

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 673 Residential Tenancies
SPONSOR(S): Stargel
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Poblete	Bond
2) Business Regulation Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Current residential landlord-tenant law does not provide for a landlord and a tenant to contract for liquidated damages in the event a rental agreement is breached by early termination. A liquidated damages clause is a means for two parties to a contract to agree in advance what the damages are for a future breach of the contract.

This bill amends residential landlord-tenant law to provide that landlords and tenants may contract for liquidated damages. The total liquidated damages and any early termination fee cannot exceed two months' rent. Alternatively, a landlord may elect, upon early termination by a tenant, to collect any unpaid rent, other charges that may be due under the rental agreement, and any rental concessions that the tenant has received.

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 increases the ability of landlords and tenants to enter into contract terms as they see fit.

B. EFFECT OF PROPOSED CHANGES:

Background

The 1973 Florida Residential Landlord and Tenant Act governs residential landlord-tenant law.¹ A rental agreement specifies the terms and conditions of a tenant's occupation in a dwelling unit for a specific period of time. Should a tenant breach a rental agreement by leaving prior to the end of the rental term, a landlord may choose one of three remedies provided in s. 83.595, F.S.:

- Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; or
- 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.

A clause for liquidated damages is a means for two parties to a contract to agree in advance what the damages are for a future breach of the contract. A liquidated damages clause is incorporated into a contract because it provides the following benefits²:

- The establishment of an exact amount of recovery in the event of a breach.
- The simplification or elimination of the need to prove actual damages, thereby leading to a reduction in the costs, time, and inconvenience of litigation.
- The reinforcement of contractual obligations and added deterrence to breach.

Section 83.47(1)(a), F.S., provides that to the extent any provision in a rental agreement purports to waive or preclude the rights, remedies, and requirements set forth in the Florida Residential Landlord and Tenant Act, that provision is void and unenforceable. Section 83.47(1)(b), F.S., also makes void and unenforceable any provision that purports to limit or preclude any liability arising under law between a landlord and a tenant.

In 2004, a circuit court in Palm Beach found that the remedies set forth in s. 83.595, F.S., are exclusive because s. 83.47, F.S., prohibits rental agreement terms that conflict with specific rights in the Florida Residential Landlord and Tenant Act, including those regarding liquidated damages. This class action judgment therefore found a liquidated damages clause in a landlord's standard lease agreement to be invalid.³

¹ Part II of ch. 83, F.S.

² Luepke, Henry F., "How to Draft and Enforce a Liquidated Damages Clause." 61 J. Mo. B. 324

³ Order dated December 1, 2004, in *Yates v. Equity Residential Properties Trust*, 15th Judicial Circuit in and for Palm Beach County, Florida, Case No. 502002CA014116XXOCAB. Equity's standard lease had two separate fees that, in effect, charged a tenant 3 months rent as a penalty for early termination of the lease.

Effect of Bill

This bill amends s. 83.595, F.S., to provide a landlord two additional remedies in the event a tenant breaches a rental agreement by leaving prior to the end of the rental term.

This bill creates paragraph (d) which provides that a landlord and a tenant may contract for liquidated damages. A landlord is entitled to both liquidated damages and an early termination fee if specified in the rental agreement and the total amount charged does not exceed an amount equal to two months' rent. If a landlord elects this remedy, the landlord must treat the rental agreement as terminated, and the other remedies listed provided for s. 83.595(1)(a)-(c) are no longer available to the landlord. This remedy does not apply when the breach is a failure to give notice of the end of the rental agreement as provided in s. 83.575, F.S.⁴

This bill also creates paragraph (e) to provide a landlord another alternative remedy upon early termination by a tenant. The paragraph provides that a landlord may charge a tenant for any unpaid rent, other charges that may be due under the rental agreement, and any rental concessions that the tenant has received in consideration for entering into the rental agreement. Rental concessions include any amount by which all or part of the base rent, options, or fees are reduced in exchange for entering into the rental agreement.

C. SECTION DIRECTORY:

Section 1 amends s. 83.595, F.S., to allow a landlord and a tenant to contract for liquidated damages or charge certain fees in the event a tenant breaches a rental agreement by early termination.

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:

None.

⁴ Section 83.575, F.S., allows for a rental agreement provision requiring a tenant to notify a landlord before vacating the premises at the end of a rental term. The provision may not require more than 60 days' notice. A landlord must provide written notice to a tenant specifying the obligations under the notification provision as well as the termination date. If, after written notice, a tenant breaches such a provision, the tenant may be liable for liquidated damages as specified in the rental agreement.

FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear whether rental agreements executed prior to the effective date of the bill will be affected by this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a