

By Representative Roberts-Burke

1                                   A bill to be entitled  
2           An act relating to residential tenancies;  
3           creating s. 83.565, F.S.; providing for a  
4           tenant to repair the premises after notice to  
5           the landlord; providing for deduction of the  
6           costs of repair from rent due; providing  
7           limitations; amending s. 83.60, F.S.; providing  
8           for the right of the tenant to repair to be a  
9           defense to an action for rent or possession;  
10          providing for the payment of certain funds into  
11          the registry of the court; amending s. 83.64,  
12          F.S.; prohibiting retaliatory actions by the  
13          landlord; providing an effective date.

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15 Be It Enacted by the Legislature of the State of Florida:

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17           Section 1. Section 83.565, Florida Statutes, is  
18 created to read:

19           83.565 Remedies; tenant's right to repair after  
20 notice.--

21           (1) If the landlord fails to comply with the rental  
22 agreement or s. 83.51, excluding the roofs, and the reasonable  
23 cost of repair is less than \$250, the tenant may notify the  
24 landlord in writing of the tenant's intention to make the  
25 repair at the landlord's expense. Notice to the landlord must  
26 be sent by certified mail, return receipt requested, unless  
27 the landlord has failed to comply with s. 83.50(1), in which  
28 case notice may be by hand delivery to the landlord, the  
29 landlord's representative as designated pursuant to s.  
30 83.50(1), a resident manager, or the person or entity who  
31 collects the rent on behalf of the landlord. The landlord has

1 7 days from the date notice is mailed by certified mail or the  
2 date notice is received, if by hand delivery, to make the  
3 repairs. If the landlord fails to make the repairs within the  
4 7-day period, the tenant may have the premises repaired.  
5 Installation, servicing, and repair of any permanent, fixed  
6 electrical system shall be by a licensed or registered  
7 electrical contractor pursuant to part II of chapter 489,  
8 F.S., unless excluded by that chapter. Installation,  
9 servicing, and repair of any plumbing shall be by a licensed  
10 or registered plumbing contractor pursuant to part I of  
11 chapter 553, F.S., unless excluded by that chapter. All  
12 repairs shall be in a workmanlike manner. The tenant may  
13 deduct from the rent the actual and reasonable cost of the  
14 repair and submit to the landlord an itemized statement for  
15 the repair. A tenant's lawful payment of rent becoming due  
16 during the 7-day period does not waive his right to deduct the  
17 repair cost in the subsequent rental period. A tenant's  
18 compliance with this subsection is a complete defense to an  
19 action for possession based upon nonpayment of rent. This  
20 remedy shall not be available to the tenant more than once in  
21 a 6-month period.

22 (2) Subsection (1) does not apply if the condition was  
23 created or caused by a deliberate or negligent act or omission  
24 of the tenant, a member of the tenant's family, or any other  
25 person on the premises with the tenant's consent.

26 Section 2. Section 83.60, Florida Statutes, is amended  
27 to read:

28 83.60 Defenses to action for rent or possession;  
29 procedure.--

30 (1) In an action by the landlord for possession of a  
31 dwelling unit based upon nonpayment of rent or in an action by

1 the landlord under s. 83.55 seeking to recover unpaid rent,  
2 the tenant may defend upon the ground of a material  
3 noncompliance with s. 83.51(1) ~~GF.S. 19735~~, or may raise any  
4 other defense, whether legal or equitable, that he or she may  
5 have, including the defense of repair after notice under s.  
6 83.565 or retaliatory conduct in accordance with s. 83.64.  
7 The defense of a material noncompliance with s. 83.51(1) ~~GF.S.~~  
8 ~~19735~~ may be raised by the tenant if 7 days have elapsed after  
9 the delivery of written notice by the tenant to the landlord,  
10 specifying the noncompliance and indicating the intention of  
11 the tenant not to pay rent by reason thereof. Such notice by  
12 the tenant may be given to the landlord, the landlord's  
13 representative as designated pursuant to s. 83.50(1), a  
14 resident manager, or the person or entity who collects the  
15 rent on behalf of the landlord. A material noncompliance with  
16 s. 83.51(1) ~~GF.S. 19735~~ by the landlord is a complete defense  
17 to an action for possession based upon nonpayment of rent,  
18 and, upon hearing, the court or the jury, as the case may be,  
19 shall determine the amount, if any, by which the rent is to be  
20 reduced to reflect the diminution in value of the dwelling  
21 unit during the period of noncompliance with s. 83.51(1) ~~GF.S.~~  
22 ~~19735~~. After consideration of all other relevant issues, the  
23 court shall enter appropriate judgment.

24 (2) In an action by the landlord for possession of a  
25 dwelling unit, if the tenant interposes any defense other than  
26 payment, or repair after notice under s. 83.565, the tenant  
27 shall pay into the registry of the court the accrued rent as  
28 alleged in the complaint or as determined by the court and the  
29 rent which accrues during the pendency of the proceeding, when  
30 due. If the tenant raises the defense of repair after notice  
31 under s. 83.565, he must pay into the court registry the

1 difference between the accrued rent alleged in the complaint  
2 and the repair cost, or any other amount set by the court, and  
3 must pay the rent accruing during the pendency of the  
4 proceeding as it becomes due. The clerk shall notify the  
5 tenant of such requirement in the summons. Failure of the  
6 tenant to pay the rent into the registry of the court or to  
7 file a motion to determine the amount of rent to be paid into  
8 the registry within 5 days, excluding Saturdays, Sundays, and  
9 legal holidays, after the date of service of process  
10 constitutes an absolute waiver of the tenant's defenses other  
11 than payment, and the landlord is entitled to an immediate  
12 default judgment for removal of the tenant with a writ of  
13 possession to issue without further notice or hearing thereon.  
14 In the event a motion to determine rent is filed,  
15 documentation in support of the allegation that the rent as  
16 alleged in the complaint is in error is required. Public  
17 housing tenants or tenants receiving rent subsidies shall be  
18 required to deposit only that portion of the full rent for  
19 which the tenant is responsible pursuant to federal, state, or  
20 local program in which they are participating.

21 Section 3. Paragraph (c) of subsection (1) of section  
22 83.64, Florida Statutes, is amended to read:

23 83.64 Retaliatory conduct.--

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

3 (c) The tenant has complained to the landlord pursuant  
4 to s. 83.56(1) or s. 83.565.

5 Section 4. This act shall take effect July 1, 1997.

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HOUSE SUMMARY

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10 Revises the Florida Residential Landlord and Tenant Act  
to:

11 1. Authorize a tenant to repair the premises after  
notice to the landlord under described circumstances and  
to deduct the costs of such repairs from the rent due.

12 2. Provide that the right of the tenant to repair  
may be a defense to an action for rent or possession and  
to provide for the payment of described funds into the  
13 registry of the court.

14 3. Prohibit retaliatory actions by the landlord.

15 See bill for details.

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