

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1417 Residential Tenancies
SPONSOR(S): Esposito and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1586

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 5 N	Mawn	Jones
2) Local Administration, Federal Affairs & Special Districts Subcommittee	12 Y, 5 N	Burgess	Darden
3) Judiciary Committee			

SUMMARY ANALYSIS

Part II of chapter 83, F.S., known as the “Florida Residential Landlord and Tenant Act” (“Act”), governs residential tenancies and the landlord-tenant relationship. Significant provisions of the Act include provisions relating to unconscionable rental agreements or durations; rent and duration of tenancies; prohibited rental agreement provisions; the landlord’s obligation to maintain the premises; the tenant’s obligation to maintain the dwelling unit; the landlord’s access to a dwelling unit; tenancy termination; and enforcement, damages, and attorney fees.

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general or special law approved by vote of the electors. Likewise, municipalities have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.

A local government enactment may be inconsistent with state law if the:

- Local enactment conflicts with state statutes; or
- The Legislature has preempted the particular area of law that is the subject of the enactment.

Such state preemption, which may be express or implied, precludes a local government from exercising authority in the preempted area. However, the Act does not currently preempt to the state the regulation of residential tenancies, the landlord-tenant relationship, or any other matters covered by the Act. Thus, local governments may regulate these areas to the extent such regulations do not conflict with state law or applicable federal law.

HB 1417:

- Expressly preempts to the state the regulation of residential tenancies, the landlord-tenant relationship, and all other matters covered by the Act.
- Specifies that it supersedes any local government regulations on matters covered under the Act.
- Increases the time for giving notice of termination of a tenancy for month-to-month tenancies and tenancies of a specified duration.

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

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Landlord-Tenant Relationship

Part II of chapter 83, F.S., known as the “Florida Residential Landlord and Tenant Act” (“Act”), governs residential tenancies and the landlord¹-tenant² relationship. Significant provisions of the Act include provisions relating to unconscionable rental agreements or durations; rent and duration of tenancies; prohibited rental agreement provisions; the landlord’s obligation to maintain the premises; the tenant’s obligation to maintain the dwelling unit; the landlord’s access to a dwelling unit; tenancy termination; and enforcement, damages, and attorney fees.

Unconscionable Rental Agreement or Duration

Under the Act, if a court, as a matter of law, finds a rental agreement or any provision therein to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.³ However, when it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties must be given a reasonable opportunity to present evidence as to meaning, party relationship, purpose, and effect to aid the court in making the determination.⁴

Rent and Duration of Tenancies

The Act specifies that, unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.⁵ Further, if the rental agreement contains no provision as to tenancy duration, the duration is determined by the periods for which rent is payable.⁶ Specifically, if the rent is payable:

- Weekly, then the tenancy is from week to week;
- Monthly, then the tenancy is from month to month;
- Quarterly, then the tenancy is from quarter to quarter; or
- Yearly, then the tenancy is from year to year.⁷

However, if a dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the tenancy’s duration, the duration is determined by the period for which wages are payable.⁸ Specifically, if wages are payable:

- Weekly or more frequently, then the tenancy is from week to week; or
- Monthly, or not at all, then the tenancy is from month to month.⁹

Prohibited Provisions in a Rental Agreement

¹ “Landlord” means the owner or lessor of a dwelling unit. “Dwelling unit,” in turn, means a structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household; a mobile home rented by a tenant; and a structure or part of a structure that is furnished as an incident of employment for use as a home, residence, or sleeping place by one or more persons. Ss. 83.43(2) and (3), F.S.

² “Tenant” means any person entitled to occupy a dwelling unit under a rental agreement. “Rental agreement,” in turn, means any written or oral agreement for a duration of less than one year, providing for premises use and occupancy. S. 83.43(4) and (6), F.S.

³ S. 83.45, F.S.

⁴ *Id.*

⁵ S. 83.46(1), F.S.

⁶ S. 83.46(2), F.S.

⁷ *Id.*

⁸ S. 83.46(3), F.S.

⁹ *Id.*

Under the Act, a rental agreement provision is void and unenforceable to the extent that it purports to:

- Waive or preclude the rights, remedies, or requirements set forth in the Act; or
- Limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.¹⁰

If such a rental agreement includes such a void and unenforceable provision and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover such damages.¹¹

Landlord's Obligation to Maintain Premises

The Act mandates that a landlord at all times during a residential tenancy must:

- Comply with applicable building, housing, and health codes, or, where there are none, maintain all structural components in good repair and the plumbing in reasonable working condition;
- Make reasonable provisions for:
 - The extermination of rats, mice, roaches, wood-destroying organisms, and bedbugs;
 - Locks and keys;
 - The clean and safe condition of common areas;
 - Garbage removal and outside receptacles therefore; and
 - Functioning facilities for heat in winter, running water, and hot water; and
- Install working smoke detectors.¹²

Tenant's Obligation to Maintain Dwelling Unit

The Act mandates that a tenant at all times during a tenancy must:

- Comply with all obligations imposed on tenants by applicable provisions of building, housing, and health codes;
- Keep that part of the premises which he or she occupies and uses clean and sanitary;
- Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner;
- Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair;
- Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators;
- Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit anyone else to do so; and
- Conduct himself or herself, and requires his or her guests to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.¹³

Landlord's Access to Dwelling Unit

A tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.¹⁴ The landlord, in turn, may enter the dwelling unit:

- At any time for the protection or preservation of the premises;
- At a reasonable time for the purpose of premises repair, with notice given at least 24 hours before entry and the time of entry being between the hours of 7:30 a.m. and 8:00 p.m.; or
- When necessary to further the purposes for which a tenant may not withhold consent to the landlord's entry:
 - With the tenant's consent;
 - In case of emergency;
 - When the tenant unreasonably withholds consent; or

¹⁰ S. 83.47(1), F.S.

¹¹ S. 83.47(2), F.S.

¹² S. 83.51, F.S.

¹³ S. 83.52, F.S.

¹⁴ S. 83.53(1), F.S.

- If the tenant is absent for a period of time equal to one-half the time for periodic rental payments, but if the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may only enter with the tenant's consent or for the protection or preservation of the premises.¹⁵

Termination of Tenancy without Specific Duration

The Act provides that a rental agreement without a specific duration may be terminated by either the landlord or the tenant giving written notice in a specified manner.¹⁶ Specifically, when the tenancy is from:

- Year to year, by giving at least 60 days' notice before the end of any annual period;
- Quarter to quarter, by giving at least 30 days' notice before the end of any quarterly period;
- Month to month, by giving at least 15 days' notice before the end of any monthly period; and
- When the tenancy is from week to week, by giving at least 7 days' notice before the end of any weekly period.¹⁷

Termination of Tenancy with Specific Duration

A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord within a specified period before vacating the premises at the end of the rental agreement, if such provision requires the landlord to notify the tenant within such notice period if the rental agreement will not be renewed.¹⁸ However, under the Act, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord.¹⁹

Enforcement, Damages, and Attorney Fees

Any right or duty declared in the Act is enforceable by filing a civil action.²⁰ In any such civil action, the prevailing party may generally recover reasonable attorney fees and costs from the non-prevailing party, and such a right may not be waived in a rental agreement.²¹ Further, a person aggrieved by a violation of the Act may recover the damages caused by the noncompliance.²²

Local Government Authority

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.²³ Those counties operating under a county charter have all powers of self-government not inconsistent with general or special law approved by vote of the electors.²⁴ Likewise, municipalities²⁵ have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.²⁶

A local government enactment may be inconsistent with state law if the:

- Local enactment conflicts with state statutes; or
- The Legislature has preempted the particular area of law that is the subject of the enactment.

¹⁵ S. 83.53(2), F.S.

¹⁶ S. 83.57, F.S.

¹⁷ See s. 83.56(4), F.S., for additional notice requirements. *Id.*

¹⁸ S. 83.575(1), F.S.

¹⁹ *Id.*

²⁰ S. 83.54, F.S.

²¹ S. 83.48, F.S.

²² S. 83.55, F.S.

²³ Art. VIII, s. 1(f), Fla. Const.

²⁴ Art. VIII, s. 1(g), Fla. Const.

²⁵ A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

²⁶ Art. VIII, s. 2(b), Fla. Const. See also s. 166.021(1), F.S.

Such state preemption precludes a local government from exercising authority in the preempted area.²⁷

Florida law recognizes two types of state preemption: express and implied. Express preemption requires an express legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.²⁸ Implied preemption, on the other hand, exists where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the legislature.²⁹ Courts determining the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.³⁰

The Act does not currently preempt to the state the regulation of residential tenancies, the landlord-tenant relationship, or any other matters covered by the Act. Thus, local governments may regulate these areas to the extent such regulations do not conflict with state statutes or applicable federal law.

Effect of Proposed Changes

HB 1417 creates s. 83.425, F.S., to expressly preempt to the state the regulation of residential tenancies, the landlord-tenant relationship, and all other matters covered by the Act. The bill also specifies that it supersedes any local government regulations on matters covered under the Act, including, but not limited to:

- The screening process used by landlords in approving tenancies;
- Security deposits;
- Rental agreement applications and fees associated therewith;
- Terms and conditions of rental agreements;
- The rights and responsibilities of landlords and tenants; disclosures concerning the premises, dwelling unit, rental agreement, or rights and responsibilities of landlords and tenants;
- Fees charged by the landlord; and
- Notice requirements.

The bill also increases the notice period for terminating a:

- Month-to-month tenancy from 15 days' notice to 30 days' notice.
- Tenancy with a specific duration, providing that the applicable rental agreement cannot require less than 60 days' notice of termination, instead of more than 60 days' notice as required in current law.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 83.425, F.S., relating to preemption.

Section 2: Amends s. 83.57, F.S., relating to termination of tenancy without specific term.

Section 3: Amends s. 83.575, F.S., relating to termination of tenancy with specific duration.

Section 4: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²⁷ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited March 20, 2023).

²⁸ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

²⁹ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, (Fla. 2010).

³⁰ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector to the extent that preemption supersedes local ordinances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.