

By the Committees on Budget Subcommittee on Criminal and Civil Justice Appropriations; and Judiciary; and Senator Flores

604-04278-12

20121830c2

1                                   A bill to be entitled  
2           An act relating to landlords and tenants; amending s.  
3           83.42, F.S.; revising exclusions from application of  
4           part II of ch. 83, F.S., relating to residential  
5           tenancies; amending s. 83.48, F.S.; providing that the  
6           right to attorney fees may not be waived in a lease  
7           agreement; providing that attorney fees may not be  
8           awarded in a claim for personal injury damages based  
9           on a breach of duty of premises maintenance; amending  
10          s. 83.49, F.S.; revising and providing landlord  
11          disclosure requirements with respect to deposit money  
12          and advance rent; providing requirements for the  
13          disbursement of advance rents; providing a limited  
14          rebuttable presumption of receipt of security  
15          deposits; providing for certain changes to disclosure  
16          requirements to be phased in; amending s. 83.50, F.S.;  
17          removing certain landlord disclosure requirements  
18          relating to fire protection; amending s. 83.51, F.S.;  
19          revising a landlord's obligation to maintain a  
20          premises with respect to screens; amending s. 83.56,  
21          F.S.; revising procedures for the termination of a  
22          rental agreement by a landlord; revising notice and  
23          payment procedures; providing that a landlord does not  
24          waive the right to terminate the rental agreement or  
25          to bring a civil action for noncompliance by accepting  
26          partial rent, subject to certain notice; providing  
27          that the period to institute an action before an  
28          exemption involving rent subsidies is waived begins  
29          upon actual knowledge; amending s. 83.575, F.S.;

604-04278-12

20121830c2

30 revising requirements for the termination of a tenancy  
31 having a specific duration to provide for reciprocal  
32 notice provisions in rental agreements; amending ss.  
33 83.58 and 83.59, F.S.; conforming cross-references;  
34 amending s. 83.60, F.S.; providing that a landlord  
35 must be given an opportunity to cure a deficiency in  
36 any notice or pleadings prior to dismissal of an  
37 eviction action; making technical changes; amending s.  
38 83.62, F.S.; revising procedures for the restoration  
39 of possession to a landlord to provide that weekends  
40 and holidays do not stay the applicable notice period;  
41 amending s. 83.63, F.S.; conforming a cross-reference;  
42 amending s. 83.64, F.S.; providing examples of conduct  
43 for which the landlord may not retaliate; amending s.  
44 723.063, F.S.; providing that a mobile home park owner  
45 must be given an opportunity to cure a deficiency in  
46 any notice or pleadings prior to dismissal of an  
47 eviction action; providing an effective date.

48  
49 Be It Enacted by the Legislature of the State of Florida:

50  
51 Section 1. Subsection (2) of section 83.42, Florida  
52 Statutes, is amended to read:

53 83.42 Exclusions from application of part.—This part does  
54 not apply to:

55 (2) Occupancy under a contract of sale of a dwelling unit  
56 or the property of which it is a part in which at least one  
57 month's rent has been paid and the buyer has paid a deposit of  
58 at least 5 percent of the value of the property, or in which the

604-04278-12

20121830c2

59 buyer has paid at least 12 months' rent.

60 Section 2. Section 83.48, Florida Statutes, is amended to  
61 read:

62 83.48 Attorney ~~Attorney's~~ fees.—In any civil action brought  
63 to enforce the provisions of the rental agreement or this part,  
64 the party in whose favor a judgment or decree has been rendered  
65 may recover reasonable court costs, including, but not limited  
66 to, attorney ~~attorney's~~ fees, from the nonprevailing party. The  
67 right to attorney fees in this section may not be waived in a  
68 lease agreement. However, attorney fees may not be awarded under  
69 this section in a claim for personal injury damages based on a  
70 breach of duty under s. 83.51.

71 Section 3. Subsections (2), (3), and (7) of section 83.49,  
72 Florida Statutes, are amended to read:

73 83.49 Deposit money or advance rent; duty of landlord and  
74 tenant.—

75 (2) The landlord shall, in the lease agreement or within 30  
76 days after ~~of~~ receipt of advance rent or a security deposit,  
77 furnish written notice to notify the tenant which includes  
78 disclosure of in writing of the manner in which the landlord is  
79 holding the advance rent or security deposit and the rate of  
80 interest, if any, which the tenant is to receive and the time of  
81 interest payments to the tenant. Such written notice shall:

82 (a) ~~Be given in person or by mail to the tenant.~~

83 (b) ~~State the name and address of the depository where the~~  
84 ~~advance rent or security deposit is being held, whether the~~  
85 ~~advance rent or security deposit is being held in a separate~~  
86 ~~account for the benefit of the tenant or is commingled with~~  
87 ~~other funds of the landlord, and, if commingled, whether such~~

604-04278-12

20121830c2

88 ~~funds are deposited in an interest-bearing account in a Florida~~  
89 ~~banking institution.~~

90 ~~(c) Include a copy of the provisions of subsection (3).~~

91  
92 Subsequent to providing such notice, if the landlord changes the  
93 manner or location in which he or she is holding the advance  
94 rent or security deposit, he or she shall notify the tenant  
95 within 30 days after ~~of~~ the change according to the provisions  
96 of paragraphs (a)-(d) herein set forth. The landlord is not  
97 required to give a new notice or an additional notice solely  
98 because the depository has merged with another financial  
99 institution, changed its name, or transferred ownership to a  
100 different financial institution. This subsection does not apply  
101 to any landlord who rents fewer than five individual dwelling  
102 units. Failure to provide this notice is shall not be a defense  
103 to the payment of rent when due. Such written notice must:

104 (a) Be given in person or by mail to the tenant;

105 (b) State the name and address of the depository where the  
106 advance rent or security deposit is being held, or state that  
107 the landlord has posted a surety bond as provided by law;

108 (c) State whether the tenant is entitled to interest on the  
109 deposit; and

110 (d) Include the following disclosure:

111  
112 YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE  
113 LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S  
114 ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU  
115 MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS  
116 SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING

604-04278-12

20121830c2

117 YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE,  
118 WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S  
119 INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU  
120 DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO  
121 THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE  
122 LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM  
123 AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY. IF  
124 YOU TIMELY OBJECT, THE LANDLORD MUST HOLD THE DEPOSIT  
125 AND EITHER YOU OR THE LANDLORD WILL HAVE TO FILE A  
126 LAWSUIT SO THAT THE COURT CAN RESOLVE THE DISPUTE.

127  
128 IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE  
129 LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A  
130 LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY  
131 OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE  
132 DEPOSIT BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A  
133 REFUND.

134  
135 YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE  
136 BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE  
137 FAVOR A JUDGMENT HAS BEEN RENDERED WILL BE AWARDED  
138 COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

139  
140 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF  
141 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL  
142 RIGHTS AND OBLIGATIONS.

143  
144 (3) The landlord may disburse advance rents from the  
145 deposit account to the landlord's benefit when the advance

604-04278-12

20121830c2

146 rental period commences and without notice to the tenant. For  
147 all other deposits:

148 (a) Upon the vacating of the premises for termination of  
149 the lease, if the landlord does not intend to impose a claim on  
150 the security deposit, the landlord shall have 15 days to return  
151 the security deposit together with interest if otherwise  
152 required, or the landlord shall have 30 days to give the tenant  
153 written notice by certified mail to the tenant's last known  
154 mailing address of his or her intention to impose a claim on the  
155 deposit and the reason for imposing the claim. The notice shall  
156 contain a statement in substantially the following form:

157  
158 This is a notice of my intention to impose a claim for  
159 damages in the amount of .... upon your security deposit, due to  
160 ..... It is sent to you as required by s. 83.49(3), Florida  
161 Statutes. You are hereby notified that you must object in  
162 writing to this deduction from your security deposit within 15  
163 days from the time you receive this notice or I will be  
164 authorized to deduct my claim from your security deposit. Your  
165 objection must be sent to ...(landlord's address)....

166  
167 If the landlord fails to give the required notice within the 30-  
168 day period, he or she forfeits the right to impose a claim upon  
169 the security deposit and may not seek a setoff against the  
170 deposit but may file an action for damages after return of the  
171 deposit.

172 (b) Unless the tenant objects to the imposition of the  
173 landlord's claim or the amount thereof within 15 days after  
174 receipt of the landlord's notice of intention to impose a claim,

604-04278-12

20121830c2

175 the landlord may then deduct the amount of his or her claim and  
176 shall remit the balance of the deposit to the tenant within 30  
177 days after the date of the notice of intention to impose a claim  
178 for damages. The failure of the tenant to make a timely  
179 objection does not waive any rights of the tenant to seek  
180 damages in a separate action.

181 (c) If either party institutes an action in a court of  
182 competent jurisdiction to adjudicate the party's right to the  
183 security deposit, the prevailing party is entitled to receive  
184 his or her court costs plus a reasonable fee for his or her  
185 attorney. The court shall advance the cause on the calendar.

186 (d) Compliance with this section by an individual or  
187 business entity authorized to conduct business in this state,  
188 including Florida-licensed real estate brokers and sales  
189 associates, constitutes ~~shall constitute~~ compliance with all  
190 other relevant Florida Statutes pertaining to security deposits  
191 held pursuant to a rental agreement or other landlord-tenant  
192 relationship. Enforcement personnel shall look solely to this  
193 section to determine compliance. This section prevails over any  
194 conflicting provisions in chapter 475 and in other sections of  
195 the Florida Statutes, and shall operate to permit licensed real  
196 estate brokers to disburse security deposits and deposit money  
197 without having to comply with the notice and settlement  
198 procedures contained in s. 475.25(1)(d).

199 (7) Upon the sale or transfer of title of the rental  
200 property from one owner to another, or upon a change in the  
201 designated rental agent, any and all security deposits or  
202 advance rents being held for the benefit of the tenants shall be  
203 transferred to the new owner or agent, together with any earned

604-04278-12

20121830c2

204 interest and with an accurate accounting showing the amounts to  
205 be credited to each tenant account. Upon the transfer of such  
206 funds and records to the new owner or agent ~~as stated herein,~~  
207 and upon transmittal of a written receipt therefor, the  
208 transferor is ~~shall be~~ free from the obligation imposed in  
209 subsection (1) to hold such moneys on behalf of the tenant.  
210 There is a rebuttable presumption that any new owner or agent  
211 received the security deposits from the previous owner or agent;  
212 however, the limit of this presumption is one month's rent. This  
213 subsection does not ~~However, nothing herein shall~~ excuse the  
214 landlord or agent for a violation of other ~~the~~ provisions of  
215 this section while in possession of such deposits.

216 Section 4. The Legislature recognizes that landlords may  
217 have stocks of preprinted lease forms that contain disclosures  
218 compliant with current law. Accordingly, changes to the  
219 disclosure required of a landlord and made by amendments to s.  
220 83.49, Florida Statutes, in this act, are conditional for leases  
221 entered into between July 1, 2012, and December 31, 2012. During  
222 that period, the landlord may elect to give notice required by  
223 former s. 83.49, Florida Statutes, or the disclosure required  
224 under this act. The disclosure required by this act is required  
225 for all leases entered into on or after January 1, 2013.

226 Section 5. Section 83.50, Florida Statutes, is amended to  
227 read:

228 83.50 Disclosure of landlord's address.—

229 ~~(1)~~ In addition to other disclosures required by law, the  
230 landlord, or a person authorized to enter into a rental  
231 agreement on the landlord's behalf, shall disclose in writing to  
232 the tenant, at or before the commencement of the tenancy, the



604-04278-12

20121830c2

233 name and address of the landlord or a person authorized to  
234 receive notices and demands in the landlord's behalf. The person  
235 so authorized to receive notices and demands retains authority  
236 until the tenant is notified otherwise. All notices of such  
237 names and addresses or changes thereto shall be delivered to the  
238 tenant's residence or, if specified in writing by the tenant, to  
239 any other address.

240 ~~(2) The landlord or the landlord's authorized~~  
241 ~~representative, upon completion of construction of a building~~  
242 ~~exceeding three stories in height and containing dwelling units,~~  
243 ~~shall disclose to the tenants initially moving into the building~~  
244 ~~the availability or lack of availability of fire protection.~~

245 Section 6. Subsection (1) and paragraph (a) of subsection  
246 (2) of section 83.51, Florida Statutes, are amended to read:

247 83.51 Landlord's obligation to maintain premises.—

248 (1) The landlord at all times during the tenancy shall:

249 (a) Comply with the requirements of applicable building,  
250 housing, and health codes; or

251 (b) Where there are no applicable building, housing, or  
252 health codes, maintain the roofs, windows, ~~screens,~~ doors,  
253 floors, steps, porches, exterior walls, foundations, and all  
254 other structural components in good repair and capable of  
255 resisting normal forces and loads and the plumbing in reasonable  
256 working condition. ~~However,~~ The landlord is ~~shall~~ not be  
257 required to maintain a mobile home or other structure owned by  
258 the tenant.

259  
260 The landlord's obligations under this subsection may be altered  
261 or modified in writing with respect to a single-family home or

604-04278-12

20121830c2

262 duplex.

263 (2) (a) Unless otherwise agreed in writing, in addition to  
264 the requirements of subsection (1), the landlord of a dwelling  
265 unit other than a single-family home or duplex shall, at all  
266 times during the tenancy, make reasonable provisions for:

267 1. The extermination of rats, mice, roaches, ants, wood-  
268 destroying organisms, and bedbugs. When vacation of the premises  
269 is required for such extermination, the landlord is ~~shall~~ not be  
270 liable for damages but shall abate the rent. The tenant must  
271 ~~shall be required to~~ temporarily vacate the premises for a  
272 period of time not to exceed 4 days, on 7 days' written notice,  
273 if necessary, for extermination pursuant to this subparagraph.

274 2. Locks and keys.

275 3. The clean and safe condition of common areas.

276 4. Garbage removal and outside receptacles therefor.

277 5. Functioning facilities for heat during winter, running  
278 water, and hot water.

279 Section 7. Subsections (2) through (5) of section 83.56,  
280 Florida Statutes, are amended to read:

281 83.56 Termination of rental agreement.—

282 (2) If the tenant materially fails to comply with s. 83.52  
283 or material provisions of the rental agreement, other than a  
284 failure to pay rent, or reasonable rules or regulations, the  
285 landlord may:

286 (a) If such noncompliance is of a nature that the tenant  
287 should not be given an opportunity to cure it or if the  
288 noncompliance constitutes a subsequent or continuing  
289 noncompliance within 12 months of a written warning by the  
290 landlord of a similar violation, deliver a written notice to the

604-04278-12

20121830c2

291 tenant specifying the noncompliance and the landlord's intent to  
292 terminate the rental agreement by reason thereof. Examples of  
293 noncompliance which are of a nature that the tenant should not  
294 be given an opportunity to cure include, but are not limited to,  
295 destruction, damage, or misuse of the landlord's or other  
296 tenants' property by intentional act or a subsequent or  
297 continued unreasonable disturbance. In such event, the landlord  
298 may terminate the rental agreement, and the tenant shall have 7  
299 days from the date that the notice is delivered to vacate the  
300 premises. The notice shall be ~~adequate if it is~~ in substantially  
301 the following form:

302

303       You are advised that your lease is terminated effective  
304 immediately. You shall have 7 days from the delivery of this  
305 letter to vacate the premises. This action is taken because  
306 ... (cite the noncompliance)....

307

308       (b) If such noncompliance is of a nature that the tenant  
309 should be given an opportunity to cure it, deliver a written  
310 notice to the tenant specifying the noncompliance, including a  
311 notice that, if the noncompliance is not corrected within 7 days  
312 from the date the written notice is delivered, the landlord  
313 shall terminate the rental agreement by reason thereof. Examples  
314 of such noncompliance include, but are not limited to,  
315 activities in contravention of the lease or this part ~~act~~ such  
316 as having or permitting unauthorized pets, guests, or vehicles;  
317 parking in an unauthorized manner or permitting such parking; or  
318 failing to keep the premises clean and sanitary. If there is a  
319 noncompliance within 12 months after notice, an eviction action

604-04278-12

20121830c2

320 may commence without the necessity of delivering a subsequent  
321 notice pursuant to paragraph (a) or this paragraph. However, if  
322 the notice pursuant to paragraph (a) or this paragraph is not  
323 given, the clerk may not issue a writ to the sheriff to put the  
324 landlord into possession of the premises before the 3rd day  
325 after the date that the action for possession was served on a  
326 tenant pursuant to s. 48.183. The notice shall be ~~adequate if it~~  
327 ~~is~~ in substantially the following form:

328  
329       You are hereby notified that ...(cite the  
330 noncompliance).... Demand is hereby made that you remedy the  
331 noncompliance within 7 days of receipt of this notice or your  
332 lease shall be deemed terminated and you shall vacate the  
333 premises upon such termination. If this same conduct or conduct  
334 of a similar nature is repeated within 12 months, your tenancy  
335 is subject to termination without further warning and without  
336 your being given an opportunity to cure the noncompliance.

337  
338       (3) If the tenant fails to pay rent when due and the  
339 default continues for 3 days, excluding Saturday, Sunday, and  
340 legal holidays, after delivery of written demand by the landlord  
341 for payment of the rent or possession of the premises, the  
342 landlord may terminate the rental agreement. Legal holidays for  
343 the purpose of this section shall be court-observed holidays  
344 only. The total amount claimed may include all moneys owed to  
345 the landlord through the date of the notice, including, but not  
346 limited to, late fees. The 3-day notice shall contain a  
347 statement in substantially the following form:

348

604-04278-12

20121830c2

349           You are hereby notified that you are indebted to me in the  
350 sum of .... dollars for the rent and use of the premises  
351 ...(address of leased premises, including county)..., Florida,  
352 now occupied by you and that I demand payment of the rent or  
353 possession of the premises within 3 days (excluding Saturday,  
354 Sunday, and legal holidays) from the date of delivery of this  
355 notice, to wit: on or before the .... day of ....., ...(year)....  
356           ...(landlord's name, address and phone number)...

357  
358           (4) The delivery of the written notices required by  
359 subsections (1), (2), and (3) shall be by mailing or delivery of  
360 a true copy thereof or, if the tenant is absent from the  
361 premises, by leaving a copy thereof at the residence. The notice  
362 requirements of subsections (1), (2), and (3) may not be waived  
363 in the lease.

364           (5) (a) If the landlord accepts rent with actual knowledge  
365 of a noncompliance by the tenant or accepts performance by the  
366 tenant of any other provision of the rental agreement that is at  
367 variance with its provisions, or if the tenant pays rent with  
368 actual knowledge of a noncompliance by the landlord or accepts  
369 performance by the landlord of any other provision of the rental  
370 agreement that is at variance with its provisions, the landlord  
371 or tenant waives his or her right to terminate the rental  
372 agreement or to bring a civil action for that noncompliance, but  
373 not for any subsequent or continuing noncompliance. However, a  
374 landlord does not waive the right to terminate the rental  
375 agreement or to bring a civil action for that noncompliance by  
376 accepting partial rent for the period if the landlord notifies  
377 the tenant that the landlord is reserving the right to enforce

604-04278-12

20121830c2

378 the rental agreement.

379 (b) Any tenant who wishes to defend against an action by  
380 the landlord for possession of the unit for noncompliance of the  
381 rental agreement or of relevant statutes must ~~shall~~ comply with  
382 ~~the provisions in~~ s. 83.60(2). The court may not set a date for  
383 mediation or trial unless the provisions of s. 83.60(2) have  
384 been met, but must ~~shall~~ enter a default judgment for removal of  
385 the tenant with a writ of possession to issue immediately if the  
386 tenant fails to comply with s. 83.60(2).

387 (c) This subsection does not apply to that portion of rent  
388 subsidies received from a local, state, or national government  
389 or an agency of local, state, or national government; however,  
390 waiver will occur if an action has not been instituted within 45  
391 days after the landlord obtains actual knowledge of the  
392 noncompliance.

393 Section 8. Section 83.575, Florida Statutes, is amended to  
394 read:

395 83.575 Termination of tenancy with specific duration.—

396 (1) A rental agreement with a specific duration may contain  
397 a provision requiring the tenant to notify the landlord before  
398 vacating the premises at the end of the rental agreement if the  
399 provision also requires that the landlord notify the tenant if  
400 the rental agreement will not be renewed on the same terms;  
401 however, a rental agreement may not require more than 60 days'  
402 notice from either the tenant or the landlord ~~before vacating~~  
403 ~~the premises.~~

404 (2) A rental agreement with a specific duration may provide  
405 that if a tenant fails to give the required notice before  
406 vacating the premises at the end of the rental agreement, the

604-04278-12

20121830c2

407 tenant may be liable for liquidated damages as specified in the  
408 rental agreement if the landlord provides written notice to the  
409 tenant specifying the tenant's obligations under the  
410 notification provision contained in the lease and the date the  
411 rental agreement is terminated. The landlord must provide such  
412 written notice to the tenant within 15 days before the start of  
413 the notification period contained in the lease. The written  
414 notice shall list all fees, penalties, and other charges  
415 applicable to the tenant under this subsection.

416 (3) If the tenant remains on the premises with the  
417 permission of the landlord after the rental agreement has  
418 terminated and fails to give notice required under s. 83.57(3),  
419 the tenant is liable to the landlord for an additional 1 month's  
420 rent.

421 Section 9. Section 83.58, Florida Statutes, is amended to  
422 read:

423 83.58 Remedies; tenant holding over.—If the tenant holds  
424 over and continues in possession of the dwelling unit or any  
425 part thereof after the expiration of the rental agreement  
426 without the permission of the landlord, the landlord may recover  
427 possession of the dwelling unit in the manner provided for in s.  
428 83.59 ~~[F.S. 1973]~~. The landlord may also recover double the  
429 amount of rent due on the dwelling unit, or any part thereof,  
430 for the period during which the tenant refuses to surrender  
431 possession.

432 Section 10. Subsection (2) of section 83.59, Florida  
433 Statutes, is amended to read:

434 83.59 Right of action for possession.—

435 (2) A landlord, the landlord's attorney, or the landlord's

604-04278-12

20121830c2

436 agent, applying for the removal of a tenant, shall file in the  
437 county court of the county where the premises are situated a  
438 complaint describing the dwelling unit and stating the facts  
439 that authorize its recovery. A landlord's agent is not permitted  
440 to take any action other than the initial filing of the  
441 complaint, unless the landlord's agent is an attorney. The  
442 landlord is entitled to the summary procedure provided in s.  
443 51.011 ~~{F.S. 1971}~~, and the court shall advance the cause on the  
444 calendar.

445 Section 11. Section 83.60, Florida Statutes, is amended to  
446 read:

447 83.60 Defenses to action for rent or possession;  
448 procedure.—

449 (1) (a) In an action by the landlord for possession of a  
450 dwelling unit based upon nonpayment of rent or in an action by  
451 the landlord under s. 83.55 seeking to recover unpaid rent, the  
452 tenant may defend upon the ground of a material noncompliance  
453 with s. 83.51(1) ~~{F.S. 1973}~~, or may raise any other defense,  
454 whether legal or equitable, that he or she may have, including  
455 the defense of retaliatory conduct in accordance with s. 83.64.  
456 The landlord must be given an opportunity to cure a deficiency  
457 in a notice or in the pleadings prior to dismissal of the  
458 action.

459 (b) The defense of a material noncompliance with s.  
460 83.51(1) ~~{F.S. 1973}~~ may be raised by the tenant if 7 days have  
461 elapsed after the delivery of written notice by the tenant to  
462 the landlord, specifying the noncompliance and indicating the  
463 intention of the tenant not to pay rent by reason thereof. Such  
464 notice by the tenant may be given to the landlord, the



604-04278-12

20121830c2

465 landlord's representative as designated pursuant to s. 83.50~~(1)~~,  
466 a resident manager, or the person or entity who collects the  
467 rent on behalf of the landlord. A material noncompliance with s.  
468 83.51(1) ~~[F.S. 1973]~~ by the landlord is a complete defense to an  
469 action for possession based upon nonpayment of rent, and, upon  
470 hearing, the court or the jury, as the case may be, shall  
471 determine the amount, if any, by which the rent is to be reduced  
472 to reflect the diminution in value of the dwelling unit during  
473 the period of noncompliance with s. 83.51(1) ~~[F.S. 1973]~~. After  
474 consideration of all other relevant issues, the court shall  
475 enter appropriate judgment.

476 (2) In an action by the landlord for possession of a  
477 dwelling unit, if the tenant interposes any defense other than  
478 payment, including, but not limited to, the defense of a  
479 defective 3-day notice, the tenant shall pay into the registry  
480 of the court the accrued rent as alleged in the complaint or as  
481 determined by the court and the rent that ~~which~~ accrues during  
482 the pendency of the proceeding, when due. The clerk shall notify  
483 the tenant of such requirement in the summons. Failure of the  
484 tenant to pay the rent into the registry of the court or to file  
485 a motion to determine the amount of rent to be paid into the  
486 registry within 5 days, excluding Saturdays, Sundays, and legal  
487 holidays, after the date of service of process constitutes an  
488 absolute waiver of the tenant's defenses other than payment, and  
489 the landlord is entitled to an immediate default judgment for  
490 removal of the tenant with a writ of possession to issue without  
491 further notice or hearing thereon. If ~~In the event~~ a motion to  
492 determine rent is filed, documentation in support of the  
493 allegation that the rent as alleged in the complaint is in error

604-04278-12

20121830c2

494 is required. Public housing tenants or tenants receiving rent  
495 subsidies are ~~shall be~~ required to deposit only that portion of  
496 the full rent for which they are ~~the tenant is~~ responsible  
497 pursuant to the federal, state, or local program in which they  
498 are participating.

499 Section 12. Subsection (1) of section 83.62, Florida  
500 Statutes, is amended to read:

501 83.62 Restoration of possession to landlord.—

502 (1) In an action for possession, after entry of judgment in  
503 favor of the landlord, the clerk shall issue a writ to the  
504 sheriff describing the premises and commanding the sheriff to  
505 put the landlord in possession after 24 hours' notice  
506 conspicuously posted on the premises. Weekends and legal  
507 holidays do not stay the 24-hour notice period.

508 Section 13. Section 83.63, Florida Statutes, is amended to  
509 read:

510 83.63 Casualty damage.—If the premises are damaged or  
511 destroyed other than by the wrongful or negligent acts of the  
512 tenant so that the enjoyment of the premises is substantially  
513 impaired, the tenant may terminate the rental agreement and  
514 immediately vacate the premises. The tenant may vacate the part  
515 of the premises rendered unusable by the casualty, in which case  
516 the tenant's liability for rent shall be reduced by the fair  
517 rental value of that part of the premises damaged or destroyed.  
518 If the rental agreement is terminated, the landlord shall comply  
519 with s. 83.49(3) ~~[F.S. 1973]~~.

520 Section 14. Subsection (1) of section 83.64, Florida  
521 Statutes, is amended to read:

522 83.64 Retaliatory conduct.—

604-04278-12

20121830c2

523 (1) It is unlawful for a landlord to discriminatorily  
524 increase a tenant's rent or decrease services to a tenant, or to  
525 bring or threaten to bring an action for possession or other  
526 civil action, primarily because the landlord is retaliating  
527 against the tenant. In order for the tenant to raise the defense  
528 of retaliatory conduct, the tenant must have acted in good  
529 faith. Examples of conduct for which the landlord may not  
530 retaliate include, but are not limited to, situations where:

531 (a) The tenant has complained to a governmental agency  
532 charged with responsibility for enforcement of a building,  
533 housing, or health code of a suspected violation applicable to  
534 the premises;

535 (b) The tenant has organized, encouraged, or participated  
536 in a tenants' organization;

537 (c) The tenant has complained to the landlord pursuant to  
538 s. 83.56(1); ~~or~~

539 (d) The tenant is a servicemember who has terminated a  
540 rental agreement pursuant to s. 83.682;

541 (e) The tenant has paid rents to a condominium,  
542 cooperative, or homeowners' association after demand from the  
543 association in order to pay the landlord's obligation to the  
544 association; or

545 (f) The tenant has exercised his or her rights under local,  
546 state, or federal fair housing laws.

547 Section 15. Subsection (1) of section 723.063, Florida  
548 Statutes, is amended to read:

549 723.063 Defenses to action for rent or possession;  
550 procedure.—

551 (1) (a) In any action based upon nonpayment of rent or

604-04278-12

20121830c2

552 seeking to recover unpaid rent, or a portion thereof, the mobile  
553 home owner may defend upon the ground of a material  
554 noncompliance with any portion of this chapter or may raise any  
555 other defense, whether legal or equitable, which he or she may  
556 have. The mobile home park owner must be given an opportunity to  
557 cure a deficiency in a notice or in the pleadings prior to  
558 dismissal of the action.

559 (b) The defense of material noncompliance may be raised by  
560 the mobile home owner only if 7 days have elapsed after he or  
561 she has notified the park owner in writing of his or her  
562 intention not to pay rent, or a portion thereof, based upon the  
563 park owner's noncompliance with portions of this chapter,  
564 specifying in reasonable detail the provisions in default. A  
565 material noncompliance with this chapter by the park owner is a  
566 complete defense to an action for possession based upon  
567 nonpayment of rent, or a portion thereof, and, upon hearing, the  
568 court or the jury, as the case may be, shall determine the  
569 amount, if any, by which the rent is to be reduced to reflect  
570 the diminution in value of the lot during the period of  
571 noncompliance with any portion of this chapter. After  
572 consideration of all other relevant issues, the court shall  
573 enter appropriate judgment.

574 Section 16. This act shall take effect July 1, 2012.