

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5 Residential Tenancies
SPONSOR(S): Gannon
TIED BILLS: none **IDEN./SIM. BILLS:** none

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Bond	Bond
2) Business Regulation Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

This bill amends residential landlord-tenant law to:

- Provide that a tenant who has obtained a permanent injunction against domestic violence, repeat violence, sexual violence, or dating violence, may obtain an early termination of the lease.
- Provide that a landlord may recover possession of a dwelling unit 45 days after the death of a tenant.
- Provide that a landlord and tenant may agree in the rental agreement to liquidated damages and early termination fees in the event that the rental agreement is broken.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill both increases and decreases the ability of landlords and tenants to enter into contract terms as they see fit.

Promote personal responsibility -- This bill requires financial responsibility of a perpetrator of domestic violence.

Empower families -- This bill will serve or benefit families that are suffering from the effects of domestic violence.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs residential landlord-tenant law.¹ A lease is an agreement to use real property for a certain length of time. By definition, all residential tenancies must end. Most end at the conclusion of the agreed-upon lease term with the tenant having paid all rents due. Section 83.595, F.S., governs the financial obligation of the tenant where the tenant's occupation of the property ends prior to the agreed upon term of the lease.

Section 83.595, F.S., provides that a landlord who has retaken possession of a rental property before the end of the lease term may:

- Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant;
- Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rental stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from renting to another tenant; or
- Stand by and do nothing, holding the tenant liable for the rent as it comes due.

There are several circumstances whereby a tenant can terminate the lease early, and yet have limited or no liability for rent through the end of the term of the lease. Those situations are:

- Where the landlord has breached a material term of the lease or has failed to provide maintenance required by statute, and the tenant has given the landlord notice and an opportunity to cure. See ss. 83.51(1)² and 83.56(1), F.S.
- If the property has been substantially damaged or destroyed. See s. 83.63, F.S.
- If the tenant is an active duty member of the armed forces, and is either transferred or discharged from service. See s. 83.682, F.S.

Current law does not provide for early lease termination for victims of domestic violence.

¹ Part II of ch. 83, F.S.

² Section 83.51(1) requires a landlord to comply with all applicable building, housing, and health codes, and maintain all structural components and plumbing in good repair.

Section 83.59(3), F.S., provides that a landlord may not recover possession of a rental unit unless the tenant has voluntarily surrendered or abandoned the premises, or the landlord obtains a court order awarding possession. Section 83.67, F.S., provides that it is unlawful for a landlord to change the locks or remove the tenant's belongings except upon surrender, abandonment, or eviction. A landlord who violates this section is liable to the tenant for damages equal to 3 months rent, plus costs and attorneys fees. This punitive section is intended to discourage landlords from "self-help evictions."³ Current law is unclear whether the death of a tenant is abandonment or surrender of the premises, and accordingly some cautious landlords resort to formal eviction proceedings upon death of a tenant in order to avoid the penalty provisions of s. 83.67, F.S.

It is not uncommon for the parties to a contract to agree to a liquidated damages clause. A liquidated damages clause provides, in advance, an agreement as to how much one party will pay the other for breach of the contract. Landlord-tenant law, as applied before enactment of the Florida Residential Landlord and Tenant Act, provided that a liquidated damages clause in a lease agreement will be enforced only if such damages are intended to reimburse the landlord for expected damages, not if such damages are in the nature of a penalty intended solely to coerce performance under the lease.⁴

Current law does not allow a residential lease to contain an early termination clause that includes a provision for liquidated damages. Section s. 83.47(1)(a), F.S., provides that any provision in a rental agreement is void and unenforceable to the extent that it purports to waive or preclude the rights, remedies, or requirements set forth in the Florida Residential Landlord and Tenant Act. Section 83.595(1), F.S., provides the landlord's remedies that are available should the tenant breach the lease and the landlord has retaken possession of the rental unit. In 2004, a circuit court in Palm Beach found that the remedies set forth in s. 83.595(1), F.S., are exclusive and may not be modified by agreement of the parties. The class action judgment invalidated a liquidated damages clause in a landlord's standard lease agreement.⁵

Injunctions against Domestic, Repeat, Dating, or Sexual Violence

Section 741.30(1)(a), F.S., creates a cause of action for an injunction for protection against domestic violence, and provides that a person who is the victim of domestic violence, as defined in s. 741.28, F.S.,⁶ or who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, has standing to seek an injunction against domestic violence. A domestic violence injunction may be sought by family or household members, and "[n]o person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse."⁷

Courts have adopted a two-pronged test for determining whether a relationship is such that the court can properly issue a domestic violence injunction against one of the parties.⁸ First, the petitioner must

³ *Badaraco v. Sun Coast Towers V Associates*, 676 So.2d 502 (Fla. 3rd DCA 1996).

⁴ *Hyman v. Cohen*, 73 So. 2d 393, 398-99 (Fla. 1954) (defining a "penalty" at page 401 as a sum "so grossly disproportionate to any damages that might reasonably be expected to follow from a premature termination of the lease as to show that the parties could have intended only to induce full performance thereunder."). See also *Lefemine v. Baron*, 573 So. 2d 326, 328 (Fla. 1991) (holding that an option to either accept liquidated damages or to sue for the full amount due is, in effect, a penalty).

⁵ Order dated December 1, 2004, in *Yates v. Equity Residential Properties Trust*, 15th Judicial Circuit in and for Palm Beach County, Florida, Case No. 502002CA014116XXOCAB. The case is currently on appeal. *Equity Residential Properties Trust v. Tammy Yates*, 4th District Court of Appeal, Case No. 4D05-125. Equity's standard lease had two separate fees that, in effect, charged a tenant 3 months rent as a penalty for early termination of the lease.

⁶ "'Domestic violence' means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." s. 741.28(2), F.S.

⁷ Section 741.30(1)(e), F.S.

⁸ *Kokoris v. Zipnick*, 738 So. 2d 369, 370 (Fla. 4th DCA 1999).

have a familial or domestic relationship with the respondent that falls within the range of relationships listed in the statute, and second, the parties must have resided together, either in the past or present, as a family or household in the same dwelling unit.⁹

Section 784.046, F.S., defines violence, repeat violence, sexual violence, and dating violence, and creates separate causes of action for repeat, sexual, and dating violence. Any person who is the victim of repeat violence,¹⁰ or the parent of a minor child who lives at home and is the victim of repeat violence, has standing to file a sworn petition for an injunction against repeat violence.¹¹ “Dating violence” is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.”¹² Any person who has reasonable cause to believe that he or she is in imminent danger of becoming the victim of an act of dating violence, or who is the victim of dating violence and has reasonable cause to fear imminent future dating violence, or who is the parent of a minor child living at home and is in need of protection from dating violence, may file a petition for an injunction to protect against dating violence.¹³

A person who is the victim of sexual violence,¹⁴ or the parent of any minor child living at home who is the victim of sexual violence, has standing to file a petition for a protective injunction against sexual violence if:

- The person has reported the sexual violence to a law enforcement agency and is cooperating with any criminal proceeding against the respondent; or
- The person who committed the sexual violence was sentenced to a term of imprisonment for the sexual violence, and such sentence expires or shall expire within 90 days of the filing of the petition.¹⁵

The court is authorized to grant an injunction enjoining the respondent from committing any acts of violence and it is also given broad authority to order such other relief as is necessary to protect the victim.¹⁶ An order granting an injunction must be supported by competent, substantial evidence.¹⁷ Either party may move to have the injunction modified or dissolved at any time, and the terms of the injunction remain in effect until modified or dissolved.¹⁸

Effect of Bill

Domestic Violence

This bill creates s. 83.683, F.S., entitled “Termination of rental agreement by a victim of domestic violence, repeat violence, sexual violence, or dating violence.” The new section contains the following definitions:

⁹ *Id.*

¹⁰ “Repeat violence” means two incidents of violence or stalking committed by the respondent, one of which must have occurred within six months of the filing of the petition, and which were directed against the petitioner or an immediate member of the petitioner’s family. S. 784.046(1)(b), F.S.

¹¹ Section 784.046(2)(a), F.S.

¹² Section 784.046(1)(d), F.S.

¹³ Section 784.046(2)(b), F.S.

¹⁴ Sexual violence means one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person younger than 16, luring or enticing a child, sexual performance by a child, or any forcible felony wherein a sexual act is committed or attempted, regardless of the presence or absence of criminal charges resulting from the incident. s. 784.046(1)(c), F.S.

¹⁵ Section 784.046(2)(c), F.S.

¹⁶ Sections 784.046(6)(a), and 784.046(7)(a)-(b), F.S.

¹⁷ *Forrest v. Wilson*, 889 So.2d 124, 124-25 (Fla. 1st DCA 2004).

¹⁸ Sections 784.046(7)(c) and 784.046(10), F.S.

- "Permanent injunction" means an injunction for protection against domestic violence, issued under s. 741.30(6), F.S., or an injunction for protection against repeat violence, sexual violence, or dating violence, issued under s. 784.046(7), F.S., regardless of whether a motion for rehearing or a notice of appeal is filed.
- "Respondent" means a person against whom a permanent injunction for protection against domestic violence under s. 741.30(6), F.S., or a permanent injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046(7), F.S., has been issued.
- "Victim" means an adult, or the parent or guardian of a minor, who has been granted a permanent injunction against domestic violence, as defined in s. 741.28(2), F.S., or who has been granted a permanent injunction against sexual violence, dating violence, or acts of repeat violence, as defined in s. 784.046, F.S.
- "Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.

The bill provides that a victim may choose to terminate a rental agreement and vacate a dwelling unit if the victim provides the landlord with a copy of the permanent injunction, and written notice of the victim's intent to terminate the lease, within 15 days of the issuance of the injunction.

A victim who utilizes this section to terminate a lease is obligated to report the incident to law enforcement authorities, must comply with investigation and prosecution of the case, and must testify truthfully at trial. If the respondent is convicted, and the lease contains a liquidated damages provision as described in s. 83.595(1)(d) (created by this bill, see below), then only respondent is liable to the landlord for such liquidated damages. If, however, the respondent is not convicted, the victim may be liable to the landlord for such liquidated damages.

A victim who has given notice under this provision must vacate the rental unit no later than 30 days after the landlord receives notice, or earlier if the lease expires by its own terms. After the victim vacates the dwelling unit, the landlord must send notice of any claim against the security deposit to both the victim and respondent.

After a victim moves out, the lease remains in place, except that the victim is not liable for "future obligations of the lease or tenancy." All tenants, including the victim, are liable for damages to the dwelling unit that exceed normal wear and tear, except that the victim is not responsible for any damage to the unit that occurred during the act of violence that led to the filing for an injunction. This provision may not be construed to prohibit the right of the landlord to evict a tenant for participation in an illegal activity.

If the respondent or any other tenant fails to retake possession of the premises within 15 days after the victim indicated as the date that he or she would vacate, and the rent is unpaid, the dwelling unit will be deemed abandoned and the landlord may retake possession and may dispose of any abandoned property in a way the landlord sees fit.

The victim and respondent may not agree to waive or modify the provisions of this section. This section applies to all residential rental agreements entered into on or after July 1, 2006.

Death of Tenant

This bill amends s. 83.59, F.S., to allow a landlord to retake possession of a dwelling unit 45 days after the death of a tenant, when the rent is unpaid and the landlord has not been notified of the existence of a probate estate or personal representative.

Termination Fees (liquidated damages)

This bill amends s. 83.595, F.S., to provide an additional measure of damages that a tenant may be obligated to pay a landlord upon early termination of the lease.

This bill adds that landlords and tenants may choose to contract for liquidated damages for breach of a rental agreement and a specified fee for early termination of a rental agreement. The liquidated damages or early termination fee must be specified in the rental agreement, may require up to 60 days notice, and may not exceed 2 months' rent in addition to any rent due and "other charges" due under the rental agreement to the end of the month.¹⁹ If a landlord chooses to include such a liquidated damages clause, an early termination clause, or both, in the rental agreement, the landlord may not exercise any of the remedies listed in s. 83.595(1)(a)-(c). This subsection does not apply when the breach is failure to give notice at the end of the rental agreement.

C. SECTION DIRECTORY:

Section 1 creates s. 83.683, F.S., providing for early termination of a lease without penalty for victims of domestic violence.

Section 2 amends s. 83.59, F.S., to provide that a landlord may retake possession of a rental unit after death of a tenant under certain circumstances.

Section 3 amends s. 83.595, F.S., to allow landlords and tenants to agree to liquidated damages.

Section 4 provides an effective date of July 1, 2005.

II. 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of this bill may have a negative fiscal impact upon a landlord who is required to terminate a lease and who cannot timely replace the tenant.

D. FISCAL COMMENTS:

¹⁹ For a tenant announcing his or her intent to immediately vacate, such a clause could be drafted by a landlord to effectively charge the tenant a total of between 4 and 5 months rent as a cost for early termination (the 60 days notice plus 2 months rent damages plus rent to the end of the month).

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The definition of "permanent injunction" at lines 37-42 appears to refer to a final judgment of a court issuing an injunction after notice to the respondent and an opportunity for the respondent to be heard, by use of cross-reference to ss. 741.30(6) and 784.046(7), F.S. However, those two subsections that deal with what is commonly referred to as a permanent injunction also include provisions that refer to temporary injunctions that may be issued upon the filing of a petition for an injunction. The definition of permanent injunction could be clarified in this regard.

At line 67, the bill refers to conviction, but does not specify the crime that the respondent must be convicted of for the provision to apply.

Lines 78-91 are not clear. They imply, but do not specifically provide, that a victim's financial obligation for continuing lease payments ends when the victim moves out after notice. Also, as written, the victim would be liable for damage to the rental property that occurs after the victim has moved out.

The amendment to s. 83.59, F.S., is not clear that death is a form of abandonment of the tenancy. It is possible that, without amendment, a landlord relying upon s. 83.59, F.S., as amended by this bill, may still be financially liable for unlawful self-help eviction under s. 83.67(5), F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a