

STORAGE NAME: h0595.sgc.doc
DATE: March 30, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 595
RELATING TO: Landlord & Tenant
SPONSOR(S): Representative Haridopolos
TIED BILL(S): none

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

- (1) JUDICIAL OVERSIGHT (SGC) YEAS 6 NAYS 2
 - (2) AGRICULTURE & CONSUMER AFFAIRS (CCC) YEAS 8 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 9 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

This bill amends landlord-tenant law as it relates to residential leases.

This bill extends from 15 days to 30 days after termination of a residential lease agreement the time within which a landlord must either return the security deposit or notify the former tenant of the landlord's intent to make a claim against the deposit.

This bill reiterates in the landlord-tenant law that utilization of the Disposition of Personal Property Landlord and Tenant Act is not mandatory.

This bill increases from \$250 to \$500 the level below which a landlord who elects to utilize the provisions of the Disposition of Personal Property Landlord and Tenant Act may forego sale of tenant property, and thereby dispose of the property or keep the property for the landlord's own use, should the tenant or other owner of the property fail to timely claim the property.

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Florida Residential Landlord and Tenant Act.

Residential landlord-tenant relationships are regulated under Part II of Chapter 83, F.S.

A security deposit is not required by law, but in most residential leases the landlord requires a tenant to post a security deposit as a condition of the lease. When the tenant vacates the rental unit, the landlord has 15 days to return the security deposit together with interest if otherwise required, or to give the tenant written notice by certified mail of the landlord's intention to impose a claim on the deposit and the reason for imposing the claim.¹ If the landlord fails to give the required notice within the 15-day period, the landlord forfeits the right to impose a claim upon the security deposit,² but the landlord may still sue to collect damages in civil court.³

If the landlord makes a claim against the deposit, the tenant then has 15 days within which to object to the landlord's claim. If the tenant does not object, the landlord may subtract the amount of the claim from the deposit account, returning the remainder, if any.⁴ If the tenant does timely object, then the funds must remain in the deposit account until the matter is resolved either by agreement or by a court. The prevailing party in any lawsuit is entitled to attorney's fees and costs.⁵

A landlord is not required to give the initial notice of intent to make a claim against the deposit if a tenant vacates or abandons the premises prior to the expiration of the rental agreement, or, if there is no specific period for the rental agreement, if the tenant does not give timely notice of the tenant's intent to terminate the rental agreement.⁶

A landlord is prohibited from taking certain actions regarding a tenant, including that a landlord may not remove the tenant's personal property from the dwelling unit except pursuant to surrender, abandonment, or a lawful eviction.

¹Section 83.49(3), F.S. The form of notice is prescribed in the statute.

²Section 83.49(3)(a), F.S.

³*Durene v. Alcime*, 448 So.2d 1208 (Fla. 3rd DCA 1984).

⁴Section 83.49(3)(b), F.S.

⁵Section 83.49(3)(c), F.S.

⁶Section 83.49(5), F.S.

A landlord and tenant may, in the rental agreement or in a separate written agreement, agree that upon surrender or abandonment by the tenant, the landlord is not liable or responsible for storage or disposition of the tenant's personal property. If this agreement is part of the rental agreement then the rental agreement must state:

BY SIGNING THIS RENTAL AGREEMENT THE TENANT AGREES THAT UPON SURRENDER OR ABANDONMENT, AS DEFINED BY THE FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.⁷

If the landlord prevails in an eviction action, the clerk of the court must issue a "writ of possession" to the sheriff "describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice is conspicuously posted on the premises."⁸ At the time the sheriff executes the writ of possession or at any time after that, the landlord or the landlord's agent may remove any personal property found on the premises. After executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. The sheriff, landlord, and the landlord's agent are not liable to the tenant or any other party for the loss, destruction, or damage to the tenant's property after it has been removed as part of the eviction process.⁹

Disposition of Personal Property Landlord and Tenant Act.

A landlord may elect to utilize the Disposition of Personal Property Landlord and Tenant Act (Act)¹⁰ to govern disposition of a tenant's personal property remaining in the rental premises at the conclusion of the lease term. The Act is optional; a landlord is not required to utilize it.¹¹

When personal property remains on the leased premises after a tenancy has terminated or expired and the premises have been vacated by the tenant, through eviction or otherwise, a landlord that has elected to utilize the Act must give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property. The notice must describe the property, must advise the person that reasonable costs of storage may be charged before the property is returned, must state where the property may be claimed, and must give the deadline for the person to claim the property. The date specified in the notice must be a date not fewer than ten days after the notice is personally delivered or, if mailed, not fewer than fifteen days after the notice is deposited in the mail.¹²

If the property is believed by the landlord to be worth less than \$250, and the tenant does not timely claim the property, the landlord may keep or dispose of the property.¹³ If the property is worth \$250 or more, the landlord must sell the property and pay the net sale proceeds, after deduction for expenses, to the county where the sale took place. The former tenant may claim the monies within one year.¹⁴ A landlord who follows the procedures set forth in the Disposition of Personal Property

⁷Section 83.67(3), F.S.

⁸Section 83.62(1), F.S.

⁹Section 83.62(2), F.S.

¹⁰Sections 715.10 to 715.111, F.S.

¹¹Section 715.101(2), F.S.

¹²Section 715.104, F.S.

¹³Section 715.109(1), F.S.

¹⁴Section 715.109(4), F.S.

Landlord and Tenant Act is not liable to a former tenant or other owner of personal property for loss or damage to the property.¹⁵

C. EFFECT OF PROPOSED CHANGES:

Florida Residential Landlord and Tenant Act.

This bill amends s. 83.49, F.S., to extend from 15 days to 30 days after the termination of a residential lease agreement the time within which a landlord must either return a security deposit or notify the former tenant of the landlord's intent to make a claim against the deposit.

This bill amends s. 83.67, F.S., to reiterate in the landlord-tenant law that if the landlord and tenant have agreed in writing that the landlord will not be liable to the tenant for storage or disposition of the tenant's personal property upon surrender or abandonment, the landlord is not required to utilize the Disposition of Personal Property Landlord and Tenant Act should a tenant abandon personal property upon surrender of the leased premises.

Disposition of Personal Property Landlord and Tenant Act.

This bill amends the Disposition of Personal Property Landlord and Tenant Act to increase from \$250 to \$500 the level below which a landlord may forego sale of tenant property, and, thereby, keep the property for the landlord's own use, should the tenant or other owner of the property fail to timely claim the property. The related notice forms are correspondingly amended.

D. SECTION-BY-SECTION ANALYSIS:

See "Current Situation" and "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁵Section 715.11, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may delay by up to fifteen days the time within which landlords will send, and tenants will receive, the return of security deposits.

D. FISCAL COMMENTS:

None.

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 counties or municipalities 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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

This bill is similar to HB 733, filed in the 2000 legislative session.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 15, 2001, the Committee on Judicial Oversight adopted two amendments to this bill, as follows:

1. Chapter 475, F.S., the real estate licensing law, provides that a person must be licensed under that chapter in order to receive any compensation related to the sale or lease of real property. This amendment provides an exemption to the licensure requirements of Chapter 475, F.S., to provide that a property management firm, or an owner of an apartment complex, may pay a finder's fee or referral fee of up to \$50 for referral of a tenant without violating the real estate licensure law.
2. This amendment modifies the disclosure language required by s. 83.67(3), F.S., to substitute a specific reference to "Chapter 83" in lieu of the general reference to the "Florida Statutes".

The bill was then reported favorably as amended.

On March 28, 2001, the Committee on Agriculture and Consumer Affairs adopted a "remove everything after the enactment clause" amendment that:

- Restates the original bill.
- Removes the Amendment 1 adopted by the Committee on Judicial Oversight (see description above).
- Includes the Amendment 2 adopted by the Committee on Judicial Oversight (see description above).
- Adds a provision which provides that military personnel who are transferred or discharged may terminate a lease agreement effective at the conclusion of the following month. The language is similar to the provisions in the federal Soldiers' and Sailors' Relief Act which provides that an individual who enters military service may terminate a lease agreement signed prior to entry into service at the conclusion of the following month. See 50 U.S.C. § 534.

The bill was then reported favorably as amended.

On March 29, 2001, the Council on Smarter Government adopted two amendments to the remove everything amendment, which:

1. Restores to the bill Amendment 1 adopted by the Committee on Judicial Oversight regarding allowable referral fees; but changed to limit the referral fees to only current tenants referring a new tenant, and specifying that any payment outside the specific authorization is a violation of s. 475.25(1)(h), F.S., and punishable under s. 475.42, F.S.
2. Provides that if the landlord intends to return the entire deposit, the landlord must do so within 15 days of termination of the lease; but a landlord who intends to impose a claim against the deposit has 30 days within which to prepare the notice of claim and mail it to the former tenant.

The bill was then reported favorably as amended.

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VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Nathan L. Bond, J.D.

Staff Director:

Lynne Overton, J.D.

AS REVISED BY THE COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

Prepared by:

Susan D. Reese

Staff Director:

Susan D. Reese

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Nathan L. Bond, J.D.

Council Director:

Don Rubottom