

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 809

Eviction of Tenants

SPONSOR(S): Planas

TIED BILLS: None

IDEN./SIM. BILLS: SB 2250

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		DeZego	De La Paz
2)	Criminal & Civil Justice Policy Council			
3)	Finance & Tax Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs the relationship between landlords and tenants in a residential lease agreement. Florida law provides that a landlord may remove a tenant in certain circumstances. To remove a tenant, a landlord must file a complaint in the county court and pay a filing fee of \$265. This fee was increased during the last legislative session from \$75 to \$265. If a landlord cannot afford to pay the filing fee, then he or she may file an Application for Determination of Civil Indigent Status to have the fees deferred.

This bill lowers the filing fee for a removal of a tenant action to \$90. This bill provides that the filing fee for an action for removal of a tenant for possession and damages is still \$265.

This bill has a negative fiscal impact of \$4,474,417 on state revenues for FY 2008-2009. This bill has a positive fiscal impact of \$175 for a landlord who files an action for removal of a tenant without damages.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Florida Landlord - Tenant Law

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs the relationship between landlords and tenants in a residential lease agreement.<sup>1</sup> A rental agreement specifies the terms and conditions of a tenant's occupation in a dwelling unit for a specific period of time.<sup>2</sup> The provisions of the Act specifically address the payment of rent,<sup>3</sup> duration of leases,<sup>4</sup> security deposits,<sup>5</sup> maintenance of the dwelling and premises,<sup>6</sup> termination of rental agreements,<sup>7</sup> liquidated damages for failure to provide notice before vacating,<sup>8</sup> penalty for holding over,<sup>9</sup> and a landlord's remedies for the breach of a lease.<sup>10</sup>

##### Landlord's Removal of a Tenant

Florida law provides that a landlord may remove a tenant for any of the following:<sup>11</sup>

- A tenant holds over and continues in possession of the premises after the expiration of the person's time, without the permission of the landlord;

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<sup>1</sup> Part II of ch. 83, F.S. This part applies to the rental of a "dwelling unit" which is defined as a structure or part of a structure rented for use as a home, residence or sleeping place. It also includes mobile homes rented by a tenant.

Section 83.43, F.S.

<sup>2</sup> Section 83.43(7), F.S., provides that: "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

<sup>3</sup> Section 83.46, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 83.49, F.S.

<sup>6</sup> Sections 83.51 and 83.52, F.S.

<sup>7</sup> Section 83.56, F.S.

<sup>8</sup> Section 83.58, F.S.

<sup>9</sup> Section 83.575, F.S.

<sup>10</sup> Section 83.595, F.S.

<sup>11</sup> Section 83.20, F.S.

- A tenant holds over without permission after a default in payment and three days written notice, requiring the payment of rent or the possession of the premises, has been served on the tenant; or
- A tenant holds over without permission after failing to cure a material breach of the lease or oral agreement, other than not paying rent, and 15 days written notice has been served on the tenant.

To remove a tenant, a landlord, or the landlord's attorney or agent, must file a complaint in the county court.<sup>12</sup> A landlord may file either an action to remove a tenant from the premises or to remove the tenant *and* be awarded damages, which is often used to recover unpaid rent.

### Filing Fee

CS/SB 1790 was enacted into law in 2008 and increased certain service charges, court costs, and fees.<sup>13</sup> Among these changes, the filing fee for a removal of tenant action was increased from \$75 to \$265.<sup>14</sup>

If a landlord cannot afford to pay the filing fee, then he or she may file an Application for Determination of Civil Indigent Status to have the fees deferred.<sup>15</sup> Currently, the income threshold for an indigent person "is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services."<sup>16</sup> The poverty guidelines for 2009 are as follows:<sup>17</sup>

<b>Persons in Family or Household</b>	<b>48 Contiguous States and D.C.</b>
1	\$10,830
2	14,570
3	18,310
4	22,050
5	25,790
6	29,530
7	33,270
8	37,010
For each additional person, add	3,740

<sup>12</sup> Section 83.21, F.S.

<sup>13</sup> Chapter No. 2008-111

<sup>14</sup> Section 34.401(1)(a)7, F.S.

<sup>15</sup> Florida law provides that any party in any judicial or administrative proceeding is entitled to receive the services of the courts, sheriffs, and clerks despite his or her present inability to pay for those services. However, the person must repay the amount for such services.

<sup>16</sup> Section 57.082(2)(a)1., F.S.

<sup>17</sup> Federal Register, Vol. 74, No. 14, January 23, 2009, pp. 4199-4201. See <http://aspe.hhs.gov/POVERTY/09poverty.shtml>. Last accessed March 11, 2009.

## **Proposed Changes**

This bill lowers the filing fees for a removal of a tenant action for possession of the premises to \$90 from \$265. However, this bill provides that the filing fee for an action for removal of a tenant for possession and damages is still \$265.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 34.041, F.S., relating to filing fees.

Section 2 provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

This bill has a negative fiscal impact of \$4,474,417. See comments.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill will decrease the filing fee for a landlord for removal of a tenant by \$175. However, if a landlord wants to recover damages, such as unpaid rent, he or she must still pay a filing fee of \$265.

### **D. FISCAL COMMENTS:**

According to the Office of the State Courts Administrator (OSCA), 173,933 county court eviction filings were reported for FY 2007-2008. Applying an indigence rate of two percent, OSCA estimates filings of 170,454 for \$45,170,310 in general revenue for FY 2008-2009. OSCA estimates that actions for removal of a tenant only will account for 15% of filings and actions for removal of a tenant with damages will account for 85% of filings. Therefore, the estimated revenue for FY 2008-2009 under this bill is \$40,695,893 or \$4,474,417 less than current revenue collections.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

N/A