

STORAGE NAME: h1163s1a.rpp
DATE: April 15, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1163

RELATING TO: Residential Tenancies

SPONSOR(S): The Committee on Real Property & Probate and Representative Roberts-Burke

STATUTE(S) AFFECTED: Creating section 83.565, and amending section 83.60, and 83.64,
Florida Statutes

COMPANION BILL(S): SB 646

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE YEAS 4 NAYS 2
- (2) REAL PROPERTY & PROBATE YEAS 3 NAYS 1
- (3)
- (4)
- (5)

I. SUMMARY:

This bill creates a means for a tenant to repair certain defects in a dwelling after notification to the landlord, and to deduct the reasonable and actual cost of the repair from rent owed. Repairs made pursuant to this new section are limited to costs up to \$250 and may not be attributable to damage caused by the tenant or other persons on the premises with the permission of the tenant.

The bill will take effect July 1, 1997.

This bill should have no fiscal impact on state or local government.

CS/HB 1163 was pending ranking in the Justice Council at the end of the 1997 Legislative Session. The bill was carried forward from the 1997 Legislative Session and was referred back to the Committee on Real Property & Probate in order to conform the bill to its Senate companion.

On March 10, 1998, the Committee on Real Property & Probate took up the bill and passed a strike everything amendment, incorporating an amendment to the amendment. The bill was then temporarily deferred.

On April 8, 1998 the Committee on Real Property & Probate took up the bill as amended. An additional amendment to the bill was adopted. Both amendments are traveling with the bill. See: AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES section.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 83, Part II, Florida Statutes, the "Florida Residential Landlord and Tenant Act," sets forth the rights and duties of landlords and tenants in rental of a dwelling unit.

Section 83.60, Florida Statutes, recognizes the right of a tenant to withhold rent when the landlord materially fails to satisfy the landlord's duty to maintain the premises as set forth in section 83.51(1), Florida Statutes. Section 83.60(1), Florida Statutes, permits the tenant to assert the tenant's right by deducting from the rental amount regularly owed and then asserting the landlord's noncompliance as a defense in an action by the landlord for possession of a dwelling unit based on the tenant's failure to pay rent. The defense may be raised only if 7 days have elapsed since the tenant provided the landlord with notice that specified the noncompliance and indicated the tenant's intent not to pay rent because of the noncompliance. Notice may be provided by delivery in person or mail to the landlord or an authorized agent pursuant to section 83.50(1), Florida Statutes.

Section 83.60(2), Florida Statutes, provides that a tenant who asserts material noncompliance (lack of running water, heat during the winter, hot water, etc.) as a defense to an eviction action must deposit in the court registry either the full amount of the rent alleged in the complaint to evict, or the amount determined by the court plus any rent which accrues during the pendency of the proceeding. A material noncompliance with section 83.51(1), Florida Statutes, by the landlord is a complete defense to an action for possession based upon nonpayment, and after hearing, the court or jury must determine the amount, if any, by which the rent will be reduced to reflect the diminished value of the dwelling for the period of noncompliance. See section 83.60(1), Florida Statutes.

Withholding of rent is a means for the tenant to receive compensation for the reduced value of the dwelling unit resulting from the noncompliance which may not be the same amount as the cost to repair. To compel the landlord to repair the noncompliance the tenant must pursue injunctive relief.

B. EFFECT OF PROPOSED CHANGES:

This bill creates a new section 83.565, Florida Statutes, which authorizes a tenant to repair defects, excluding the roofs, in the dwelling unit which constitute a violation of the rental agreement or the landlord's statutory duty to maintain the premises and to deduct the cost of the repair, not to exceed \$250, from the amount of rent owed. The tenant must notify the landlord in writing of the tenant's intent to repair the violation at the landlord's expense. Notice must be sent by certified mail, return receipt requested, unless the landlord has failed to comply with section 83.50(1), Florida Statutes.

Section 83.50(1), Florida Statutes, requires the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, to provide the name and address of the landlord or a person authorized to receive notices and demands. The bill provides that if the landlord has failed to comply with section 83.50(1), Florida Statutes, notice may be by hand delivery to the landlord, the landlord's representative as designated pursuant to section 83.50(1), Florida Statutes, a resident manager, or the person or entity who

collects the rent on behalf of the landlord. If the landlord has failed to comply with section 83.50(1), Florida Statutes, by failing to designate a representative, it is unclear how this provision would operate since the notice by hand delivery also contemplates a representative pursuant to section 83.50(1), Florida Statutes.

If the landlord fails to materially comply with this section within 7 days of receipt of the notice, the tenant may deduct the actual and reasonable cost of the repair from the amount of rent owed and must submit to the landlord an itemized statement of the work performed. However, the repair cannot be made by the tenant, and must be made by an individual or business licensed or customarily engaged in making the needed repairs. Installation, servicing, and repair of any permanent, fixed electrical system must be by a licensed or registered electrical contractor pursuant to part II of Chapter 489, Florida Statutes, unless excluded by that chapter. The installation, servicing and repair of any plumbing must be by a licensed or registered plumbing contractor pursuant to part I of Chapter 553, Florida Statutes, unless excluded by that chapter. The bill specifies that all repairs must be completed and reflect such work standards as are normally and customarily expected.

Payment of rent owed during the 7-day notice period does not constitute a waiver of the right to repair and deduct. Compliance with the new subsection constitutes a complete defense to an action for possession. A tenant may use this remedy not more than once in a 6-month period. The bill specifies that nothing in this section would prohibit the tenant from utilizing any other available remedy. A tenant may not deduct the cost of repairs resulting from willful or negligent acts or omissions of the tenant, a member of the tenant's family or other person on the premises with the consent of the tenant.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill provides a mechanism for tenants to have minor repairs made, and to deduct the cost of those repairs from their rent.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill will allow tenants to have minor repairs made up to \$250 during a 6-month period, and to deduct the cost from their rent. This would occur only when the landlord has been given notice of the problem, and has had 7 days within which to materially comply with the repair request.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill changes certain rights and obligations between landlords and tenants.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1 creates section 83.565, Florida Statutes, which authorizes a tenant to repair defects in the dwelling unit, excluding the roofs, which constitute a violation of the rental agreement or section 83.51, Florida Statutes. The tenant must notify the landlord of his or her intent to repair the violation at the landlord's expense and, if the landlord fails to materially comply with the request within 7 days of receipt of the notice, the tenant may deduct the cost of such repair from the periodic rent owed.

Notice shall be by certified mail, return receipt requested, unless the landlord has not provided the required name and address of a person to receive notices and demands in the landlord's behalf pursuant to section 83.50(1), Florida Statutes. Otherwise, notice may be by hand delivery to the landlord, the landlord's representative as designated pursuant to section 83.50(1), Florida Statutes, a resident manager, or the person or entity who collects the rent on behalf of the landlord. Repairs pursuant to this section must be less than \$250 and must be the reasonable and actual cost. Payment of rent during the 7-day notice period shall not constitute a waiver of the tenant's right to repair and deduct the cost of the repair from the rent.

Installation, servicing, and repair of any permanent, fixed electrical system must be by a licensed or registered electrical contractor pursuant to part II of Chapter 489, Florida Statutes, unless excluded by that chapter. The installation, servicing and repair of any plumbing must be by a licensed or registered plumbing contractor pursuant to part I of Chapter 553, Florida Statutes, unless excluded by that chapter. The bill specifies that the repairs cannot be made by the tenant, and must be made by an individual or business licensed or customarily engaged in making the needed repairs. In addition, the

repairs must be completed and reflect such work standards as are normally and customarily expected.

Compliance with the new subsection constitutes a complete defense to an action for possession. A tenant may use this remedy not more than once in a 6-month period. This section does not prohibit the tenant from utilizing any other available remedy.

Subsection (2) is created to provide that repairs made by the tenant at the expense of the landlord may not be the result of willful or negligent acts or omissions of the tenant, a tenant's family member, or any other person on the premises with the consent of the tenant.

Section 2 provides that the act shall take effect on July 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None anticipated.

2. Recurring Effects:

None anticipated.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

This bill may create some litigation. However, according to the Office of the State Courts Administrator, the impact should be negligible.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill permits a tenant to make certain repairs and to deduct the cost of the repairs from their rent. This remedy is limited to 1 time in a 6-month period, and is limited to less than \$250. The repairs can only be for items the landlord is required by contract or by law to maintain.

2. Direct Private Sector Benefits:

This bill will allow tenants to make minor repairs and deduct the cost of those repairs when the landlord fails to do so after notice, within 7 days.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Section 83.50(1), Florida Statutes, requires the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, to provide the name and address of the landlord or a person authorized to receive notices and demands. The bill provides that if the landlord has failed to comply with section 83.50(1), Florida Statutes, notice may be by hand delivery to the landlord, the landlord's representative as designated pursuant to section 83.50(1), Florida Statutes, a resident manager, or the person or entity who collects the rent on behalf of the landlord. If the landlord has failed to comply with section 83.50(1), Florida Statutes, by failing to designate a representative, it is unclear how this provision would operate since the notice by hand delivery also contemplates a representative pursuant to section 83.50(1), Florida Statutes.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Real Property & Probate adopted 5 amendments which are incorporated into CS/HB 1163.

Amendment 1 clarified that the landlord must materially comply with this section. The original bill did not allow for the situation where a landlord was making efforts to make the repair, but was unable to complete the repair within the 7-day period.

Amendment 2 provided that all repairs shall be completed and reflect such work standards as are normally and customarily expected. The original bill required the repairs to be in a workmanlike manner.

Amendment 3 clarified that this section would not prohibit the tenant from utilizing any other available remedy.

Amendment 4 changed the provision relating to the 7-day notice to provide that the notice begins to run upon receipt, not when mailed as was in the original bill.

Amendment 5 provided that the repair cannot be made by the tenant, and that it must be made by an individual or business licensed or customarily engaged in making the needed repairs.

CS/HB 1163 was pending ranking in the Justice Council at the end of the 1997 Legislative Session. The bill was carried forward from the 1997 Legislative Session and was referred back to the Committee on Real Property & Probate in order to conform the bill to its Senate companion.

On March 10, 1998, the Committee on Real Property & Probate took up the bill and passed a strike everything amendment to the committee substitute, incorporating an amendment to the amendment. The bill was then temporarily deferred.

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PAGE 10

The CS/HB 1163 as amended was heard by the Committee on Real Property & Probate on April 8, 1998. Representative Healey offered amendment 2 for Representative Roberts-Burke at the meeting.

Amendment 1 (as amended):

- Reduces the amount of the allowable repair from \$250 to \$100;
- Provides that the repair must be of an emergency nature;
- Defines "emergency" to mean: heat during the winter months, running water, hot water, elimination of leaks or faulty drains which create internal standing water, and functioning external locks, toilet, stove, oven, refrigerator, exterior windows and exterior doors;
- Provides a form for the notice to landlord of the necessary repair and the tenant's intent to repair; and
- Provides that the landlord may furnish a list of approved vendors to the tenant for the purpose of making emergency repairs. If the landlord provides the list, the tenant may have the repair made only by a vendor on the list.

Amendment 2:

Requires all rental agreements to include a statement either printed or clearly stamped on the agreement notifying the tenant of the repair and deduct provision in s. 83.475, F.S.

Both amendments are traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Legislative Research Director:

P.K. Jameson

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