

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5 CS Residential Tenancies
SPONSOR(S): Gannon
TIED BILLS: none **IDEN./SIM. BILLS:** SB 666

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------------|-------------------|------------------|
| 1) <u>Civil Justice Committee</u> | <u>6 Y, 0 N, w/CS</u> | <u>Bond</u> | <u>Bond</u> |
| 2) <u>Business Regulation Committee</u> | <u></u> | <u>Livingston</u> | <u>Liepshutz</u> |
| 3) <u>Justice Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

This bill amends residential landlord-tenant law to provide that a tenant who has obtained a permanent injunction against domestic violence, repeat violence, sexual violence, or dating violence, may obtain an early termination of the lease. The tenant's obligation to pay rent ends 30 days after proper notice to the landlord.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill decreases the ability of landlords and tenants to enter into contract terms as they see fit.

Promote personal responsibility -- This bill requires financial responsibility of a perpetrator of specific forms of violence.

Empower families -- This bill will serve or benefit families that are suffering from the effects of domestic and other forms of violence.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs residential landlord-tenant law.¹ A lease is an agreement to use real property for a certain length of time. By definition, all residential tenancies must end. Most end at the conclusion of the agreed-upon lease term with the tenant having paid all rents due. Section 83.595, F.S., governs the financial obligation of the tenant where the tenant's occupation of the property ends prior to the agreed upon term of the lease.

Section 83.595, F.S., provides that a landlord who has retaken possession of a rental property before the end of the lease term may:

- Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant;
- Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rental stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from renting to another tenant; or
- Stand by and do nothing, holding the tenant liable for the rent as it comes due.

There are several circumstances whereby a tenant can terminate the lease early, and yet have limited or no liability for rent through the end of the term of the lease. Those situations are:

- Where the landlord has breached a material term of the lease or has failed to provide maintenance required by statute, and the tenant has given the landlord notice and an opportunity to cure. See ss. 83.51(1)² and 83.56(1), F.S.
- If the property has been substantially damaged or destroyed. See s. 83.63, F.S.
- If the tenant is an active duty member of the armed forces, and is either transferred or discharged from service. See s. 83.682, F.S.

¹ Part II of ch. 83, F.S.

² Section 83.51(1) requires a landlord to comply with all applicable building, housing, and health codes, and maintain all structural components and plumbing in good repair.

Current law does not provide for early lease termination by a tenant who is a victim of domestic violence, repeat violence, sexual violence, or dating violence.

Injunctions against Domestic, Repeat, Dating, or Sexual Violence

Section 741.30(1)(a), F.S., creates a cause of action for an injunction for protection against domestic violence, and provides that a person who is the victim of domestic violence, as defined in s. 741.28, F.S.,³ or who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, has standing to seek an injunction against domestic violence. A domestic violence injunction may be sought by family or household members, and “[n]o person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse.”⁴

Courts have adopted a two-pronged test for determining whether a relationship is such that the court can properly issue a domestic violence injunction against one of the parties.⁵ First, the petitioner must have a familial or domestic relationship with the respondent that falls within the range of relationships listed in the statute, and second, the parties must have resided together, either in the past or present, as a family or household in the same dwelling unit.⁶

Section 784.046, F.S., defines violence, repeat violence, sexual violence, and dating violence, and creates separate causes of action for repeat, sexual, and dating violence. Any person who is the victim of repeat violence,⁷ or the parent of a minor child who lives at home and is the victim of repeat violence, has standing to file a sworn petition for an injunction against repeat violence.⁸ “Dating violence” is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.”⁹ Any person who has reasonable cause to believe that he or she is in imminent danger of becoming the victim of an act of dating violence, or who is the victim of dating violence and has reasonable cause to fear imminent future dating violence, or who is the parent of a minor child living at home and is in need of protection from dating violence, may file a petition for an injunction to protect against dating violence.¹⁰

A person who is the victim of sexual violence,¹¹ or the parent of any minor child living at home who is the victim of sexual violence, has standing to file a petition for a protective injunction against sexual violence if:

- The person has reported the sexual violence to a law enforcement agency and is cooperating with any criminal proceeding against the respondent; or
- The person who committed the sexual violence was sentenced to a term of imprisonment for the sexual violence, and such sentence expires or shall expire within 90 days of the filing of the petition.¹²

³ “‘Domestic violence’ means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.” s. 741.28(2), F.S.

⁴ Section 741.30(1)(e), F.S.

⁵ *Kokoris v. Zipnick*, 738 So. 2d 369, 370 (Fla. 4th DCA 1999).

⁶ *Id.*

⁷ “Repeat violence” means two incidents of violence or stalking committed by the respondent, one of which must have occurred within six months of the filing of the petition, and which were directed against the petitioner or an immediate member of the petitioner’s family. S. 784.046(1)(b), F.S.

⁸ Section 784.046(2)(a), F.S.

⁹ Section 784.046(1)(d), F.S.

¹⁰ Section 784.046(2)(b), F.S.

¹¹ Sexual violence means one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person younger than 16, luring or enticing a child, sexual performance by a child, or any forcible felony wherein a sexual act is committed or attempted, regardless of the presence or absence of criminal charges resulting from the incident. s. 784.046(1)(c), F.S.

¹² Section 784.046(2)(c), F.S.

The court is authorized to grant an injunction enjoining the respondent from committing any acts of violence and it is also given broad authority to order such other relief as is necessary to protect the victim.¹³ An order granting an injunction must be supported by competent, substantial evidence.¹⁴ Either party may move to have the injunction modified or dissolved at any time, and the terms of the injunction remain in effect until modified or dissolved.¹⁵

Effect of proposed changes

Domestic, repeat, sexual, or dating violence.

This bill creates s. 83.683, F.S., entitled "Termination of rental agreement by a victim of domestic violence, repeat violence, sexual violence, or dating violence." The new section contains the following definitions:

- "Permanent injunction" means a final injunction for protection against domestic violence, issued under s. 741.30(6), F.S., or an injunction for protection against repeat violence, sexual violence, or dating violence, issued under s. 784.046(7), F.S., regardless of whether a motion for rehearing or a notice of appeal is filed.
- "Respondent" means a person against whom a permanent injunction has been issued.
- "Victim" means an adult, or the parent or guardian of a minor, who has been granted a permanent injunction.

The bill provides that a victim may choose to terminate a rental agreement and vacate a dwelling unit if the victim provides the landlord with a copy of the permanent injunction, and written notice of the victim's intent to terminate the lease, within 15 days of the issuance of the injunction. The victim must also either:

- Furnish the landlord a sworn statement that there are no cotenants or other parties other than the respondent upon whom the termination will create a financial loss or hardship; or
- Provide a statement from the cotenant or other party agreeing to release of the victim from the obligations under the rental agreement.

A victim who has given notice under this provision must vacate the rental unit no later than 30 days after the landlord receives notice, or earlier if the lease expires by its own terms. After the victim vacates the dwelling unit, the landlord must send notice of any claim against the security deposit to both the victim and respondent. The notice mailed to the respondent may not contain the victim's new address.

The victim who elects to terminate a lease under this section is financially liable to the landlord for rent through the end of the 30 day notice period. The victim is also liable for damages to the dwelling unit beyond normal wear and tear, except that the respondent alone is liable for damages to the dwelling that resulted from the incident or incidents of violence that led to the injunction.

After the victim moves out, if the respondent is also a tenant under the lease, and the lease term has not otherwise expired, the respondent may move back into the dwelling. If the respondent does not retake possession within 15 days, and the rent is unpaid, the landlord may deem the dwelling abandoned and thereafter retake possession of the dwelling.

¹³ Sections 784.046(6)(a), and 784.046(7)(a)-(b), F.S.

¹⁴ *Forrest v. Wilson*, 889 So.2d 124, 124-25 (Fla. 1st DCA 2004).

¹⁵ Sections 784.046(7)(c) and 784.046(10), F.S.

The bill specifies that the rights and obligations of this section may not be modified by contract or agreement.

The bill provides that this section may not be interpreted to impair the right of any landlord to evict any tenant in accordance with any terms and conditions set forth that provide for eviction in the event of a tenant participating in unlawful activity.

This bill applies to all residential rental agreements entered into on or after July 1, 2006.

C. SECTION DIRECTORY:

Section 1 creates s. 83.683, F.S., providing for early termination of a lease without penalty for victims of violence.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a negative fiscal impact upon a landlord who is required to terminate a lease and who cannot timely replace the tenant.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not seem to require counties or municipalities to spend funds or to take action requiring the expenditure of funds. The bill does not seem to reduce the percentage of a state tax shared with counties or municipalities. The bill does not seem to reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On October 19, 2005, the Civil Justice Committee adopted one remove everything amendment. The amendment:

- Removed the provision regarding death of a tenant.
- Removed the provision regarding liquidated damages.
- Specified that a victim's financial obligation ends at the conclusion of the 30 day notice period.
- Removed the financial penalty that could be assessed against the victim should the respondent not be convicted of a crime.
- Clarified the definition of permanent injunction.
- Added that the notice of a claim against the security deposit that is mailed to the respondent may not contain the new address of the victim.
- Limited application of the bill to only a landlord who owns more than 10 dwelling units throughout the state, or to a tenant renting from a landlord who owns more than 4 contiguous units.
- Added a requirement that a victim may not terminate a lease unless the tenant furnishes the landlord a sworn statement that there are no cotenants or other parties other than the respondent upon whom the termination will create a financial loss or hardship. However, in lieu of a sworn statement, the cotenant or other party may agree to release of the victim from the financial obligation.

The bill was then reported favorably with a committee substitute.