

By Senator Meadows

30-166-98

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 is not available to the  
23 tenant more than once in a 6-month period. Nothing in this  
24 section prohibits the tenant from seeking any other available  
25 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, 1998.

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SENATE SUMMARY

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Authorizes a tenant, under certain circumstances, to make repairs costing less than \$250 on rental premises when the landlord fails to comply with the rental agreement or s. 83.51, F.S., relating to a landlord's obligation to maintain premises. Provides for notice to the landlord. Provides a 7-day grace period in which the landlord may make repairs. Provides that certain repairs be made by licensed contractors. Authorizes the tenant to deduct from the rent reasonable costs of repairs. Provides that a tenant's lawful payment of rent becoming due during the 7-day grace period does not waive his right to deduct any repair cost in a subsequent rental period. Provides that a tenant's compliance with the act is a complete defense to an action for possession based upon nonpayment of rent. A tenant's right to repair is not available to the tenant more than once in a 6-month period. A tenant does not have a right to repair if the condition requiring the repair was created or caused by an intentional or negligent act or an omission by the tenant, a member of the tenant's family, or any other person on the rental premises with the tenant's consent. Provides for the payment of certain funds by a tenant into the registry of the court in a legal action for rent or possession. Prohibits retaliatory actions by the landlord.