

By Senator Constantine

22-736-07

1 A bill to be entitled
2 An act relating to residential tenancies;
3 amending s. 83.43, F.S.; revising the
4 definition of "rental agreement"; defining
5 "early termination fee"; amending s. 83.595,
6 F.S.; authorizing a landlord to terminate a
7 rental agreement and recover liquidated damages
8 for breach of the agreement or charge the
9 tenant an early termination fee, or both, under
10 certain circumstances; providing a limit on the
11 combined total damages and fee; requiring the
12 tenant to indicate acceptance of an early
13 termination fee or liquidated damages provision
14 in the rental agreement; specifying liability
15 of the tenant for rent, other charges otherwise
16 due, and rental concessions under certain
17 circumstances; providing applicability and
18 certain retroactive effect; providing that the
19 act does not invalidate any liquidated damages
20 or early termination fee in any rental
21 agreement entered into prior to the effective
22 date of the act; providing an effective date.

24 Be It Enacted by the Legislature of the State of Florida:

26 Section 1. Subsection (7) of section 83.43, Florida
27 Statutes, is amended, and subsection (17) is added to that
28 section, to read:

29 83.43 Definitions.--As used in this part, the
30 following words and terms shall have the following meanings
31 unless some other meaning is plainly indicated:

1 (7) "Rental agreement" means any written agreement,
2 including amendments or addenda, or oral agreement if for less
3 duration than 1 year, providing for use and occupancy of
4 premises.

5 (17) "Early termination fee" means any charge, fee, or
6 forfeiture which is contained in a written rental agreement
7 and which is assessed to a tenant when a tenant vacates a
8 dwelling unit before the end of the rental agreement. An early
9 termination fee does not include:

10 (a) Charges for services actually rendered to the
11 tenant.

12 (b) Unpaid rent through the end of the month in which
13 the tenant occupied the dwelling unit.

14 (c) Charges for damages to the dwelling unit.

15 Section 2. Section 83.595, Florida Statutes, is
16 amended to read:

17 83.595 Choice of remedies upon breach by tenant.--

18 (1) If the tenant breaches the rental agreement lease
19 for the dwelling unit and the landlord has obtained a writ of
20 possession, or the tenant has surrendered possession of the
21 dwelling unit to the landlord, or the tenant has abandoned the
22 dwelling unit, the landlord may:

23 (a) Treat the rental agreement lease as terminated and
24 retake possession for his or her own account, thereby
25 terminating any further liability of the tenant; ~~or~~

26 (b) Retake possession of the dwelling unit for the
27 account of the tenant, holding the tenant liable for the
28 difference between the rent rental stipulated to be paid under
29 the lease agreement and what, in good faith, the landlord is
30 able to recover from a reletting; ~~or~~

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1 (c) Stand by and do nothing, holding the lessee liable
2 for the rent as it comes due; ~~or-~~

3 (d)1. If provided for in the rental agreement, recover
4 liquidated damages upon the breach or charge the tenant a fee
5 for early termination of the rental agreement upon the
6 tenant's giving the landlord notice as provided for in the
7 rental agreement. The landlord is entitled to liquidated
8 damages and an early termination fee if the combined total
9 charged for liquidated damages and the early termination fee
10 does not exceed an amount equal to 2 months' rent. The
11 landlord shall treat the rental agreement as terminated and
12 charge the tenant liquidated damages or the early termination
13 fee as specified in the rental agreement. In such event, the
14 remedies set forth in paragraphs (a), (b), and (c) are not
15 available to the landlord. This subparagraph does not apply
16 when the breach is failure to give notice at the end of the
17 rental agreement as provided in s. 83.575.

18 2. The tenant shall indicate acceptance of the
19 provision in the rental agreement requiring an early
20 termination fee or liquidated damages. Acceptance for purposes
21 of this subparagraph includes, but is not limited to, the
22 tenant's placing of his or her initials next to the provision
23 or otherwise indicating his or her agreement with the
24 provision. If acceptance is not indicated, the remedies in
25 this paragraph will not apply.

26 (2) The landlord may charge the tenant for any unpaid
27 rent, other charges due under the rental agreement through the
28 end of the month in which the landlord retakes possession of
29 the dwelling unit, and any rental concessions that the tenant
30 has received. For purposes of this subsection, the term
31 "rental concessions" means any amount contained in the rental

1 agreement by which all or a portion of the base rent or
2 options is reduced or any service or thing of value is given
3 in consideration for the tenant's entering into the rental
4 agreement.

5 ~~(3)(2)~~ If the landlord retakes possession of the
6 dwelling unit for the account of the tenant pursuant to
7 paragraph (1)(b), the landlord has a duty to exercise good
8 faith in attempting to relet the premises, and any rent
9 ~~rentals~~ received by the landlord as a result of the reletting
10 shall be deducted from the balance of rent due from the
11 tenant. For purposes of this section, "good faith in
12 attempting to relet the premises" means that the landlord
13 shall use at least the same efforts to relet the premises as
14 were used in the initial rental or at least the same efforts
15 as the landlord uses in attempting to rent lease other similar
16 rental units but does not require the landlord to give a
17 preference in leasing the premises over other vacant dwelling
18 units that the landlord owns or has the responsibility to
19 rent.

20 Section 3. This act applies to any rental agreement
21 entered into before the effective date of the act in which the
22 parties agree to the remedies authorized in this act, except
23 that s. 83.595(1)(d)2., Florida Statutes, applies to any
24 rental agreement entered into on or after the effective date
25 of this act. However, this act does not invalidate any
26 liquidated damages or early termination fee in any rental
27 agreement entered into before the effective date of the act.

28 Section 4. This act shall take effect upon becoming a
29 law.

SENATE SUMMARY

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3 Revises the definition of "rental agreement." Defines
4 "early termination fee." Allows a landlord to terminate a
5 rental agreement and recover liquidated damages for
6 breach of the agreement or charge the tenant an early
7 termination fee, or both, under certain circumstances.
8 Provides a limit on the combined total damages and fee.
9 Requires the tenant to indicate acceptance of an early
10 termination fee or liquidated damages provision in the
11 rental agreement. Specifies liability of the tenant for
12 rent, other charges otherwise due, and rental concessions
13 under certain circumstances. Provides applicability and
14 certain retroactive effect. Provides that the act does
15 not invalidate any liquidated damages or early
16 termination fee in any rental agreement entered into
17 prior to the effective date of the act.
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