

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 696

SPONSOR: Senator Grant

SUBJECT: Landlord and Tenant

DATE: January 18, 2000

REVISED: 02/09/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute amends the security deposit provisions and the abandoned property provisions in the Florida Residential Landlord and Tenant Act, which is found in Part II of Chapter 83 of the Florida Statutes. The bill provides for the following:

- Changes the manner of calculation for interest on security deposits
- Lowers the amount of interest payable
- Changes the time period for payment of interest to the tenant
- Allows the landlord and tenant to agree in writing to a variation of the statutory security deposit requirements
- Enlarges the time periods within which a landlord must notify a tenant of a claim on the security deposit
- Relieves the landlord from compliance with the notice provisions of s. 715.109, F.S., when the landlord provides written notice to the tenant

The bill also amends ss. 715.105, 715.106 and 715.109, F.S., which govern the sale or disposition of abandoned property, to raise to \$500 the value of abandoned property which requires no notification to the owner or former tenant before sale or disposition of the same.

The effective date is July 1, 2000.

This bill substantially amends the following sections of the Florida Statutes: 83.49, 83.67, 715.105, 715.106, and 715.109.

II. Present Situation:

Security deposits under the Florida Residential Landlord and Tenant Act

Section 83.49, F.S., which is part of the Florida Residential Landlord and Tenant Act, provides guidelines for landlords and tenants to follow when security deposits are part of a residential

rental agreement. The landlord may place the security deposit into a separate non-interest-bearing account in a Florida banking institution pursuant to s. 83.49(1)(a), F.S., which funds may not be commingled with any other funds of the landlord. The security deposit may also be placed, pursuant to s. 83.49(1)(b), F.S., in a separate interest-bearing account in a Florida banking institution, which funds likewise may not be commingled with any other funds of the landlord. In such a case, the tenant shall receive and collect interest in an amount of at least 75% of the annualized average interest rate payable on such account, or interest at the rate of 5% per year, simple interest, whichever the landlord elects.

Alternatively, s. 83.49(1)(c), F.S., allows the landlord to post the amount of the security deposit(s) or a \$50,000 surety bond in the registry of the court where the rental property is located, or, if the landlord has property in five or more counties, to post the amount of the security deposit(s) or a \$250,000 surety bond, whichever is less, with the Secretary of State. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of s. 83.49, F.S., and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. Additionally, the landlord must pay to the tenant interest at the rate of 5% per year, simple interest. In this instance, deposits may be commingled with other funds and may be placed in institutions outside Florida.

Pursuant to s. 83.49(9), F.S., in those cases where interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually.

Within 30 days of receiving the security deposit, s. 83.49(2), F.S., requires the landlord to notify the tenant in writing of: the manner in which the deposit is being held; the rate of interest, if any, which the tenant is to receive; and the time of the interest payments.

Once the lease is terminated and the tenant has vacated the premises, s. 83.49(3)(a), F.S., requires the landlord to return the security deposit within 15 days or give the tenant written notice of the landlord's intention to impose a claim on the deposit. If the landlord fails to give the required notice within 15 days, the landlord forfeits the right to impose a claim upon the security deposit. Pursuant to s. 83.49(3)(b), F.S., unless the tenant objects to the landlord's claim within 15 days after receipt of the landlord's notice, the landlord may then deduct the amount of the claim and remit the balance of the security deposit to the tenant within 30 days after the date of the landlord's original notice to impose the claim.

Disposition of abandoned property

Section 83.67(3), F.S., generally prohibits landlords from removing the personal property of tenants from the rental property. However, if the tenant leaves property behind after surrendering or abandoning the premises, s. 83.67(3), F.S., provides that the landlord shall not be liable or responsible for storage or disposition of the tenant's personal property as long as the landlord provides written notification of this provision to the tenant.

Sections 715.10-715.111, F.S., known as the Disposition of Personal Property Landlord and Tenant Act, apply to residential tenancies to which the Florida Residential Landlord and Tenant Act apply. These sections provide an optional procedure for the disposition of personal property which remains on the premises after a tenancy has expired or terminated and the premises have

been vacated by the tenant through eviction, surrender, abandonment, or otherwise. If the landlord reasonably believes the personal property is worth less than \$250, s. 715.109, F.S., allows the landlord, upon proper notice as provided for in ss. 715.105 and 715.106, F.S., to retain the property for the landlord's own use or dispose of it as the landlord wishes. If the property is worth more than \$250, then the landlord may dispose of the property through a public sale pursuant to s. 715.109, F.S. Pursuant to s. 715.11, F.S., the landlord has no liability for disposing of the personal property in accordance with the provisions of this Act.

III. Effect of Proposed Changes:

Security Deposits

The committee substitute amends s. 83.49(1)(b), F.S., to change the manner in which interest is calculated on security deposits that are placed in interest bearing accounts. The bill provides for interest to be paid according to the accumulated interest paid on such account, as opposed to the current method of the annualized average interest rate payable on such account. Additionally, the bill lowers the amount of interest payable from at least 75% to at least 50% of the accumulated interest paid. The bill does not change the section's provision allowing the landlord the option of placing the security deposit in an interest-bearing account that pays interest at the rate of 5% per year, simple interest. The bill also adds a provision that allows the landlord and tenant to agree in writing, in an instrument separate from the rental agreement, to something different than the statutorily prescribed manner in which interest is calculated, as well as the rate payable.

Section 83.49(1)(b), F.S., is further amended to expressly allow the landlord to retain any remaining interest from a tenant's security deposit that is placed in an interest-bearing account. The committee substitute also adds a provision which states that "[i]nterest payable to the tenant must be paid upon return of the security deposit." The committee substitute amends s. 83.49(9), F.S., so that it conforms with this provision.

Section 83.49(3)(a), F.S., is amended to enlarge the time from 15 to 30 days within which the landlord must return the tenant's security deposit after the termination of the lease or notify the tenant of a claim upon the deposit.

The committee substitute amends s. 83.67, F.S., to specify that a landlord may remove a tenant's personal property after surrender or abandonment without being required to comply with s. 715.104, F.S. This effectively relieves the landlord of complying with the notice requirements contained in s. 715.104, F.S., prior to removing and disposing of the tenant's property. However, this probably does not relieve the landlord of the notice requirements in s. 715.104, F.S., if the property left in the rental unit is property of someone other than the tenant.

The bill also amends the notice provisions contained in ss. 715.105 and 715.106, F.S., to reflect that abandoned property believed to be worth less than \$500 may be kept, sold, or destroyed by the landlord without further notice to the former tenant or owner of the property. The bill also makes a similar monetary change in s. 715.109, F.S., which allows a landlord to retain or dispose of the abandoned property worth less than \$500 after expiration of the time period prescribed by s. 715.104(2)(b), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to some sources, most landlords are not placing security deposits in interest-bearing accounts because the current statute's provisions pertaining to the payment of interest on an annual basis are extremely burdensome from an accounting standpoint. This is especially true based upon the statute's method of calculating interest. As a result, tenants are not collecting interest on their security deposits and landlords are not collecting the remaining portion of interest to which the statute may entitle them. Accordingly, the bill could result in more landlords placing tenants' deposits into interest bearing accounts with both landlords and tenants obtaining the benefits therefrom.

Currently, some landlords and property management companies have complained that the statute's 15 day notification requirement to the tenant regarding claims upon the security deposit makes it difficult for landlords to obtain accurate inspections and estimates for repairs to the rental property. As a result, the landlords must return either the entire deposit, or some portion thereof, because they are fearful of violating the statute's provisions and being subjected to a lawsuit for costs and attorney's fees. The bill's extension of the notification period from 15 to 30 days should provide landlords with sufficient time to obtain accurate inspections and repair estimates.

The bill's provisions regarding the landlord's disposition of abandoned property should reduce the storage fees currently being incurred by landlords as the value of abandoned property that can be disposed of without storing the same is being raised from \$250 to \$500.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
