf of that tenant at the rate of 5 percent per year simple interest.

(2) The landlord shall, within 30 days of receipt of advance rent or a security deposit, notify the tenant in writing of the manner in which the landlord is holding the advance rent or security deposit and the rate of interest, if any, which the tenant is to receive and the time of interest payments to the tenant. Such written notice shall:

(a) Be given in person or by mail to the tenant.

(b) State the name and address of the depository where the advance rent or security deposit is being held, whether the advance rent or security deposit is being held in a separate account for the benefit of the tenant or is commingled with other funds of the landlord, and, if commingled, whether such funds are deposited in an interest-bearing account in a Florida banking institution.

(c) Include a copy of the provisions of subsection (3).

Subsequent to providing such notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she shall notify the tenant within 30 days of the change according to the provisions herein set forth. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to provide this notice shall not be a defense to the payment of rent when due.

(3)(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of _____ upon your security deposit, due to _____. It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address).

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and salespersons, shall constitute compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

(4) The provisions of this section do not apply to transient rentals by hotels or motels as defined in chapter 509; nor do they apply in those instances in which the amount of rent or deposit, or both, is regulated by law or by rules or regulations of a public body, including public housing authorities and federally administered or regulated housing programs including s. 202, s. 221(d) (3) and (4), s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization. With the exception of subsections (3), (5), and (6), this section is not applicable to housing authorities or public housing agencies created pursuant to chapter 421 or other statutes.

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' written notice by certified mail or personal delivery to the landlord prior to vacating or abandoning the premises which notice shall include the address where the tenant may be reached. Failure to give such notice shall relieve the landlord of the notice requirement of paragraph (3)(a) but shall not waive any right the tenant may have to the security deposit or any part of it.

(6) For the purposes of this part, a renewal of an existing rental agreement shall be considered a new rental agreement, and any security deposit carried forward shall be considered a new security deposit.

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records as stated herein, and upon transmittal of a written receipt therefore, the transferor shall be free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. However, nothing herein shall excuse the landlord or agent for a violation of the provisions of this section while in possession of such deposits.

(8) Any person licensed under the provisions of s. 509.241, unless excluded by the provisions of this part, who fails to comply with the provisions of this part shall be subject to a fine or to the suspension or revocation of his or her license by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the manner provided in s. 509.261.

(9) In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually.

However, no interest shall be due a tenant who wrongfully terminates his or her tenancy prior to the end of the rental term.

History.--s. 1, ch. 69-282; s. 3, ch. 70-360; s. 1, ch. 72-19; s. 1, ch. 72-43; s. 5, ch. 73-330; s. 1, ch. 74-93; s. 3, ch. 74-146; ss. 1, 2, ch. 75-133; s. 1, ch. 76-15; s. 1, ch. 77-445; s. 20, ch. 79-400; s. 21, ch. 82-66; s. 5, ch. 83-151; s. 13, ch. 83-217; s. 3, ch. 87-195; s. 1, ch. 87-369; s. 3, ch. 88-379; s. 2, ch. 93-255; s. 5, ch. 94-218; s. 1372, ch. 95-147; s. 1, ch. 96-146; s. 1, ch. 2001-179.

Note.--Former s. 83.261.

83.50 Disclosure.--

(1) The landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

(2) The landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, shall disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.

History.--s. 2, ch. 73-330; s. 443, ch. 95-147.

83.51 Landlord's obligation to maintain premises.--

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. However, the landlord shall not be required to maintain a mobile home or other structure owned by the tenant.

The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord shall not be liable for damages but shall abate the rent. The tenant shall be required to temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefore.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

History.--s. 2, ch. 73-330; s. 22, ch. 82-66; s. 4, ch. 87-195; s. 1, ch. 90-133; s. 3, ch. 93-255; s. 444, ch. 95-147; s. 8, ch. 97-95.

83.52 Tenant's obligation to maintain dwelling unit.--The tenant at all times during the tenancy shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.

(2) Keep that part of the premises which he or she occupies and uses clean and sanitary.

(3) Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.

(5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.

(6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.

(7) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

History.--s. 2, ch. 73-330; s. 445, ch. 95-147.

83.53 Landlord's access to dwelling unit.--

(1) The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments.

If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

(3) The landlord shall not abuse the right of access nor use it to harass the tenant.

History.--s. 2, ch. 73-330; s. 5, ch. 87-195; s. 4, ch. 93-255; s. 446, ch. 95-147.

83.535 Flotation bedding system; restrictions on use.--No landlord may prohibit a tenant from using a flotation bedding system in a dwelling unit, provided the flotation bedding system does not violate applicable building codes. The tenant shall be required to carry in the tenant's name flotation insurance as is standard in the industry in an amount deemed reasonable to protect the tenant and owner against personal injury and property damage to the dwelling units. In any case, the policy shall carry a loss payable clause to the owner of the building.

History.--s. 7, ch. 82-66; s. 5, ch. 93-255.

83.54 Enforcement of rights and duties; civil action.--Any right or duty declared in this part is enforceable by civil action.

History.--s. 2, ch. 73-330.

83.55 Right of action for damages.--If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.

History.--s. 2, ch. 73-330.

83.56 termination of rental agreement.--

(1) If the landlord materially fails to comply with s. 83.51(1) or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with s. 83.51(1) or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

(2) If the tenant materially fails to comply with s. 83.52 or material provisions of the rental agreement, other than a failure to pay rent, or reasonable rules or regulations, the landlord may:

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be adequate if it is in substantially the following form:

You are advised that your lease is terminated effective immediately. You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because (cite the noncompliance).

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not

corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. The notice shall be adequate if it is in substantially the following form:

You are hereby notified that (cite the noncompliance). Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without your being given an opportunity to cure the noncompliance.

(3) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of _____ dollars for the rent and use of the premises (address of leased premises, including county), Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the _____ day of , (year) .

(landlord's name, address and phone number)

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence.

(5) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes shall comply with the provisions in s. 83.60(2). The court may not set a date for mediation or trial unless the provisions of s. 83.60(2) have been met, but shall enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with s. 83.60(2). This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or, an agency of local, state, or national government; however, waiver will occur if an action has not been instituted within 45 days of the noncompliance.

(6) If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.--s. 2, ch. 73-330; s. 23, ch. 82-66; s. 6, ch. 83-151; s. 14, ch. 83-217; s. 6, ch. 87195; s. 6, ch. 93-255; s. 6, ch. 94-170; s. 1373, ch. 95-147; s. 5, ch. 99-6.

83.57 Termination of tenancy without specific term.--A tenancy without a specific duration, as defined in s. 83.46(2) or (3), may be terminated by either party giving written notice in the manner provided in s. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.--s. 2, ch. 73-330; s. 3, ch. 81-190; s. 15, ch. 83-217.

83.58 Remedies; tenant holding over.--If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59 [F.S. 1973]. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

History.--s. 2, ch. 73-330.

83.59 Right of action for possession.

(1) If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in s. 51.011 (F.S. 1971), and the court shall advance the cause on the calendar.

(3) The landlord shall not recover possession of a dwelling unit except:

(a) In an action for possession under subsection (2) or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the dwelling unit to the landlord; or

(c) When the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he or she is absent from the premises for a period of time equal to one-half the time for periodic rental payments. However, this presumption shall not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence.

(4) The prevailing party is entitled to have judgment for costs and execution therefor.

History.--s. 2, ch. 73-330; s. 1, ch. 74-146; s. 24, ch. 82-66; s. 1, ch. 92-36; s. 447, ch. 95147.

83.595 Choice of remedies upon breach by tenant.

(1) If the tenant breaches the lease for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

(a) Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; or

(b) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rental stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from a reletting; or

(c) Stand by and do nothing, holding the lessee liable for the rent as it comes due.

(2) If the landlord retakes possession of the dwelling unit for the account of the tenant, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rentals received by the landlord as a result of the reletting shall be deducted from the balance of rent due from the tenant. For purposes of this section, "good faith in attempting to relet the premises" means that the landlord shall use at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to lease other similar rental units but does not require the landlord to give a preference in leasing the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent.

History.--s. 2, ch. 87-369; s. 4, ch. 88-379; s. 448, ch. 95-147.

83.60 Defenses to action for rent or possession; procedure.

(1) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1) [F.S. 1973], or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with s. 83.64. The defense of a material noncompliance with s. 83.51(1) [F.S. 1973] may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to s. 83.50(1), a resident manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with s. 83.51(1) [F.S. 1973] by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with s. 83.51(1) [F.S. 1973]. After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. In the event a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies shall be required to deposit only that portion of the full rent for which the tenant is responsible pursuant to federal, state, or local program in which they are participating.

History.--s. 2, ch. 73-330; s. 7, ch. 83-151; s. 7, ch. 87-195; s. 7, ch. 93-255; s. 7, ch. 94-170; s. 1374, ch. 95-147.

83.61 Disbursement of funds in registry of court; prompt final hearing.--When the tenant has deposited funds into the registry of the court in accordance with the provisions of s. 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause.

History.--s. 2, ch. 73-330; s. 2, ch. 74-146.

83.62 Restoration of possession to landlord.

(1) In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises.

(2) At the time the sheriff executes the writ of possession or at any time thereafter, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line. Subsequent to executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.

History.--s. 2, ch. 73-330; s. 3, ch. 82-66; s. 5, ch. 88-379; s. 8, ch. 94-170; s. 1375, ch. 95-147; s. 2, ch. 96-146.

83.625 Power to award possession and enter money judgment.--In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment with costs in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to the landlord. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. The prevailing party in the action may also be awarded attorney's fees and costs.

History.--s. 1, ch. 75-147; s. 8, ch. 87-195; s. 6, ch. 88-379.

83.63 Casualty damage.--If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord shall comply with s. 83.49(3) [F.S. 1973].

History.--s. 2, ch. 73-330; s. 449, ch. 95-147.

83.64 Retaliatory conduct. --

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

- (a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;
- (b) The tenant has organized, encouraged, or participated in a tenants' organization; or
- (c) The tenant has complained to the landlord pursuant to s. 83.56(1).

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

History.--s. 8, ch. 83-151; s. 450, ch. 95-147.

83.67 Prohibited practices.--

(1) No landlord of any dwelling unit governed by this part shall cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord.

(2) No landlord of any dwelling unit governed by this part shall prevent the tenant from gaining reasonable access to the dwelling unit by any means, including, but not limited to, changing the locks or using any bootlock or similar device.

(3) No landlord of any dwelling unit governed by this part shall remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; nor shall the landlord

remove the tenant's personal property from the dwelling unit unless said action is taken after surrender, abandonment, or a lawful eviction. If provided in the rental agreement or a written agreement separate from the rental agreement, upon surrender or abandonment by the tenant, the landlord is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement there must be printed or clearly stamped on such rental agreement a legend in substantially the following form:

BY SIGNING THIS RENTAL AGREEMENT THE TENANT AGREES THAT UPON SURRENDER OR ABANDONMENT, AS DEFINED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.

For the purposes of this section, abandonment shall be as set forth in s. 83.59(3)(c).

(4) A landlord who violates the provisions of this section shall be liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney's fees. Subsequent or repeated violations which are not contemporaneous with the initial violation shall be subject to separate awards of damages.

(5) A violation of this section shall constitute irreparable harm for the purposes of injunctive relief.

(6) The remedies provided by this section are not exclusive and shall not preclude the tenant from pursuing any other remedy at law or equity which the tenant may have.

History.--s. 3, ch. 87-369; s. 7, ch. 88-379; s. 3, ch. 90-133; s. 3, ch. 96-146; s. 2, ch. 2001179.

83.681 Orders to enjoin violations of this part. --

(1) A landlord who gives notice to a tenant of the landlord's intent to terminate the tenant's lease pursuant to s. 83.56(2)(x), due to the tenant's intentional destruction, damage, or misuse of the landlord's property may petition the county or circuit court for an injunction prohibiting the tenant from continuing to violate any of the provisions of that part.

(2) The court shall grant the relief requested pursuant to subsection (1) in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases.

(3) Evidence of a tenant's intentional destruction, damage, or misuse of the landlord's property in an amount greater than twice the value of money deposited with the landlord pursuant to s. 83.49 or \$300, whichever is greater, shall constitute irreparable harm for the purposes of injunctive relief,

History.--s. 8, ch. 93-255; s. 451, ch. 95-147.

83.682 Termination of rental agreement by a member of the United States Armed Forces.-

(1)(a) Any member of the United States Armed Forces who is required to move pursuant to permanent change of station orders to depart 35 miles or more from the location of a rental premises or who is prematurely or involuntarily discharged or released from active duty with the United States Armed Forces may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer.

(b) In the event a member of the United States Armed Forces dies during active duty, an adult member of his immediate family may terminate his rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's Commanding Officer.

(2) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy except the liquidated damages provided in this section. If a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no

damages or penalties of any kind are due.

(3) In consideration of early termination of the rental agreement, the tenant is liable to the landlord for liquidated damages provided the tenant has completed less than 9 months of the tenancy and the landlord has suffered actual damages due to loss of the tenancy. The liquidated damages must be no greater than 1 month's rent if the tenant has completed less than 6 months of the tenancy as of the effective date of termination, or one-half of 1 month's rent if the tenant has completed at least 6 but not less than 9 months of the tenancy as of the effective date of termination.

(4) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.--s. 6, ch. 2001-179.

Citizen Dispute Settlement Program

Lee County Justice Center
1700 Monroe Street
Fort Myers, FL 33901
(239) 335-2885
On the Web at:
www.ca.cjis20.org/citizen.htm

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