

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: February 18, 1998 Revised: _____

Subject: Tenants/Repair to Rental Property

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides a method by which a residential tenant may make repairs and deduct the cost from the rent. To utilize this remedy, the tenant must give the landlord written notice and 7 days after receipt of the notice to make the repairs. The cost of such repairs cannot exceed \$100 and the repairs must be of an emergency nature. The landlord may provide the tenant with a list of approved vendors to make repairs and, if the landlord does so, the tenant may have repairs made only by the vendors on the list. If the landlord does not provide a list of vendors, or if no vendor is specified for the type of repair needed, the repairs must be done by an individual or business licensed or customarily engaged in making the needed repairs. The remedy can only be used once in a 6-month period and cannot be used if the condition was created or caused by the tenant, a member of the tenant's family, or any other person on the premises with the tenant's consent.

If the landlord brings an action to recover rent or possession of the premises for nonpayment of rent, the fact that the tenant has made repairs pursuant to this process is a defense. In such an action, the tenant must deposit into the court registry the difference between the accrued rent alleged in the complaint and the repair cost, or any other amount set by the court, and must pay the rent accruing during the action as it becomes due.

A landlord is prohibited from taking retaliatory action against a tenant who complains of necessary repairs.

This bill substantially amends sections 83.60 and 83.64 and creates section 83.565, of the Florida Statutes.

II. Present Situation:

A. Landlord's Duty to Maintain Property

Section 83.51, F.S., contains a number of requirements that a residential landlord must meet in maintaining the rental property. Subsection (1) provides that the landlord must comply with the requirements of applicable building, housing, and health codes. Where there are no such codes applicable, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and must maintain the plumbing in reasonable working condition. For a single-family home or duplex, these requirements may be altered or modified in writing.

Unless otherwise agreed in writing, the landlord of a dwelling unit other than a single-family home or duplex must also make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs.
2. Locks and keys.
3. The clean and safe condition of common areas.
4. Garbage removal and outside receptacles therefor.
5. Functioning facilities for heat during winter, running water, and hot water.

Additionally, unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord must install working smoke detection devices.

B. Noncompliance with Maintenance Requirements

Section 83.60, F.S., provides that upon a material noncompliance with the applicable building, housing, and health codes or the alternative statutory requirements, the tenant is to give written notice to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent due to the noncompliance. The notice may be given to the landlord, the landlord's designated representative, a resident manager, or the person or entity who collects the rent on behalf of the landlord. If rent is not paid due to the noncompliance, the landlord may bring an action for possession of the dwelling unit based upon nonpayment of rent or an action seeking to recover the unpaid rent. However, material noncompliance is a complete defense to such an action if 7 days have elapsed after the delivery to the landlord of the written notice of noncompliance. In such a case, the trier of fact determines the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance. After consideration of all other relevant issues, the court is to enter an appropriate judgment.

This section also provides that if a landlord brings an action for possession of a dwelling unit and the tenant has stopped paying rent to the landlord, the tenant must pay into the court registry the accrued rent as alleged in the complaint or as determined by the court. In addition, the tenant

must pay into the registry the rent which accrues during the pendency of the proceeding as such rent becomes due.

C. Retaliatory Actions by Landlord Against Tenant Prohibited

Section 83.64, F.S., makes it unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. The examples of conduct for which the landlord may not retaliate include that the tenant has complained to the landlord pursuant to s. 83.56(1).

III. Effect of Proposed Changes:

A. Procedures for Making Necessary Repairs

Section 83.565, F.S., is created to provide a method by which a tenant may make repairs and deduct the cost from the rent. If a landlord fails to comply with the rental agreement or with any of the provisions of s. 83.51, F.S., which concerns maintenance of the premises, excluding the roofs, the tenant may notify the landlord in writing of the tenant's intention to make the repair at the landlord's expense. However, this can be done only if the reasonable cost of repair is less than \$100 and the repairs are of an emergency nature. The bill provides a form notice, which requires the tenant to list the necessary repairs and notify the landlord that if the repairs are not made within 7 days of receipt of the notice, the tenant will have the repairs made and deduct the cost from rent. The notice must be sent by certified mail, return receipt requested, unless the landlord has failed to comply with applicable building, housing, and health codes or the alternative statutory requirements set forth in s. 83.50(1), F.S. In that case, notice may be by hand delivery to the landlord, the landlord's designated representative, a resident manager, or the person or entity who collects the rent on behalf of the landlord.

The landlord has 7 days from the date notice is received to materially comply with this section. If the landlord fails to materially comply within the 7-day period, the tenant may have the premises repaired. The tenant cannot make the repairs. The landlord may provide the tenant with a list of approved vendors for making repairs. If the landlord does so, the tenant may have the repairs made only by a vendor on the list. If the landlord does not provide a list, or if no vendor is specified for the type of repair needed, the repair must be made by an individual or business licensed or customarily engaged in making the needed repairs. Specifically, installation, servicing, and repair of any permanent, fixed electrical system must be done by a licensed or registered electrical contractor pursuant to part II of chapter 489, F.S., unless excluded by that chapter. Installation, servicing, and repair of any plumbing must be done by a licensed or registered plumbing contractor pursuant to part I of chapter 553, F.S., unless excluded by that chapter. All repairs must be completed and reflect such work standards as are normally and customarily expected.

The tenant may have the repairs made and submit an itemized statement for the repairs to the landlord. A tenant's lawful payment of rent becoming due during the 7-day period does not waive his right to deduct the repair cost in the subsequent rental period. A tenant's compliance with these provisions is a complete defense to an action for possession based upon nonpayment of rent.

This remedy may only be used once by a tenant in a 6-month period. A tenant is not prohibited from seeking any other available remedy.

This remedy is not applicable if the condition was created or caused by a deliberate or negligent act or omission of the tenant, a member of the tenant's family, or any other person on the premises with the tenant's consent.

B. Noncompliance with Maintenance Requirements

Section 83.60, F.S., is amended to provide that in an action by a landlord for possession of a dwelling unit based upon nonpayment of rent or in an action to recover unpaid rent, the tenant may raise the defense of making a repair to the dwelling unit and deducting the cost of the repair from the rent. If this defense is raised, the tenant must pay into the court registry the difference between the accrued rent alleged in the complaint and the repair cost, or any other amount set by the court, and must pay the rent accruing during the action as it comes due.

C. Retaliatory Actions by Landlord Against Tenant Prohibited

Section 83.64, F.S., is amended to provide that a landlord may not take retaliatory action against a tenant because the tenant has complained to the landlord by the written notice of noncompliance with maintenance requirements.

The bill takes effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Tenants should be able to obtain repairs to the rental property more quickly than they currently can. If landlords arrange for repairs to be made within the 7 day period provided, they should be required only to make those repairs and to pay those amounts which would otherwise be required. If they do not make the repairs within the 7 day period, the tenants' repair arrangements may be more costly than the landlords' would have been as landlords may have more knowledge of repairs and costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.