

STORAGE NAME: h0733.rpp
DATE: February 11, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
ANALYSIS**

BILL #: HB 733
RELATING TO: Landlord & Tenant
SPONSOR(S): Representative Bilirakis
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill relates to residential leases. If a landlord elects to place a tenant's security deposit in an interest-bearing account, this bill reduces the proportion of the earned interest that the landlord must pay to the tenant who posted the security deposit from 75 percent to 50 percent of earned interest, and provides that accrued interest is paid when the deposit is returned, not annually. This bill also provides that the landlord and tenant may agree to a different arrangement regarding interest earned on a security deposit posted by the tenant.

This bill also extends the time within which a landlord must notify a tenant of the landlord's claim against a security deposit from 15 to 30 days. The time for a tenant to object to the landlord's claim is also extended from 15 to 30 days, and unless the tenant objects to the landlord's claim the time for the landlord to deduct the amount of the landlord's claim and to pay the balance to the tenant is extended from 30 to 45 days from the date the landlord provided notice of the claim to the tenant.

This bill also provides that the landlord and tenant may agree in writing that the landlord will not be liable to the tenant for storage or disposition of the tenant's personal property upon eviction, and that the notice provisions of the Disposition of Personal Property Landlord and Tenant Act are not applicable when the tenant has abandoned or surrendered the premises, or has been evicted.

This bill increases from \$250 to \$500 the level below which a landlord may forego sale of tenant property, and thereby keep the property for the landlord's own use, when a landlord elects to utilize the provisions of the Disposition of Personal Property Landlord and Tenant Act.

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Florida Residential Landlord and Tenant Act

Residential landlord-tenant relationships are regulated under Part II of Chapter 83, F.S.

A security deposit is not required by law, but in most residential leases the landlord requires a tenant to post a security deposit as a condition of the lease. The landlord has three options on how to treat security deposit funds received:

- The landlord may hold the money in a separate non-interest bearing account for the benefit of the tenant.¹
- The landlord may hold the money in a separate interest bearing account for the benefit of the tenant. The landlord is required to pay the tenant 75 percent of the earned interest, or 5 percent simple interest on the amount of the deposit, whichever the landlord elects.²
- The landlord may hold and use the monies, so long as the landlord posts a surety bond³ and pays the tenant 5 percent interest.⁴

When the tenant vacates the rental unit, the landlord has 15 days to return the security deposit together with interest if otherwise required, or to give the tenant written notice by certified mail of the landlord's intention to impose a claim on the deposit and the reason for imposing the claim.⁵ If the landlord fails to give the required notice within the 15-day

¹ Section 83.49(1)(a), F.S.

² Section 83.49(1)(b), F.S.

³ The amount of the surety bond must be at least the total of security deposits, limited to \$50,000 countywide or \$250,000 statewide.

⁴ Section 83.49(1)(c), F.S.

⁵ Section 83.49(3), F.S. The form of notice is prescribed in the statute.

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period, the landlord forfeits the right to impose a claim upon the security deposit,⁶ but may still sue to collect damages in civil court.⁷

If the landlord makes a claim against the deposit, the tenant has 15 days within which to object to the landlord's claim. If the tenant does not object, the landlord may subtract the amount of the claim from the deposit account, returning the remainder, if any.⁸ If the tenant does timely object, then the funds must remain in the deposit account until the matter is resolved either by agreement or by a court. The prevailing party in any lawsuit is entitled to attorney's fees and costs.⁹

A landlord is not required to give the initial notice of intent to make a claim against the deposit if a tenant vacates or abandons the premises prior to the expiration of the rental agreement, or, if there is no specific period for the rental agreement, if the tenant does not give timely notice of the tenant's intent to terminate the rental agreement.¹⁰ Where interest is required to be paid to the tenant, the landlord must annually pay the earned interest directly to the tenant, or give the tenant a credit against rent. However, no interest is due to a tenant who wrongfully terminates his or her tenancy prior to the end of the rental agreement.¹¹

A landlord is prohibited from taking certain actions regarding a tenant, including that a landlord may not remove the tenant's personal property from the dwelling unit except pursuant to surrender, abandonment, or a lawful eviction. A landlord and tenant may enter into an agreement that, upon surrender or abandonment by the tenant, the landlord is not liable or responsible for storage or disposition of the tenant's personal property; if this agreement is part of the rental agreement the rental agreement must state:

BY SIGNING THIS RENTAL AGREEMENT THE TENANT AGREES THAT UPON SURRENDER OR ABANDONMENT, AS DEFINED BY THE FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.¹²

If the landlord prevails in an eviction action, the clerk of the court issues a writ to the sheriff "describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises."¹³ At the time the sheriff executes the writ of possession or at any time after that, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line. After executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the

⁶ Section 83.49(3)(a), F.S.

⁷ Durene v. Alcime, 448 So.2d 1208 (Fla. 3rd DCA 1984).

⁸ Section 83.49(3)(b), F.S.

⁹ Section 83.49(3)(c), F.S.

¹⁰ Section 83.49(5), F.S.

¹¹ Section 83.49(9), F.S.

¹² Section 83.67(3), F.S.

¹³ Section 83.62(1), F.S.

premises. The sheriff, landlord, and the landlord's agent are not liable to the tenant or any other party for the loss, destruction, or damage to the tenant's property after it has been removed.¹⁴

Disposition of Personal Property Landlord and Tenant Act

The disposition of personal property of a tenant remaining at the conclusion of the lease term may also be governed by the Disposition of Personal Property Landlord and Tenant Act.¹⁵ A landlord is not required to follow this Act, its provisions are optional.¹⁶ When personal property remains on the leased premises after a tenancy has terminated or expired and the premises have been vacated by the tenant, through eviction or otherwise, a landlord that has elected to follow the Act must give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property. The notice must describe the property, must advise the person that reasonable costs of storage may be charged before the property is returned, must state where the property may be claimed, and must give the deadline for the person to claim the property. The date specified in the notice must be a date not fewer than 10 days after the notice is personally delivered or, if mailed, not fewer than 15 days after the notice is deposited in the mail.¹⁷ The form of notice is specified in s. 715.105, F.S., and s. 715.106, F.S. If the property is believed by the landlord to be worth less than \$250, and the tenant does not timely claim the property, the landlord may keep or dispose of the property.¹⁸ If the property is worth \$250 or more, the landlord must sell the property and pay the net sale proceeds, after deduction for expenses, to the county where the sale took place. The former tenant must claim the monies within one year.¹⁹ A landlord who follows these procedures is not liable to a former tenant or other owner of personal property for loss or damage to the property.²⁰

C. EFFECT OF PROPOSED CHANGES:

Florida Residential Landlord and Tenant Act

If a landlord elects to place a security deposit in an interest-bearing account, this bill reduces the interest that the landlord must pay to the tenant who posted the security deposit from "75% of the annualized average interest rate payable" on the account to "50% of the accumulated interest paid" on the account, unless otherwise agreed to in writing.

¹⁴ Section 83.62(2), F.S.

¹⁵ Sections 715.10 to 715.111, F.S.

¹⁶ Section 715.101(2), F.S.

¹⁷ Section 715.104, F.S.

¹⁸ Section 715.109(1), F.S.

¹⁹ Section 715.109(4), F.S.

²⁰ Section 715.11, F.S.

This bill further provides that interest payable to a tenant is to be paid to the tenant upon return of the security deposit.²¹

This bill also adds the phrase “unless otherwise agreed in writing” to the provisions on the posting of a surety bond in lieu of holding security deposit monies in an account. This bill does not address or specify who must agree in writing or what they may agree to.

This bill extends the time within which a landlord must notify a tenant of the landlord’s claim against a security deposit from 15 to 30 days. The time for a tenant to object to this claim is also extended from 15 to 30 days, and the time for the landlord to pay the unclaimed portion of the deposit should the tenant fail to object to the landlord’s claim is extended from 30 to 45 days.

This bill also provides that the landlord and tenant may agree in writing that the landlord will not be liable to the tenant for storage or disposition of the tenant’s personal property upon eviction, or, as is in current law, upon surrender or abandonment of the premises. Also, if the landlord and tenant have agreed in writing that the landlord will not be liable to the tenant for storage or disposition of the tenant’s personal property upon surrender, abandonment, or eviction, this bill adds that the landlord is not required to comply with the provisions of s. 715.104, F.S. (notice of sale of property under the Disposition of Personal Property Landlord and Tenant Act).

Disposition of Personal Property Landlord and Tenant Act

This bill increases from \$250 to \$500 the level below which a landlord may forego sale of tenant property, and thereby keep the property for the landlord’s own use. The related notice forms are correspondingly amended.

D. SECTION-BY-SECTION ANALYSIS:

See “Current Situation” and “Effect of Proposed Changes”.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

none

2. Expenditures:

none

²¹ This is in conflict with s. 83.49(9), F.S., which requires interest to be paid to a tenant annually. This bill does not address the conflict.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

none

2. Expenditures:

none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A bill proponent asserts that landlords usually elect to place deposit monies in a non-interest bearing account because the 25 percent share of the interest that a landlord would receive from placing the monies in an interest bearing account is insufficient to cover the administrative costs of accounting for the interest owed to tenants. The bill proponent also asserts that this bill may encourage landlords to place funds currently held in non-interest bearing accounts into interest-bearing accounts that would benefit landlords and tenants.²²

D. FISCAL COMMENTS:

none

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

none

²² Meeting with Jodi Chase, Esquire, February 9, 2000.

B. RULE-MAKING AUTHORITY:

none

C. OTHER COMMENTS:

There is a concern that s. 83.49(1)(b), as amended, which provides that interest on a security deposit is to be paid to a tenant when the security deposit is refunded, is in conflict with s. 83.49(9), F.S., which currently provides that interest on a security deposit is to be paid to a tenant annually. This bill does not address the conflict.

There is a concern that s. 83.49(1)(c), as amended, would permit a landlord to seek from a tenant an agreement that there be no bonding requirement nor any requirement to place tenant deposits in any account, thereby defeating the apparent public protection purpose of the statute.

It is unclear why this bill would provide that, when a tenant and landlord agree that the landlord is not responsible for property of the tenant under s. 83.67, F.S., the landlord need not comply with s. 715.104, F.S. Section 715.104, F.S., is only part of a set of statutes that are specifically optional. See s. 715.101(2), F.S.

Section 83.67(3), as amended by this bill, is unclear. It reads in pertinent part:

If provided in the rental agreement or a written agreement separate from the rental agreement, upon surrender, abandonment by the tenant, or eviction, the landlord is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement there must be printed or clearly stamped on such rental agreement a legend in substantially the following form: . . .

This bill is similar to SB 696.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

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