

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 921 Landlords and Tenants

**SPONSOR(S):** Judiciary Committee; Civil Justice Subcommittee; Stargel and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	9 Y, 4 N, As CS	Caridad	Bond
2) Judiciary Committee	9 Y, 6 N, As CS	Caridad	Havlicak

### SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act" governs the relationship between landlords and tenants under a residential rental agreement. This bill updates and modifies the Act to:

- Make it applicable to lease purchase agreements for residential properties if the buyer has not paid at least one month's rent and paid a deposit of at least 5 percent of the value of the property or at least 12 month's rent.
- Specify that certain statutory notice and attorneys fee provisions may not be waived.
- Modify the statutory disclosure regarding deposits to use plain language.
- Require landlords to pay regular assessments to an association.
- Clarify eviction for a continuing noncompliance.
- Allow a landlord to accept partial rent without waiving the right to evict.
- Where the landlord requires a tenant to provide advance notice of an intent to not renew the lease at the end of the term, require the landlord to provide the same notice of intent not to renew.
- Provide that a notice of eviction is not stayed by weekends or holidays.
- Prohibit a landlord from retaliating against a tenant who lawfully pays an association rents pursuant to a lawful demand, or a tenant who complains of a fair housing violation.
- Provide that a landlord and a mobile home park owner must be given an opportunity to cure a deficiency in any notice or pleadings prior to dismissal of an eviction action.
- Provide technical and stylistic changes.

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

This bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Part II of ch. 83, F.S., entitled the "Florida Residential Landlord and Tenant Act" governs the relationship between landlords and tenants under a residential rental agreement. This bill makes various changes to Part II of the Act.

#### Exclusions from Application of the "Florida Residential Landlord and Tenant Act"

Current law sets out various forms of residential tenancy in which Part II of the Act does not apply.<sup>1</sup> For instance, Part II does not apply to residency or detention in a facility where residence is incidental to certain treatment or services (i.e. medical or religious services). Section 83.42(2) provides that Part II does not apply to "[o]ccupancy under a contract of sale of a dwelling unit or the property of which it is a part."

In *Pensacola Wine and Spirits Distillers, Inc., v. Gator Distributors, Inc.*, the court held that where the tenant had exercised an option to purchase, the lease was terminated and, therefore, the proper action for the landlord seeking possession was ejectment rather than eviction.<sup>2</sup> Under current law, it is possible for a tenant to sign a lease-purchase agreement, move in to the premises, make no payment, and be subject to the much slower ejection process rather than eviction.

The bill makes the Act applicable to lease purchase agreements for residential properties if the buyer has not paid at least one month's rent and paid a deposit of at least 5 percent of the value of the property or at least 12 month's rent.

#### Attorney Fees

Current law provides that the prevailing party in a civil action to enforce a provision of a rental agreement or Part II of the Act may recover reasonable court costs, including attorney's fees. This has been interpreted to provide for attorney's fees where a tenant files a personal injury action against a landlord alleging a breach of the landlord's maintenance duties. In general, attorney's fees are not awarded in personal injury actions.

The bill provides that a right to attorney fees may not be waived in a lease agreement. In addition, this bill provides that attorney's fees may not be awarded in a claim for personal injury damages based on a breach of duty under s. 83.51, F.S., regarding the landlord's obligation to maintain premises.

#### Deposit Money or Advance Rent Payments; Disclosures

Section 83.49, F.S., governs the landlord's duty to a tenant regarding deposit money or advance rent. The purpose of the statute is to assure tenants that their security deposits will be returned expeditiously or, in the alternative, that they will be promptly notified otherwise.<sup>3</sup>

Current law requires that a landlord furnish a copy of subsection (3) of s. 83.49, F.S., to a tenant. However, that subsection does not give notice of all laws regarding deposits and may not be clear to laypersons. This bill deletes the requirement to give a copy of subsection (3), and replaces it with a disclosure in plain language.

Many landlords require payment of a future rent in advance. For instance, a landlord may require "first, last and a security deposit." In addition to holding the security deposit through the end of the term, current law requires the landlord to also deposit the advance rents into the separate account. However,

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<sup>1</sup> Section 83.42, F.S.

<sup>2</sup> 448 So.2d 34 (Fla. 1st DCA 1984).

<sup>3</sup> See *Durene v. Alcime*, 448 So.2d 1208, 1210 (Fla. 3d DCA 1984).

current law is unclear regarding whether the landlord has to give written notice and an opportunity to object before paying advance rents held in the separate account when they become due. This bill provides that advance rents may be withdrawn from the deposit account when such rents are due to the landlord and without notice.

Current law provides that a tenant has 15 days after receipt of a landlord's notice of intention to impose a claim on a security deposit to object to the landlord's claim. After such time, the landlord may deduct the amount of his or her claim and must remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.<sup>4</sup> Current law provides that, if a landlord fails to give timely notice of a claim against the deposit, the landlord must return the entire deposit but can file a later action regarding the damages.<sup>5</sup> This bill codifies this law and further provides that a tenant who fails to timely object loses the right to object to the landlord taking the deposit, but still has a cause of action.

Current law requires a landlord to transfer deposits to a new owner of the property. In practice, some landlords, especially ones who have been foreclosed, neglect to transfer the deposit to the new owner. This bill creates a rebuttable presumption that the new owner has received the deposit, but the presumption is limited to one month's rent.

The bill also creates a new section relating to the application of the new disclosure requirements. Specifically, it provides that, for leases entered into between July 1, 2012 and December 31, 2012, a landlord may elect to comply with the current, statutory disclosure requirements or the new disclosure requirements under the bill. However, after January 1, 2013, all leases must comply with the disclosure requirements under the bill. This provision is to accommodate landowners who have stocks of preprinted lease forms.

### Outdated Disclosure

Current law at s. 83.50(2), F.S., requires that the landlord, or an authorized representative, must disclose to tenants initially moving into a building that has just been completed and is over three stories the availability or lack of availability of fire protection. The apparent intent of this law was to give notice to new tenants of buildings without fire protection systems. Current building codes require significant fire protection systems in new buildings over three stories tall. The bill deletes the outdated disclosure requirement related to the availability of fire protection.

### Landlord's Obligation to Maintain Premises and Pay Assessments

Current law provides that, during the tenancy, a landlord must comply with applicable building, housing and health code requirements.<sup>6</sup> However, where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.<sup>7</sup> The bill removes screens from the list of items a landlord must maintain.

### Termination of Rental Agreement - Noncompliance

Section 83.56, F.S., governs instances where either the tenant or landlord may terminate the rental agreement. Tenant eviction can be for either monetary default or non-monetary default. Non-monetary defaults are in two categories:

- If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant

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<sup>4</sup> Section 83.49(3)(b), F.S.

<sup>5</sup> See *Durene*, 448 So.2d at 1210.

<sup>6</sup> Section 83.51(1)(a), F.S.

<sup>7</sup> Section 83.51(1)(b), F.S.

specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises.

- If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or the landlord tenant act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary.<sup>8</sup>

Some tenants have taken the position that a noncompliance with opportunity to cure still requires an additional 7-day notice upon the re-occurrence of the offense before filing for eviction. This bill amends s. 83.56(2)(b), F.S., to provide that such additional notice is not required.

#### Termination of Rental Agreement - Rent; Waiver

A landlord waives his or her right to terminate the rental agreement or to bring a civil action for a specific noncompliance if the landlord accepts rent with actual knowledge of such noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions.<sup>9</sup> Likewise, the tenant waives his or her right to terminate or to bring a civil action for a specific noncompliance if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any provision of the rental agreement that is in variance with its provisions. A landlord or tenant does not waive his or her right to terminate the rental agreement or bring a civil action for any subsequent or continuing noncompliance.

Thus, under current law, if a landlord accepts partial rent from a tenant with full knowledge that it is not for the full amount, he or she waives the right to terminate the rental agreement or to bring a civil action.<sup>10</sup> The application of this law discourages landlords from negotiating partial payments with a tenant. This bill provides that a landlord does not waive the right to terminate a rental agreement or to bring a civil action for noncompliance by accepting partial rent.

The bill also revises several provisions relating to termination of rental agreements to:

- Specify that a 3-day notice of nonpayment of rent may include late fees.
- Provide that the notice requirements in s. 83.56(1)-(3), F.S., may not be waived in a lease.
- Increase the period to institute an action before an exemption involving rent subsidies is waived from 45 days to 90 days.

#### Termination of a Tenancy with a 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 rental agreement. However, such a provision may not require more than 60 days notice.<sup>11</sup> A rental agreement with a specific duration may also provide that if a tenant fails to give the required notice before vacating the

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<sup>8</sup> Section 83.56(2)(a)-(b), F.S.

<sup>9</sup> Section 83.56(5), F.S.

<sup>10</sup> See *In re Sorrento's I, Inc.*, 195 B.R. 502 (Bkrcty. M.D. Fla. 1996) (holding that landlord waived his right to terminate the rental agreement where he accepted two untimely checks for partial payment of the rent and the landlord had full knowledge they were not tendered on time and that they did not represent the full amount of rent for the month).

<sup>11</sup> Section 83.575(1), F.S.

premises at the end of the rental agreement, he or she may be liable for liquidated damages as specified in the rental agreement. This only occurs if the landlord provides written notice to the tenant specifying his or her obligations under the notification provision contained in the lease and the date the rental agreement is terminated. Such written notice must be provided to the tenant within 15 days before the start of the notification period contained in the lease and list all fees, penalties and other possible charges to the tenant.

The bill provides that if a rental agreement has a requirement for tenant notice to the landlord regarding nonrenewal, the rental agreement must provide a reciprocal agreement requiring the landlord to provide the same notice of intent not to renew, using the same notice period.

#### Landlord or Mobile Home Park Owner's Action for Rent or Possession

Sections 83.60 and 723.063, F.S., both relate to defenses a party can raise in an action for rent or possession based upon nonpayment of rent. While s. 83.60, F.S., relates to landlords and tenants in a residential rental agreement, s. 723.063, F.S., relates to mobile home park owners and mobile home owners. The language is essentially the same in both sections.

Current law provides that in a landlord or mobile home park owner's action for possession based on nonpayment of rent or action seeking to recover unpaid rent, a tenant or mobile home owner may raise various defenses, including material noncompliance or retaliatory conduct pursuant to ss. 83.51(1) and 83.64, F.S., respectively. The bill provides that, before an action for possession based on nonpayment or seeking recovery of unpaid rent may be dismissed, the landlord or mobile home park owner must be given an opportunity to cure a deficiency in any notice or in the pleadings.

#### Restoration of Possession to Landlord Upon Eviction

Current law provides that, in an action for possession, if the judgment is entered in the landlord's favor, the clerk must issue a writ to the sheriff commanding him or her to put the landlord in possession after 24 hours' notice is posted on the premises.<sup>12</sup> The bill provides that weekends and legal holidays do not stay the 24-hour notice period.

#### Retaliatory Conduct

Current law provides that a landlord may not increase a tenant's rent, decrease services to a tenant, or bring or threaten to bring a civil action primarily because the landlord is retaliating against the tenant.<sup>13</sup> A tenant may raise the defense of retaliatory conduct. However, to do so, the tenant must have acted in good faith. The statute sets out a nonexclusive list of examples of conduct for which the landlord may not retaliate (i.e. a tenant has organized, encouraged or participated in a tenant's organization).

The bill adds two examples to the list of conduct for which a landlord may not retaliate. Specifically, a landlord may not retaliate where: 1) the tenant has paid the rent to a condominium, cooperative, or homeowners association after demand from the association in order to pay the landlord's obligation to the association;<sup>14</sup> or 2) the tenant has exercised his or her rights under local, state, or federal fair housing laws.

### B. SECTION DIRECTORY:

Section 1 amends s. 83.42, F.S., relating to exclusions from application to Part II.

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<sup>12</sup> Section 83.62, F.S.

<sup>13</sup> Section 83.64, F.S.

<sup>14</sup> See ss. 718.116(11)(a), 719.108(10)(a), 720.3085, F.S., (providing that if a unit or parcel is occupied by a tenant and the unit or parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit or parcel).

Section 2 amends s. 83.48, F.S., relating to attorney fees.

Section 3 amends s. 83.49, F.S., relating to deposit money and advance rent.

Section 4 amends creates an unnumbered section relating to the application date for new disclosure requirements.

Section 5 amends s. 83.50, F.S., relating to disclosure.

Section 6 amends s. 83.51, F.S., relating to a landlord's obligation to maintain premises and pay assessments.

Section 7 amends s. 83.56, F.S., relating to termination of rental agreement.

Section 8 amends s. 83.575, F.S., relating to termination of tenancy with specific duration.

Section 9 amends s. 83.58, F.S., relating to remedies.

Section 10 amends s. 83.59, F.S., relating to right of action for possession.

Section 11 amends s. 83.60, F.S., relating to defenses to action for rent or possession.

Section 12 amends 83.62, F.S., relating to restoration of possession to landlord.

Section 13 amends 83.63, F.S., relating to casualty damage.

Section 14 amends s. 83.64, F.S., relating to retaliatory conduct.

Section 15 amends s. 723.063, F.S., relating to defenses to action for rent or possession.

Section 16 provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any direct economic impact on the private sector.

### **D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the Civil Justice Subcommittee adopted five amendments and reported the bill favorably as a committee substitute. The amendments:

- Delete language which makes Part II of ch. 83, F.S., applicable to certain eviction procedures referenced in statute;
- Revise language to provide that a landlord is not required to give a new or "additional" notice solely because the depository merges with another financial institution, changed its name, or transferred ownership to a different financial institution;
- Delete language which requires a landlord to pay assessments due to a condominium, cooperative or homeowners' association;
- Provide that, in a landlord's action for possession of a dwelling unit based upon nonpayment of rent or to recover unpaid rent, the landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action; and
- Provide that, in a mobile home park owner's action for possession of a dwelling unit based upon nonpayment of rent or to recover unpaid rent, the owner must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.

On February 22, 2012, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Deletes definition of "bona fide contract."
- Deletes language regarding a nonrefundable deposit.
- Creates a new section relating to the application of disclosure requirements in the bill. Specifically, a landlord may elect to comply with the current, statutory disclosure requirements or the new disclosure requirements under the bill, for leases entered into between July 1, 2012 and December 31, 2012. However, after January 1, 2013, all leases must comply with the disclosure requirements under the bill.
- Deletes screens from the list of items a landlord must make reasonable provisions for under s. 83.51(2)(a), F.S.
- Deletes language allowing a landlord to require payment of the rent to be by cash, money order, or certified funds.

- Deletes the requirement that, if a landlord accepts partial rent, he or she must notify the tenant that the landlord reserves the right to enforce the rental agreement.
- Deletes language penalizing a landlord if it fails to give the tenant timely notice of nonrenewal by allowing the tenant to continue the tenancy for up to sixty days after the tenant's receipt of the notice of nonrenewal.
- Deletes a section relating to foreclosure of leased property.
- Makes grammatical and stylistic changes.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.