

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 77 Landlords and Tenants

**SPONSOR(S):** Judiciary Committee; Porter

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 2 N	Ward	Bond
2) Judiciary Committee	12 Y, 5 N, As CS	Ward	Havlicak

### SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act" governs the relationship between landlords and tenants under a residential rental agreement. This bill 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 purchase price of the property or at least 12 months' rent.
- Provide that attorney's fees may not be awarded for personal injury actions resulting from maintenance issues between landlord and tenant.
- Provide that certain statutory notice and attorney fee provisions may not be waived in a lease.
- Modify the statutory disclosure regarding deposits to provide specific wording.
- Require landlords to pay regular assessments to an association.
- Clarify eviction notice requirements for a recurrent noncompliance event within 12 months.
- Allow a landlord to accept partial rent without waiving the right to evict.
- Require reciprocal notice by the landlord and tenant of an intent to not renew the lease at the end of the term.
- Provide that a sheriff's notice of eviction is not stayed by weekends or holidays.
- Prohibit a landlord from retaliating against a tenant who lawfully pays a landlord's association dues 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 that the possibility of a civil action shall not preclude criminal prosecution for an offense related to the rented property.
- Provide that a landlord must ensure screens are in working order at the beginning of a tenancy, and repair damage to them at least annually thereafter.
- 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, 2013.

## 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 the Act, and makes a conforming change to landlord-tenant law for mobile home parks.

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

Part II of the Act does not apply to all residential tenancies.<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). Also, s. 83.42(2), F.S., 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, take possession of the premises, and make no payment, leaving ejectment as the landlord's only remedy - a cause of action that takes more time than eviction.

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

#### Attorney Fees

Section 83.48, F.S., governs the award of attorney's fees in a civil action instituted to enforce the rental agreement or provisions of the Act. The bill adds that the right to claim attorney's fees may not be waived in a lease agreement.

Under Florida law, the general rule is that parties "are responsible for their own attorney's fees unless authorized by statute or by agreement of the parties."<sup>3</sup> The Florida Residential Landlord and Tenant Act currently authorizes the prevailing party to recover fees from the non-prevailing party when:

- The action was brought to enforce the rental agreement, or
- The action was brought to enforce a provision of the Act.<sup>4</sup>

Anecdotal evidence suggests that this provision has been interpreted to award attorney's fees where a tenant files a personal injury action against a landlord alleging a breach of the landlord's maintenance duties under s. 83.51, F.S. In general, attorney's fees are not awarded in personal injury actions. Section 83.48, F.S., is amended, therefore, to codify the holding in *Gilbert v. Jabour*, 527 So.2d 951 (Fla. 3rd DCA 1988) that attorney's fees may not be awarded in a claim for personal injury damages based on a breach of duty in the landlord's obligation to maintain the premises.

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

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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> 1 Fla. Jur. ABSTRACTS s. 5, citing *Reiterer v. Montiel*, 98 So.3d 586 (Fla. 2d DCA 2012).

<sup>4</sup> "In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney's fees, from the nonprevailing party." s. 83.48, F.S.

Section 83.49, F.S., provides that a landlord must notify the tenant in writing of where the landlord will hold any security deposit and 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>5</sup>

Existing law requires that a landlord furnish a copy of subsection (3) of s. 83.49, F.S., which sets out remedies and time limits for claims to the security deposit after the end of the tenancy. This bill deletes the requirement to give a copy of subsection (3), and replaces it with a specifically worded disclosure.

Presently, the landlord must deposit advance rent into a separate account.<sup>6</sup> However, current law is silent as to whether the landlord must give written notice and an opportunity to object before paying advance rent held in the separate account when due. The bill states that advance rent may be withdrawn from the deposit account when due without further notice.

Current law provides that a tenant has 15 days to object after receipt of a landlord's notice of intention to impose a claim on a security deposit. After that, the landlord may deduct the amount of the claim and remit the balance to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.<sup>7</sup> Current case 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 for damages.<sup>8</sup> The bill codifies the court's holding that the 15 days is not a statute of limitations on all actions, and further provides that a tenant who fails to timely object loses that particular right, but retains the right to pursue any available remedy in a separate cause of action.

#### Transfer of Security Deposits

Current law requires a landlord to transfer deposits to a new owner of the property.<sup>9</sup> 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. This presumption is not a limit on the amount that might be recovered by the tenant. It merely shifts the burden of proof from the tenant to the new landlord in the event of a dispute over the amount of the security deposit advanced to the previous landlord. The tenant in that case, is presumed to have advanced one month's rent, rather than having to prove he or she paid any security deposit at all.

To accommodate landlords who have stocks of preprinted lease forms complying with current law, the bill creates a new section providing that, for leases entered into on or before December 31, 2013, a landlord may elect to comply with the current, statutory disclosure requirements or the new disclosure requirements under the bill.

#### Outdated Disclosure

Section 83.50(2), F.S., requires that the landlord must disclose to new tenants of a building exceeding three stories whether there is availability of fire protection. Modern building codes require significant fire protection systems in new buildings over three stories tall. The bill deletes the outdated disclosure requirement.

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

Current law provides that a landlord must comply with applicable building, housing and health code requirements.<sup>10</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,

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<sup>5</sup> See *Durene v. Alcime*, 448 So.2d 1208, 1210 (Fla. 3d DCA 1984).

<sup>6</sup> Section 83.49(1), F.S.

<sup>7</sup> Section 83.49(3)(b), F.S.

<sup>8</sup> See *Durene*, 448 So.2d at 1210.

<sup>9</sup> See s. 83.49(7), F.S.

<sup>10</sup> Section 83.51(1)(a), F.S.

and all other structural components in good repair, and the plumbing in reasonable working condition.<sup>11</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 may be grounded in either monetary default or non-monetary default. Non-monetary defaults fall into two categories: those that may be not be cured and those that may:

- If the noncompliance is of a nature that the tenant should not be given an opportunity to cure it, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that notice is delivered to vacate the premises.
- If the noncompliance is of a nature that the tenant should be given an opportunity to cure it, the landlord may 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.<sup>12</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 clarify that such additional notice is not required. It also adds to the written warning that the tenancy is subject to termination without further warning if the curable conduct is repeated within 12 months.

The bill also provides that the written notices set out in s. 83.56, F.S., for non-compliance of any kind, including non-payment of rent, may not be waived in the lease.

### Termination of Rental Agreement - Rent; Waiver

Under current law, if a landlord accepts partial rent from a tenant with full knowledge that such payment is not for the full amount due, the landlord waives the right to terminate the rental agreement or to bring a civil action.<sup>13</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. However, where a portion of the rent is subsidized, an action that has not been instituted within 45 days after the landlord obtains actual knowledge of the noncompliance is waived.

### 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>14</sup> A rental agreement with a specific duration may also provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant 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.

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<sup>11</sup> Section 83.51(1)(b), F.S.

<sup>12</sup> Section 83.56(2)(a)-(b), F.S.

<sup>13</sup> See *In re Sorrento's I, Inc.*, 195 B.R. 502 (Bkrtcy. 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>14</sup> Section 83.575(1), F.S.

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 tenant may raise in an action for 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 residents and park owners. The language is essentially the same in both sections.

Current law provides that in a landlord's or mobile home park owner's action for possession based on nonpayment of rent or an 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 the deficiency in any notice or in the pleadings.

Current law provides that if a tenant raises a defense to an eviction proceeding other than payment of rent, the tenant must pay the rent into the court's registry pending outcome of the case. The amendment to s. 83.60(b)(2), F.S., makes clear that such defenses include the defense of a defective 3-day notice.

#### Restoration of Possession to Landlord Upon Eviction

Current law provides that, in an action for possession, if judgment granting possession to the landlord is entered, the clerk must issue a writ to the sheriff commanding that the landlord shall be given possession after 24 hours' notice is posted on the premises.<sup>15</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>16</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 tenants' 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>17</sup> or 2) the tenant has exercised legal 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.

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

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<sup>15</sup> Section 83.62, F.S.

<sup>16</sup> Section 83.64, F.S.

<sup>17</sup> See ss. 718.116(11)(a), 719.108(10)(a), and 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 3 amends s. 83.49, F.S., relating to deposit money and advance rent.

Section 4 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. 83.54, F.S., relating to enforcement of rights and duties; civil action.

Section 8 amends s. 83.56, F.S., relating to termination of rental agreement.

Section 9 amends s. 83.575, F.S., relating to termination of tenancy with specific duration.

Section 10 amends s. 83.58, F.S., relating to remedies; tenant holding over.

Section 11 amends s. 83.59, F.S., relating to right of action for possession.

Section 12 amends s. 83.60, F.S., relating to defenses to action for rent or possession.

Section 13 amends 83.62, F.S., relating to restoration of possession to landlord.

Section 14 amends 83.63, F.S., relating to casualty damage.

Section 15 amends s. 83.64, F.S., relating to retaliatory conduct.

Section 16 amends s. 723.063, F.S., relating to defenses to action for rent or possession; procedure.

Section 17 provides an effective date of July 1, 2013.

## **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 February 5, 2013, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute.

The amendments provide:

- Section 83.54, F.S., is amended to provide that the possibility of a civil action shall not preclude criminal prosecution for an offense related to the rented property; and
- A landlord must ensure screens are in working order at the beginning of a tenancy, and repair damage to them at least annually thereafter.

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