

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 Committee on Judiciary

BILL: SB 656

INTRODUCER: Senator Latvala

SUBJECT: Landlords and Tenants

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Pre-meeting
2.			RI	
3.			RC	

I. Summary:

SB 656 provides greater guidance to the court in determining whether a person is a transient occupant or temporary occupant in a landlord-tenant relationship.

Under existing law, persons in a landlord and tenant relationship bear certain legal responsibilities and obligations to each other. Transient occupants are not considered tenants. Current law limits the determination of whether occupancy is transient or temporary to the intent of the parties.

This bill creates a rebuttable presumption that when a dwelling unit or premises is occupied by a person for 30 days or less, the occupancy is transient and the duties and obligations created in the Florida Residential Landlord and Tenant Act do not apply.

If a person occupies a dwelling unit or premises for longer than 30 days, the bill authorizes the court to consider a number of factors as evidence of transient occupancy. Factors for consideration include the length of time that the person lives at the property, the existence of a written agreement or contract for occupancy, and whether the person pays rent at fair market value, receives United States mail at the property, lists the property as his or her address with governmental agencies, or has an ownership or financial stake in the property.

II. Present Situation:

The Florida Residential Landlord and Tenant Act

Residential tenancies are governed by the Florida Residential Landlord and Tenant Act (Act).¹

¹ Part II of Chapter 83, F.S., s. 83.40, F.S.

The Act does not apply to:

- Residency or detention in a facility for the purpose of receiving medical, geriatric, educational, counseling, religious or other similar services;
- Occupancy under a contract of sale of a dwelling unit or the property of which it is a part in which the buyer has paid at least 12 months' rent or at least 1 months' rent and a deposit of at least 5 percent of the purchase price of the property;
- Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or in a mobile home park;
- Occupancy by a holder of a proprietary lease in a cooperative apartment; or
- Occupancy by an owner of a condominium unit.²

The Act refers to dwelling units as:

- A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one or more persons who maintain a common household;
- A mobile home rented by a tenant; or
- A structure or part of a structure that is furnished, with or without rent, as incidental to employment for use as a home, residence, or sleeping place by one or more persons.³

The landlord is the owner or lessor of a dwelling unit. The tenant is a person entitled to occupy a dwelling unit under a rental agreement, in which the tenant makes periodic payments of rent to the landlord.⁴ When people enter into a landlord and tenant relationship, as evidenced by a rental agreement, each party commits to abide by certain legal obligations and responsibilities. Rental agreements may be written or oral.⁵ Every rental agreement carries with it an obligation of good faith in both performance and enforcement.⁶ Landlords are entitled to collect security deposits from tenants and hold the deposits as security against the performance of the rental agreement.⁷

Landlords and tenants have different obligations to maintain the property. Landlords must comply with building, housing, and health codes, and for dwelling units other than a single-family home or a duplex provide for:

- The extermination of insects and rodents;
- Locks and keys;
- The clean and safe condition of common areas;
- Garbage removal; and
- Heat during winter, running water, and hot water.⁸

Tenants, in turn, must:

- Comply with building, housing and health codes that apply to tenants;
- Keep the premises clean and sanitary;
- Keep plumbing fixtures clean and sanitary and in repair;

² Section 83.42, F.S.

³ Section 83.43(2), F.S.

⁴ Sections 83.43(3), (4), and (6), F.S.

⁵ Section 83.43(7), F.S.

⁶ Section 83.44, F.S.

⁷ Section 83.43(12), F.S.

⁸ Sections 83.51(1)(a) and (2)(a), F.S.

- Use and operate electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other appliances in a reasonable manner;
- Not destroy or damage the premises or property or allow others to do so; and
- Not disturb the peace.⁹

A landlord or tenant may petition the court to enforce rights and duties through a civil action.¹⁰

If a tenant fails to materially comply with the rental agreement, or with his or her legal obligation to maintain the dwelling, a landlord may begin eviction proceedings. Prior to initiating eviction proceedings, for both residential and nonresidential tenancies, the landlord generally must provide the tenant written notice of the violation and an opportunity to correct the problem.¹¹

If the tenant fails to correct the problem, the landlord may bring an action in the county court where the property is located.¹² If the court enters a judgment for the landlord, the clerk will issue a writ of possession to the sheriff.¹³ After the sheriff provides 24 hours' notice to the tenant, through a posting on the premises, the landlord may remove the tenant's property and change the locks.¹⁴

Unlawful Detainer

An unlawful detainer is the “unjustifiable retention of the possession of real property by one whose original entry was lawful”¹⁵ The party entitled to possession has a cause of action for unlawful detainer if a person enters a property in a peaceable manner but the other party's consent has expired.¹⁶

The party who is the rightful possessor is entitled to have an action resolved through summary procedure, or expedited review by the court.¹⁷

An action for unlawful detainer is not available to residential tenancies.¹⁸

Media on Unwelcome House Guests

News articles report that an increasing number of property owners or tenants are inviting guests into their homes and having difficulty getting them to leave.¹⁹ If a law enforcement agency is

⁹ Section 83.52, F.S.

¹⁰ Section 83.54, F.S.

¹¹ Section 83.56(2), F.S.; *3618 Lantana Road Partners, LLC v. Palm Beach Pain Management, Inc.*, 57 So. 3d 966, 968 (Fla. 4th DCA 2011).

¹² Section 83.59(2), F.S.

¹³ Section 83.62(1), F.S.

¹⁴ Section 83.62(2), F.S.

¹⁵ BLACK'S LAW DICTIONARY (10th ed. 2014).

¹⁶ Section 82.04(1), F.S.

¹⁷ Section 51.011, F.S.; s. 82.04(1), F.S.

¹⁸ Section 82.04(2), F.S.

¹⁹ TAMPA BAY TIMES, *In Florida, Evicting Unwelcome Guest is no Simple Matter* (Apr. 2, 2009),

<http://www.tampabay.com/news/humaninterest/in-florida-evicting-unwelcome-guest-is-no-simple-matter/989264>; TAMPA

called for assistance to remove guests who have overstayed their welcome, the property owner or person having a written lease is typically told that the law enforcement agency is not authorized to remove the guest because the matter is a civil matter, not criminal trespassing. Additionally, law enforcement agencies reportedly advise property owners and tenants that the law requires a court order prior to changing the locks on the property or taking other actions to remove the person from the home.

A legal action to remove a guest who has overstayed his or her welcome at a residence is known as an unlawful detainer action. The filing fee for this action is \$185.00, and according to news reports, these actions take several weeks to resolve. In Hillsborough County alone, filings for unlawful detainer increased from 14 in 1999 to 67 in 2003.²⁰

III. Effect of Proposed Changes:

This bill provides greater guidance to the court in determining whether a person is a tenant or a transient (temporary) occupant.

Under existing law, persons in a landlord and tenant relationship bear certain legal responsibilities and obligations to each other. Transient occupants are not considered tenants. Current law limits the determination of whether occupancy is transient or temporary to the intent of the parties.

This bill creates a rebuttable presumption that when a dwelling unit or premises is occupied by a person for 30 days or less, the occupancy is transient and the duties and obligations created in the Landlord and Tenant Act do not apply.²¹

If a person occupies a dwelling unit or premises for longer than 30 days, the bill authorizes the court to consider the following factors as evidence of transient occupancy:

- The length of time a person occupies the property;
- Whether the person has an ownership or financial interest in the property;
- Whether the person is a subscriber to any of the utilities on the property;
- Whether the person lists the address as their address with a governmental agency, such as the Department of Highway Safety and Motor Vehicles, the supervisor of elections, and the United States Postal Service;
- Whether the person gets United States mail at the property;
- Whether a written agreement or contract exists that entitles the person to occupancy;
- Whether the person pays rent at fair market value; and
- Whether the person occupies a designated space as his or her own at the property.

BAY ONLINE, *Only Court Order Will Rid You of Unwanted House Guest* (Sept. 22, 2014), <http://tbo.com/news/business/only-court-order-will-rid-you-of-unwanted-house-guest-255859>.

²⁰ ST. PETERSBURG TIMES ONLINE, *Law Slanted in Favor of Unwanted Guests* (Feb. 17, 2004); online at http://www.sptimes.com/2004/02/17/Tampabay/Law_slanted_in_favor_.shtml.

²¹ A rebuttable presumption is an inference drawn from certain facts that establish a prima facie case, which can be overcome by the other party's introduction of evidence to the contrary. BLACK'S LAW DICTIONARY (10th ed. 2014).

This bill does not appear to clearly authorize a law enforcement officer to remove a person who has overstayed his or her welcome at a residence.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not impact cities or counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The rebuttable presumption and the list of factors for the court to consider in determining whether someone is a transient occupant in the bill may make it easier and quicker for landlords to prevail in eviction actions. Additionally, placing the presumption in law may encourage unwanted temporary guests to leave without the need for legal action.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) expects a slight reduction in court workload in excluding transient occupancy in a dwelling unit or premises from regulation of the Landlord and Tenant Act. The fiscal impact, however, is indeterminate due to the unavailability of data needed to quantifiably establish changes on judicial time and workload.²²

VI. Technical Deficiencies:

None.

²² Office of the State Courts Administrator, *2015 Judicial Impact Statement* (Mar. 3, 2015)(on file with the Senate Judiciary Committee).

VII. Related Issues:

A residential tenancy is a situation in which a rental agreement exists, written or oral. To address situations in which a guest enters lawfully but overstays, the language of this bill may be better placed in the section of law on unlawful detainers.

VIII. Statutes Affected:

This bill substantially amends sections 83.42 and 83.43 of the Florida Statutes.

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

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

None.

B. Amendments:

None.