

By the Committee on Judiciary and Senators Meadows, Campbell and Forman

308-1640-98

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

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

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

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

(1) If the landlord fails to comply with the rental
agreement or s. 83.51, excluding the roofs, and the reasonable
cost of repair is less than \$100 and the repair is of an
emergency nature, the tenant may notify the landlord in
writing of the tenant's intention to make the repair at the
landlord's expense by deducting the cost of repair from rent.

The notice must contain a statement in substantially the
following form:

Pursuant to section 83.565, Florida Statutes, I
am notifying you of your material noncompliance
with the rental agreement or section 83.51(1),

1 Florida Statutes, excluding roofs. Unless the
2 problems listed below are repaired within 7
3 days after you receive this notice, I will have
4 the repairs made and deduct the cost of the
5 repairs, up to \$100, from the following month's
6 rent. The problems are: ...(list the
7 problems).... ...(Tenant's name, address and
8 phone number)....
9 Notice to the landlord must be sent by certified mail, return
10 receipt requested, unless the landlord has failed to comply
11 with s. 83.50(1), in which case notice may be by hand delivery
12 to the landlord, the landlord's representative as designated
13 pursuant to s. 83.50(1), a resident manager, or the person or
14 entity who collects the rent on behalf of the landlord. The
15 landlord has 7 days from the date notice is received by
16 certified mail or by hand delivery to materially comply with
17 this section. If the landlord fails to materially comply with
18 this section within the 7-day period, the tenant may have the
19 premises repaired; however, the repair cannot be made by the
20 tenant. The landlord may at any time furnish a list of
21 approved vendors to the tenant for this purpose and if the
22 landlord does so, the tenant may have the repair made only by
23 a vendor on that list. The landlord may from time to time
24 provide an updated list of vendors. If the landlord has not
25 provided a list of vendors for making repairs or no vendor is
26 specified for the type of repair needed, the repair must be
27 made by an individual or business licensed or customarily
28 engaged in making the needed repairs. Installation,
29 servicing, and repair of any permanent, fixed electrical
30 system shall be by a licensed or registered electrical
31 contractor pursuant to part II of chapter 489, unless excluded

1 by that chapter. Installation, servicing, and repair of any
2 plumbing shall be by a licensed or registered plumbing
3 contractor pursuant to part I of chapter 553, unless excluded
4 by that chapter. All repairs shall be completed and reflect
5 such work standards as are normally and customarily expected.
6 The tenant may repair and submit to the landlord an itemized
7 statement for the repair. A tenant's lawful payment of rent
8 becoming due during the 7-day period does not waive his right
9 to deduct the repair cost in the subsequent rental period. A
10 tenant's compliance with this subsection is a complete defense
11 to an action for possession based upon nonpayment of rent.
12 This remedy is not available to the tenant more than once in a
13 6-month period. Nothing in this section prohibits the tenant
14 from seeking any other available remedy.

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

19 Section 2. Section 83.60, Florida Statutes, is amended
20 to read:

21 83.60 Defenses to action for rent or possession;
22 procedure.--

23 (1) In an action by the landlord for possession of a
24 dwelling unit based upon nonpayment of rent or in an action by
25 the landlord under s. 83.55 seeking to recover unpaid rent,
26 the tenant may defend upon the ground of a material
27 noncompliance with s. 83.51(1) [F.S. 1973], or may raise any
28 other defense, whether legal or equitable, that he or she may
29 have, including the defense of repair after notice under s.
30 83.565 or retaliatory conduct in accordance with s. 83.64.
31 The defense of a material noncompliance with s. 83.51(1) [F.S.

1 1973] may be raised by the tenant if 7 days have elapsed after
2 the delivery of written notice by the tenant to the landlord,
3 specifying the noncompliance and indicating the intention of
4 the tenant not to pay rent by reason thereof. Such notice by
5 the tenant may be given to the landlord, the landlord's
6 representative as designated pursuant to s. 83.50(1), a
7 resident manager, or the person or entity who collects the
8 rent on behalf of the landlord. A material noncompliance with
9 s. 83.51(1) [F.S. 1973] by the landlord is a complete defense
10 to an action for possession based upon nonpayment of rent,
11 and, upon hearing, the court or the jury, as the case may be,
12 shall determine the amount, if any, by which the rent is to be
13 reduced to reflect the diminution in value of the dwelling
14 unit during the period of noncompliance with s. 83.51(1) [F.S.
15 1973]. After consideration of all other relevant issues, the
16 court shall enter appropriate judgment.

17 (2) In an action by the landlord for possession of a
18 dwelling unit, if the tenant interposes any defense other than
19 payment, or repair after notice under s. 83.565, the tenant
20 shall pay into the registry of the court the accrued rent as
21 alleged in the complaint or as determined by the court and the
22 rent which accrues during the pendency of the proceeding, when
23 due. If the tenant raises the defense of repair after notice
24 under s. 83.565, he or she must pay into the court registry
25 the difference between the accrued rent alleged in the
26 complaint and the repair cost, or any other amount set by the
27 court, and must pay the rent accruing during the pendency of
28 the proceeding as it becomes due. The clerk shall notify the
29 tenant of such requirement in the summons. Failure of the
30 tenant to pay the rent into the registry of the court or to
31 file a motion to determine the amount of rent to be paid into

1 the registry within 5 days, excluding Saturdays, Sundays, and
2 legal holidays, after the date of service of process
3 constitutes an absolute waiver of the tenant's defenses other
4 than payment, and the landlord is entitled to an immediate
5 default judgment for removal of the tenant with a writ of
6 possession to issue without further notice or hearing thereon.
7 In the event a motion to determine rent is filed,
8 documentation in support of the allegation that the rent as
9 alleged in the complaint is in error is required. Public
10 housing tenants or tenants receiving rent subsidies shall be
11 required to deposit only that portion of the full rent for
12 which the tenant is responsible pursuant to federal, state, or
13 local program in which they are participating.

14 Section 3. Paragraph (c) of subsection (1) of section
15 83.64, Florida Statutes, is amended to read:

16 83.64 Retaliatory conduct.--

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

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

28 Section 4. This act shall take effect July 1, 1998.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 176

The Committee Substitute for Senate Bill 176 provides:

- that a tenant may have repairs made if the reasonable cost of the repairs is less than \$100 and the repair is of an emergency nature;
- a form for the notice of the need for repairs which the tenant is to provide to the landlord; and,
- that the landlord may provide to the tenant a list of approved repair vendors and that, if the landlord does so, the tenant may only have the repair made by a vendor on the list.