

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

11 The Committee on Real Property & Probate offered the  
12 following:

14 **Amendment (with title amendment)**

15 On page 1, line 15,  
16 remove from the bill: everything after the enacting clause  
17  
18 and insert in lieu thereof:

19 Section 1. Section 83.565, Florida Statutes, is  
20 created to read:

21 83.565 Remedies; tenant's right to repair after  
22 notice.--

23 (1) If the landlord fails to comply with the rental  
24 agreement or s. 83.51, excluding the roofs, and the reasonable  
25 cost of repair is less than \$100 and the repair is of an  
26 emergency nature, the tenant may notify the landlord in  
27 writing of the tenant's intention to make the repair at the  
28 landlord's expense by deducting the cost of repair from rent.  
29 For purposes of this section, repairs of an emergency nature  
30 are limited to those repairs necessary to result in: heat  
31 during the winter months, running water, hot water,

Amendment No. 1 (for drafter's use only)

1 elimination of leaks or faulty drains which create internal  
2 standing water, and functioning external locks, toilet, stove,  
3 oven, refrigerator, exterior windows and exterior doors. The  
4 notice must contain a statement in substantially the following  
5 form:

6 Pursuant to section 83.565, Florida Statutes, I  
7 am notifying you of your material noncompliance  
8 with the rental agreement or section 83.51(1),  
9 Florida Statutes, excluding roofs. Unless the  
10 problems listed below are repaired within 7  
11 days after you receive this notice, I will have  
12 the repairs made and deduct the cost of the  
13 repairs, up to \$100, from the following month's  
14 rent. The problems are: ...(list the  
15 problems).... ...(Tenant's name, address and  
16 phone number)....

17 Notice to the landlord must be sent by certified mail, return  
18 receipt requested, unless the landlord has failed to comply  
19 with s. 83.50(1), in which case notice may be by hand delivery  
20 to the landlord, the landlord's representative as designated  
21 pursuant to s. 83.50(1), a resident manager, or the person or  
22 entity who collects the rent on behalf of the landlord. The  
23 landlord has 7 days from the date notice is received by  
24 certified mail or by hand delivery to materially comply with  
25 this section. If the landlord fails to materially comply with  
26 this section within the 7-day period, the tenant may have the  
27 premises repaired; however, the repair cannot be made by the  
28 tenant. The landlord may at any time furnish a list of  
29 approved vendors to the tenant for this purpose and if the  
30 landlord does so, the tenant may have the repair made only by  
31 a vendor on that list. The landlord may from time to time

Amendment No. 1 (for drafter's use only)

1 provide an updated list of vendors. If the landlord has not  
2 provided a list of vendors for making repairs or no vendor is  
3 specified for the type of repair needed, the repair must be  
4 made by an individual or business licensed or customarily  
5 engaged in making the needed repairs. Installation,  
6 servicing, and repair of any permanent, fixed electrical  
7 system shall be by a licensed or registered electrical  
8 contractor pursuant to part II of chapter 489, unless excluded  
9 by that chapter. Installation, servicing, and repair of any  
10 plumbing shall be by a licensed or registered plumbing  
11 contractor pursuant to part I of chapter 553, unless excluded  
12 by that chapter. All repairs shall be completed and reflect  
13 such work standards as are normally and customarily expected.  
14 The tenant may repair and submit to the landlord an itemized  
15 statement for the repair. A tenant's lawful payment of rent  
16 becoming due during the 7-day period does not waive his right  
17 to deduct the repair cost in the subsequent rental period. A  
18 tenant's compliance with this subsection is a complete defense  
19 to an action for possession based upon nonpayment of rent.  
20 This remedy is not available to the tenant more than once in a  
21 6-month period. Nothing in this section prohibits the tenant  
22 from seeking any other available remedy.

23 (2) Subsection (1) does not apply if the condition was  
24 created or caused by a deliberate or negligent act or omission  
25 of the tenant, a member of the tenant's family, or any other  
26 person on the premises with the tenant's consent.

27 Section 2. Section 83.60, Florida Statutes, is amended  
28 to read:

29 83.60 Defenses to action for rent or possession;  
30 procedure.--

31 (1) In an action by the landlord for possession of a

Amendment No. 1 (for drafter's use only)

1 dwelling unit based upon nonpayment of rent or in an action by  
2 the landlord under s. 83.55 seeking to recover unpaid rent,  
3 the tenant may defend upon the ground of a material  
4 noncompliance with s. 83.51(1) [F.S. 1973], or may raise any  
5 other defense, whether legal or equitable, that he or she may  
6 have, including the defense of repair after notice under s.  
7 83.565 or retaliatory conduct in accordance with s. 83.64.  
8 The defense of a material noncompliance with s. 83.51(1) [F.S.  
9 1973] may be raised by the tenant if 7 days have elapsed after  
10 the delivery of written notice by the tenant to the landlord,  
11 specifying the noncompliance and indicating the intention of  
12 the tenant not to pay rent by reason thereof. Such notice by  
13 the tenant may be given to the landlord, the landlord's  
14 representative as designated pursuant to s. 83.50(1), a  
15 resident manager, or the person or entity who collects the  
16 rent on behalf of the landlord. A material noncompliance with  
17 s. 83.51(1) [F.S. 1973] by the landlord is a complete defense  
18 to an action for possession based upon nonpayment of rent,  
19 and, upon hearing, the court or the jury, as the case may be,  
20 shall determine the amount, if any, by which the rent is to be  
21 reduced to reflect the diminution in value of the dwelling  
22 unit during the period of noncompliance with s. 83.51(1) [F.S.  
23 1973]. After consideration of all other relevant issues, the  
24 court shall enter appropriate judgment.

25 (2) In an action by the landlord for possession of a  
26 dwelling unit, if the tenant interposes any defense other than  
27 payment, or repair after notice under s. 83.565, the tenant  
28 shall pay into the registry of the court the accrued rent as  
29 alleged in the complaint or as determined by the court and the  
30 rent which accrues during the pendency of the proceeding, when  
31 due. If the tenant raises the defense of repair after notice

Amendment No. 1 (for drafter's use only)

1 under s. 83.565, he or she must pay into the court registry  
2 the difference between the accrued rent alleged in the  
3 complaint and the repair cost, or any other amount set by the  
4 court, and must pay the rent accruing during the pendency of  
5 the proceeding as it becomes due. The clerk shall notify the  
6 tenant of such requirement in the summons. Failure of the  
7 tenant to pay the rent into the registry of the court or to  
8 file a motion to determine the amount of rent to be paid into  
9 the registry within 5 days, excluding Saturdays, Sundays, and  
10 legal holidays, after the date of service of process  
11 constitutes an absolute waiver of the tenant's defenses other  
12 than payment, and the landlord is entitled to an immediate  
13 default judgment for removal of the tenant with a writ of  
14 possession to issue without further notice or hearing thereon.  
15 In the event a motion to determine rent is filed,  
16 documentation in support of the allegation that the rent as  
17 alleged in the complaint is in error is required. Public  
18 housing tenants or tenants receiving rent subsidies shall be  
19 required to deposit only that portion of the full rent for  
20 which the tenant is responsible pursuant to federal, state, or  
21 local program in which they are participating.

22 Section 3. Paragraph (c) of subsection (1) of section  
23 83.64, Florida Statutes, is amended to read:

24 83.64 Retaliatory conduct.--

25 (1) It is unlawful for a landlord to discriminatorily  
26 increase a tenant's rent or decrease services to a tenant, or  
27 to bring or threaten to bring an action for possession or  
28 other civil action, primarily because the landlord is  
29 retaliating against the tenant. In order for the tenant to  
30 raise the defense of retaliatory conduct, the tenant must have  
31 acted in good faith. Examples of conduct for which the

Amendment No. 1 (for drafter's use only)

1 landlord may not retaliate include, but are not limited to,  
2 situations where:

3 (c) The tenant has complained to the landlord pursuant  
4 to s. 83.56(1) or s. 83.565.

5 Section 4. This act shall take effect July 1, 1998.  
6  
7

8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 On page 1, lines 1 through 13,  
11 remove from the title of the bill: all of said lines  
12  
13 and insert in lieu thereof:

14 A bill to be entitled  
15 An act relating to residential tenancies;  
16 creating s. 83.565, F.S.; providing for a  
17 tenant to repair the premises after notice to  
18 the landlord; providing for deduction of the  
19 costs of repair from rent due; providing  
20 limitations; amending s. 83.60, F.S.; providing  
21 for the right of the tenant to repair to be a  
22 defense to an action for rent or possession;  
23 providing for the payment of certain funds into  
24 the registry of the court; amending s. 83.64,  
25 F.S.; prohibiting retaliatory actions by the  
26 landlord; providing an effective date.  
27  
28  
29  
30  
31