

By the Committee on Regulated Industries; and Senators Joyner and Constantine

580-2332-07

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A bill to be entitled  
An act relating to residential tenancies;  
amending s. 83.43, F.S.; revising and providing  
definitions; amending s. 83.595, F.S.; allowing  
a landlord to terminate a rental agreement and  
recover liquidated damages or charge the tenant  
an early termination fee for breach of the  
agreement, or both, under certain  
circumstances; requiring the tenant to indicate  
acceptance of an early termination fee or  
liquidated-damages provision in the rental  
agreement in order for the provision to take  
effect; providing a limit on the combined total  
of damages and fee; providing liability of the  
tenant for rent, other charges otherwise due,  
and rental concessions; providing an effective  
date.

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

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

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

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

1           (17) "Early termination fee" means any charge, fee, or  
2 forfeiture that is provided for in a written rental agreement  
3 and is assessed to a tenant when a tenant vacates a dwelling  
4 unit before the end of the rental agreement. An early  
5 termination fee does not include:

6           (a) Unpaid rent through the end of the month in which  
7 the tenant occupied the dwelling unit.

8           (b) Charges for damages to the dwelling unit.

9           Section 2. Section 83.595, Florida Statutes, is  
10 amended to read:

11           83.595 Choice of remedies upon breach or early  
12 termination by tenant.--

13           ~~(1)~~ If the tenant breaches the rental agreement lease  
14 for the dwelling unit and the landlord has obtained a writ of  
15 possession, or the tenant has surrendered possession of the  
16 dwelling unit to the landlord, or the tenant has abandoned the  
17 dwelling unit, the landlord may:

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

21           ~~(2)(b)~~ Retake possession of the dwelling unit for the  
22 account of the tenant, holding the tenant liable for the  
23 difference between the rent rental stipulated to be paid under  
24 the rental lease agreement and what, ~~in good faith,~~ the  
25 landlord is able to recover from a reletting. If the landlord  
26 retakes possession, the landlord has a duty to exercise good  
27 faith in attempting to relet the premises, and any rent  
28 received by the landlord as a result of the reletting shall be  
29 deducted from the balance of rent due from the tenant. For  
30 purposes of this subsection, the term "good faith in  
31 attempting to relet the premises" means that the landlord uses

1 at least the same efforts to relet the premises as were used  
2 in the initial rental or at least the same efforts as the  
3 landlord uses in attempting to rent other similar rental units  
4 but does not require the landlord to give a preference in  
5 renting the premises over other vacant dwelling units that the  
6 landlord owns or has the responsibility to rent; or

7 (3)(e) Stand by and do nothing, holding the lessee  
8 liable for the rent as it comes due; ~~or-~~

9 (4) If liquidated damages or an early termination fee  
10 are provided for in the rental agreement, treat the rental  
11 agreement as terminated and recover liquidated damages or  
12 charge an early termination fee upon the tenant's giving  
13 notice. This remedy is available only if the tenant, at the  
14 time the rental agreement was made, indicated acceptance of  
15 liquidated damages or an early termination fee by placing his  
16 or her signature or initials next to the provision in the  
17 agreement. If acceptance is not indicated, only the remedies  
18 available in subsection (1), subsection (2), or subsection (3)  
19 apply.

20 (a) The landlord is entitled to both liquidated  
21 damages and an early termination fee if the combined total  
22 charge does not exceed an amount equal to 2 months' rent.

23 (b) In addition to liquidated damages or an early  
24 termination fee, the landlord may charge the tenant for any  
25 unpaid rent and other charges due under the rental agreement  
26 through the end of the month in which the landlord retakes  
27 possession of the dwelling unit, and any rent concessions that  
28 the tenant has received up to the maximum of 1 month's rent.  
29 For purposes of this paragraph, the term "rent concessions"  
30 means any amount contained in the rental agreement by which  
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1 all or a portion of the base rent is reduced in consideration  
2 for the tenant's entering into the rental agreement.

3 (c) This subsection does not apply if the breach is  
4 failure to give notice as provided in s. 83.575.

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

19 Section 3. This act shall take effect upon becoming a  
20 law.

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2   COMMITTEE SUBSTITUTE FOR  
3   Senate Bills 2730 and 1596

4 The committee substitute (CS) combines SB's 2730 and 1596.  
5 Regarding SB 2730, the CS:

- 6 - Amends s. 83.595(2) F.S., to refer to "rents" received  
7 from reletting instead of "rentals" received. It also  
8 refers to the landlord attempting to "rent" other similar  
9 rental units instead of attempting to "lease" other  
10 similar rental units.
- 11 - Amends s. 83.595(4)(b), F.S., to clarify that the  
12 landlord may charge the tenant for any unpaid rent "and  
13 other charges" due under the rental agreement through the  
14 end of the month.
- 15 - Amends s. 83.595, F.S., to include the term "or" between  
16 each of the four landlord remedies.

17 Regarding SB 1596, the CS:

- 18 - Amends s. 83.595(2), F.S., to require that the landlord  
19 attempt in good faith to relet the dwelling unit and  
20 clarifies that the amount received from the reletting  
21 must be deducted from the amount due from the tenant. It  
22 deletes the similar "good faith" provision contained in  
23 current law at s. 83.595(2), F.S.
- 24 - Requires that the tenant acknowledge the early  
25 termination fee or liquidated damages in the lease  
26 agreement by placing his or her initials or signature  
27 next to the provision.
- 28 - Defines "rental concessions" to mean an amount contained  
29 in the rental agreement used as consideration for the  
30 tenant's entering into the rental agreement. The CS does  
31 not include within the meaning of the term services or  
things of value given in consideration.
- Amends s. 83.595, F.S., to include the term "or" between  
each of the four landlord remedies.

The CS removes the provision in section 3 of the bill relating  
to the retroactive application of this act.