

By the Committee on Real Property & Probate and
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 received by certified mail or
2 by hand delivery, to materially comply with this section. If
3 the landlord fails to materially comply with this section
4 within the 7-day period, the tenant may have the premises
5 repaired, provided, however, the repair cannot be made by the
6 tenant and must be made by an individual or business licensed
7 or customarily engaged in making the needed repairs.
8 Installation, servicing, and repair of any permanent, fixed
9 electrical system shall be by a licensed or registered
10 electrical contractor pursuant to part II of chapter 489,
11 unless excluded by that chapter. Installation, servicing, and
12 repair of any plumbing shall be by a licensed or registered
13 plumbing contractor pursuant to part I of chapter 553, unless
14 excluded by that chapter. All repairs shall be completed and
15 reflect such work standards as are normally and customarily
16 expected. The tenant may repair and submit to the landlord an
17 itemized statement for the repair. A tenant's lawful payment
18 of rent becoming due during the 7-day period does not waive
19 his right to deduct the repair cost in the subsequent rental
20 period. A tenant's compliance with this subsection is a
21 complete defense to an action for possession based upon
22 nonpayment of rent. This remedy shall not be available to the
23 tenant more than once in a 6-month period. Nothing in this
24 section would prohibit the tenant from utilizing any other
25 available remedy.

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

30 Section 2. Section 83.60, Florida Statutes, is amended
31 to read:

1 83.60 Defenses to action for rent or possession;
2 procedure.--
3 (1) In an action by the landlord for possession of a
4 dwelling unit based upon nonpayment of rent or in an action by
5 the landlord under s. 83.55 seeking to recover unpaid rent,
6 the tenant may defend upon the ground of a material
7 noncompliance with s. 83.51(1) [F.S. 1973], or may raise any
8 other defense, whether legal or equitable, that he or she may
9 have, including the defense of repair after notice under s.
10 83.565 or retaliatory conduct in accordance with s. 83.64.
11 The defense of a material noncompliance with s. 83.51(1) [F.S.
12 1973] may be raised by the tenant if 7 days have elapsed after
13 the delivery of written notice by the tenant to the landlord,
14 specifying the noncompliance and indicating the intention of
15 the tenant not to pay rent by reason thereof. Such notice by
16 the tenant may be given to the landlord, the landlord's
17 representative as designated pursuant to s. 83.50(1), a
18 resident manager, or the person or entity who collects the
19 rent on behalf of the landlord. A material noncompliance with
20 s. 83.51(1) [F.S. 1973] by the landlord is a complete defense
21 to an action for possession based upon nonpayment of rent,
22 and, upon hearing, the court or the jury, as the case may be,
23 shall determine the amount, if any, by which the rent is to be
24 reduced to reflect the diminution in value of the dwelling
25 unit during the period of noncompliance with s. 83.51(1) [F.S.
26 1973]. After consideration of all other relevant issues, the
27 court shall enter appropriate judgment.
28 (2) In an action by the landlord for possession of a
29 dwelling unit, if the tenant interposes any defense other than
30 payment, or repair after notice under s. 83.565, the tenant
31 shall pay into the registry of the court the accrued rent as

1 alleged in the complaint or as determined by the court and the
2 rent which accrues during the pendency of the proceeding, when
3 due. If the tenant raises the defense of repair after notice
4 under s. 83.565, he must pay into the court registry the
5 difference between the accrued rent alleged in the complaint
6 and the repair cost, or any other amount set by the court, and
7 must pay the rent accruing during the pendency of the
8 proceeding as it becomes due. The clerk shall notify the
9 tenant of such requirement in the summons. Failure of the
10 tenant to pay the rent into the registry of the court or to
11 file a motion to determine the amount of rent to be paid into
12 the registry within 5 days, excluding Saturdays, Sundays, and
13 legal holidays, after the date of service of process
14 constitutes an absolute waiver of the tenant's defenses other
15 than payment, and the landlord is entitled to an immediate
16 default judgment for removal of the tenant with a writ of
17 possession to issue without further notice or hearing thereon.
18 In the event a motion to determine rent is filed,
19 documentation in support of the allegation that the rent as
20 alleged in the complaint is in error is required. Public
21 housing tenants or tenants receiving rent subsidies shall be
22 required to deposit only that portion of the full rent for
23 which the tenant is responsible pursuant to federal, state, or
24 local program in which they are participating.

25 Section 3. Paragraph (c) of subsection (1) of section
26 83.64, Florida Statutes, is amended to read:

27 83.64 Retaliatory conduct.--

28 (1) It is unlawful for a landlord to discriminatorily
29 increase a tenant's rent or decrease services to a tenant, or
30 to bring or threaten to bring an action for possession or
31 other civil action, primarily because the landlord is

1 retaliating against the tenant. In order for the tenant to
2 raise the defense of retaliatory conduct, the tenant must have
3 acted in good faith. Examples of conduct for which the
4 landlord may not retaliate include, but are not limited to,
5 situations where:

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

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

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