

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 \$100 and the repair is of an  
24 emergency nature, the tenant may notify the landlord in  
25 writing of the tenant's intention to make the repair at the  
26 landlord's expense by deducting the cost of repair from rent.  
27 For purposes of this section, repairs of an emergency nature  
28 are limited to those repairs necessary to result in: heat  
29 during the winter months, running water, hot water,  
30 elimination of leaks or faulty drains which create internal  
31 standing water, and functioning external locks, toilet, stove,

1 oven, refrigerator, exterior windows and exterior doors. The  
2 notice must contain a statement in substantially the following  
3 form:

4 Pursuant to section 83.565, Florida Statutes, I  
5 am notifying you of your material noncompliance  
6 with the rental agreement or section 83.51(1),  
7 Florida Statutes, excluding roofs. Unless the  
8 problems listed below are repaired within 7  
9 days after you receive this notice, I will have  
10 the repairs made and deduct the cost of the  
11 repairs, up to \$100, from the following month's  
12 rent. The problems are: ...(list the  
13 problems).... ...(Tenant's name, address and  
14 phone number)....

15 Notice to the landlord must be sent by certified mail, return  
16 receipt requested, unless the landlord has failed to comply  
17 with s. 83.50(1), in which case notice may be by hand delivery  
18 to the landlord, the landlord's representative as designated  
19 pursuant to s. 83.50(1), a resident manager, or the person or  
20 entity who collects the rent on behalf of the landlord. The  
21 landlord has 7 days from the date notice is received by  
22 certified mail or by hand delivery to materially comply with  
23 this section. If the landlord fails to materially comply with  
24 this section within the 7-day period, the tenant may have the  
25 premises repaired; however, the repair cannot be made by the  
26 tenant. The landlord may at any time furnish a list of  
27 approved vendors to the tenant for this purpose and if the  
28 landlord does so, the tenant may have the repair made only by  
29 a vendor on that list. The landlord may from time to time  
30 provide an updated list of vendors. If the landlord has not  
31 provided a list of vendors for making repairs or no vendor is

1 specified for the type of repair needed, the repair must be  
2 made by an individual or business licensed or customarily  
3 engaged in making the needed repairs. Installation,  
4 servicing, and repair of any permanent, fixed electrical  
5 system shall be by a licensed or registered electrical  
6 contractor pursuant to part II of chapter 489, unless excluded  
7 by that chapter. Installation, servicing, and repair of any  
8 plumbing shall be by a licensed or registered plumbing  
9 contractor pursuant to part I of chapter 553, unless excluded  
10 by that chapter. All repairs shall be completed and reflect  
11 such work standards as are normally and customarily expected.  
12 The tenant may repair and submit to the landlord an itemized  
13 statement for the repair. A tenant's lawful payment of rent  
14 becoming due during the 7-day period does not waive his right  
15 to deduct the repair cost in the subsequent rental period. A  
16 tenant's compliance with this subsection is a complete defense  
17 to an action for possession based upon nonpayment of rent.  
18 This remedy is not available to the tenant more than once in a  
19 6-month period. Nothing in this section prohibits the tenant  
20 from seeking any other available remedy.

21 (2) Subsection (1) does not apply if the condition was  
22 created or caused by a deliberate or negligent act or omission  
23 of the tenant, a member of the tenant's family, or any other  
24 person on the premises with the tenant's consent.  
25 Additionally, if there is damage to the dwelling unit to which  
26 subsection (1) applies and damage to which subsection (1) does  
27 not apply, due to this subsection, the landlord may offset the  
28 cost of repair of the damages to which subsection (1) applies  
29 by the cost of repair of the damages to which subsection (1)  
30 does not apply, if the tenant has not paid all or a part of  
31 those repair costs.

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

3 83.60 Defenses to action for rent or possession;  
4 procedure.--

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

30 (2) In an action by the landlord for possession of a  
31 dwelling unit, if the tenant interposes any defense other than

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

27 Section 3. Paragraph (c) of subsection (1) of section  
28 83.64, Florida Statutes, is amended to read:

29 83.64 Retaliatory conduct.--

30 (1) It is unlawful for a landlord to discriminatorily  
31 increase a tenant's rent or decrease services to a tenant, or

1 to bring or threaten to bring an action for possession or  
2 other civil action, primarily because the landlord is  
3 retaliating against the tenant. In order for the tenant to  
4 raise the defense of retaliatory conduct, the tenant must have  
5 acted in good faith. Examples of conduct for which the  
6 landlord may not retaliate include, but are not limited to,  
7 situations where:

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

10 Section 4. This act shall take effect July 1, 1998.

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