

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 2250
 INTRODUCER: Senator Crist
 SUBJECT: Court Filing Fees for Evictions
 DATE: March 31, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Maclure	JU	Favorable
2.	_____	_____	FT	_____
3.	_____	_____	JA	_____
4.	_____	_____	WPSC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill reduces the filing fee for a removal of tenant action for possession of real property to \$90 from \$265 and creates a separate filing fee of \$265 for civil actions that seek both a removal of a tenant and damages. The bill also requires a portion of these fees be deposited into the state courts' Mediation and Arbitration Fund.

This bill substantially amends section 34.041, Florida Statutes.

II. Present Situation:

Landlord and tenant actions are governed by chapter 83, F.S.¹, among three parts relating to nonresidential tenancies,² residential tenancies,³ and self-service storage space.⁴

Nonresidential Tenancies

In some instances, federal law differentiates between nonresidential or commercial leases and residential leases. Similarly, Florida law treats residential and nonresidential leases differently.⁵ Part I, of ch. 83, F.S., applies to nonresidential tenancies that are not covered under the Florida Residential Landlord and Tenant Act (part II of ch. 83, F.S.).⁶ Florida law governing

¹ Chapter 83, F.S.
² Part I of ch. 83, F.S., ss. 83.001-83.251.
³ Part II of ch. 83, F.S., ss. 83.40-83.682.
⁴ Part III of ch. 83, F.S., ss. 83.801-83.809.
⁵ *Ross v. Metropolitan Dade County*, 142 B.R. 1013, 1014 (S.D. Fla. 1992).

nonresidential or commercial leases does not offer the same tenant protections that are evident in the act. However, both commercial landlords and tenants are offered certain protections under Florida law upon the breach of the nonresidential lease.

Removal of Nonresidential Tenants

Under existing law, a landlord is authorized to remove a nonresidential tenant for any of the following reasons:

- A tenant/lessee holds over and continues in possession of the premises after the expiration of that person's time and without the landlord's permission;
- A tenant/lessee holds over without permission after he/she has defaulted in the payment of rent after three days written notice requiring rent payment.
- A tenant holds over without permission after he/she has failed to correct a material breach of the lease or oral agreement, other than not paying rent, and has received 15 days written notice requiring the cure of such breach.⁷

To remove a tenant, a landlord or the landlord's attorney or agent is required to file a complaint stating the factual basis for removal in the proper court of the county where the premises is located.⁸ If a removal the tenant judgment is found in favor of the plaintiff, a plaintiff is entitled to recover possession of the premises.⁹ The court may also award money damages within its jurisdictional limit in favor of the plaintiff, if the plaintiff "expressly and specifically" sought monetary relief through proper service of process.¹⁰ If the court determines that the issues favor the defendant, the court must issue a judgment to dismiss the removal of tenant action.¹¹

Florida Residential Landlord and Tenant Act

Part II of chapter 83, F.S., titled the "Florida Residential Landlord and Tenant Act" (act), governs the relationship between landlords and tenants under a residential lease agreement.¹² A rental agreement includes any written or oral agreement regarding the duration and conditions of a tenant's occupation of a dwelling unit.¹³ The provisions of this act specifically address the

⁶ Section 83.001, F.S. In Florida, commercial landlords possess three separate remedies for the removal of a tenant who holds over after the expiration of a lease. These actions include the historic common-law remedy of ejectment (codified in s. 66.021, F.S.), an unlawful-detainer action under s.82.04, F.S., and a tenant-removal action under s. 83.21, F.S. *Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC*, 986 So. 2d 1244, 1250 (Fla. 2008). Ejectment actions are subject to the exclusive original jurisdiction of Florida's circuit courts, while county courts generally possess subject-matter jurisdiction in unlawful-detainer and tenant-removal actions (subject to their amount-in-controversy limit). *Id.*

⁷ Section 83.20, F.S.

⁸ Section 83.21, F.S.

⁹ Section 83.231, F.S.

¹⁰ *Id.* See s. 34.01, F.S. A county court has jurisdiction to hear all actions where the amount in controversy does not exceed \$15,000.

¹¹ Section 83.231, F.S.

¹² Part II of ch. 83, F.S.

¹³ Section 83.43(7), F.S. ("A rental agreement "means any written ... or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.")

payment of rent,¹⁴ duration of leases,¹⁵ security deposits,¹⁶ landlord maintenance obligations,¹⁷ termination of rental agreements,¹⁸ and landlord remedies.¹⁹

Termination of Tenancy without Specific Term

Under current law, if a rental agreement does not provide a specific duration, “the duration is determined by the periods for which the rent is payable” or, if the agreement is provided on occasion of employment, “by the periods for which wages are payable.”²⁰

Section 83.57, F.S., provides that a tenancy without a specific term may be terminated upon written notice of either party.²¹ The amount of notice required is as follows:

- If the tenancy is from year to year, notice must be no less than 60 days prior to the conclusion of any annual period;
- If the tenancy is from quarter to quarter, notice must be no less than 30 days prior to the conclusion of any quarterly period;
- If the tenancy is from month to month, notice must be no less than 15 days prior to the conclusion of any monthly period; and
- If the tenancy is from week to week, notice must be no less than 7 days prior to the conclusion of any weekly period.²²

Termination of Tenancy with Specific Duration

Current law provides that a rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the agreement.²³ The rental agreement may not require more than 60 days’ notice before vacating the premises.²⁴

A rental agreement with a specific duration may provide that the tenant may be liable for liquidated damages if the tenant fails to give the required notice before vacating the premises at the end of the rental agreement.²⁵ The liquidated damages are determined as specified in the rental agreement. Landlords may collect liquidated damages from a tenant if the tenant fails to give notice before vacating the premises when notice is required by the rental agreement. The landlord must provide a written notice to the tenant within 15 days before the start of the notification period contained in the lease. The written notice must list all fees, penalties, and other charges applicable to the tenant.

¹⁴ Section 83.46, F.S.

¹⁵ *Id.*

¹⁶ Section 83.49, F.S.

¹⁷ Section 83.51, F.S.

¹⁸ *See* ss. 83.56 and 83.575, F.S.

¹⁹ *See* ss. 83.58 and 83.595, F.S.

²⁰ Section 83.46(2) and (3), F.S.

²¹ Section 83.57, F.S.

²² *Id.*

²³ Section 83.575(1), F.S.

²⁴ *Id.*

²⁵ Section 83.575(2), F.S.

If the tenant remains in the rental unit after the termination of the rental agreement with the landlord's permission in a month to month tenancy and fails to give 15 days notice before vacating the dwelling unit, the tenant is liable to the landlord for an additional one month's rent.²⁶

Landlord Remedies

Section 83.595, F.S., provides the landlord with choices of remedies for breaches of the rental agreement by the tenant. The remedies in s. 83.595, F.S., apply to the following situations:

- The tenant has breached the lease for the dwelling unit and the landlord has obtained a writ of possession;
- The tenant has surrendered possession of the dwelling unit to the landlord; or
- The tenant has abandoned the dwelling unit.

Section 83.595(1), F.S., permits the landlord to:

- 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 a reletting; or
- Stand by and do nothing, holding the lessee liable for the rent as it comes due.

Right of Action for Possession

A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated.²⁷ However, under current law, a landlord is not authorized to recover possession except under the following circumstances:

- In an action for possession, in which the landlord, the landlord's attorney, or agent files a specified complaint alleging certain facts authorizing recovery in the proper county court where the dwelling unit is located;²⁸
- In other civil actions where right of possession is to be determined;
- Possession of the dwelling unit has been surrendered by the tenant to the landlord;
- The dwelling unit has been abandoned by the tenant; or
- The only remaining tenant in the dwelling unit has been deceased for at least 60 days with his/her personal property still remaining on the premises and rent remains unpaid, and the landlord has not received notice of a probate estate or personal representative thereof.²⁹

²⁶ Section 83.575(3), F.S.

²⁷ Section 83.59(1), F. S.

²⁸ Section 83.59(2), F.S.

²⁹ Section 83.59(3), F.S.

Filing Fee

Upon filing a removal of tenant action, Florida law also requires the moving party to pay a \$265 filing fee, a portion of which is deposited into the state courts' Mediation and Arbitration Trust Fund.³⁰ Litigants who cannot afford to pay statutory required filing fees may apply for civil indigent status from the clerk of court and have these fees deferred.³¹

An applicant is considered to be indigent under current law "if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the applicant's household by the United States Department of Health and Human Services."³²

III. Effect of Proposed Changes:

This bill reduces the filing fee for a removal of tenant action from \$265 to \$90 under s. 34.041(1)(a)6., F.S. However, the bill further provides that litigants seeking both tenant removal and damages are still required to pay a \$265 filing fee under a new separate provision created by this bill. Both nonresidential and residential landlords who otherwise meet the jurisdictional requirements for county court and who wish to remove a tenant, or remove a tenant and recover damages, will be subject to this fee.

If this bill is enacted, the first \$15 of each of these filing fees will be deposited into the state courts' Mediation and Arbitration Trust Fund.

This bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁰ Section 34.041(1), F.S. This amount was increased from \$75 to \$265 in 2008 under CS/SB 1970. *See* ch. 2008-111, Laws of Fla.

³¹ Florida law provides that any indigent party in any judicial or administrative proceeding is entitled to receive the services of the courts, sheriffs, and clerks despite his or her present inability to pay for those services. However, the person, if he or she prevails in the action, must repay the amount for such services. *See* s. 57.082, F.S.

³² Section 57.082(2)(a)1., F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill will decrease the filing fee for a landlord removal of tenant action by \$175. However, if the moving party also wants to recover damages, such as unpaid rent, he or she will still be required to pay a filing fee of \$265.

C. Government Sector Impact:

This bill has not yet been reviewed by the Revenue Estimating Conference. The Office of the State Courts Administrator (OSCA or office) has reviewed this bill and reports 173,933 county court eviction filings for the 2007-2008 fiscal year.³³ By applying a 2-percent indigence rate, thereby reducing the number of filings to 170,454, OSCA calculates the estimated revenue under the current statute to be \$45,170,310.³⁴

The office reports that removal of tenant actions account for 15 percent of civil eviction filings, while actions for removal of tenant with damages accounting for 85 percent.³⁵ Based on these statistics, OSCA estimates that the proposed bill would generate \$40,695,893 in total revenue, therefore resulting in a negative fiscal impact of \$4,474,417 in comparison to current revenue collections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

³³ Florida Office of the State Courts Administrator, *FY 2007-2008 Statistical Reference Guide*, 9-2 (2008). See http://www.flcourts.org/gen_public/stats/bin/07-08chap9.pdf (last visited on Mar. 27, 2009).

³⁴ Office of State Courts Administrator, *House Bill 809 Judicial Impact Statement* (Mar. 3, 2009) (on file with the Senate Committee on Judiciary).

³⁵ *Id.*

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
