

STORAGE NAME: h0733s1z.rpp
DATE: May 16, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
REAL PROPERTY AND PROBATE
FINAL ANALYSIS**

BILL #: CS/HB 733

RELATING TO: Landlord & Tenant

SPONSOR(S): Committee on Real Property & Probate and Representative Bilirakis

TIED BILL(S): None.

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

- (1) REAL PROPERTY & PROBATE YEAS 7 NAYS 0
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS (W/D)
 - (3) FINANCIAL SERVICES (W/D)
 - (4) GOVERNMENTAL OPERATIONS (W/D)
 - (5)
-

I. SUMMARY:

This bill relates to residential leases. If a landlord elects to place a tenant's security deposit in an interest-bearing account, this bill reduces the proportion of the earned interest that the landlord must pay to the tenant who posted the security deposit from 75 percent to 50 percent of earned interest, and provides that accrued interest is paid when the deposit is returned, not annually. This bill also provides that the landlord and tenant may agree to a different arrangement regarding interest earned on a security deposit posted by the tenant.

This bill also provides 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 notice provisions of the Disposition of Personal Property Landlord and Tenant Act are not applicable.

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

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

On April 6, 2000, this bill was withdrawn from further consideration.

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. The landlord has three options on how to treat security deposit funds received:

- The landlord may hold the money in a separate non-interest bearing account for the benefit of the tenant.¹
- The landlord may hold the money in a separate interest bearing account for the benefit of the tenant. The landlord is required to pay the tenant 75 percent of the earned interest, or 5 percent simple interest on the amount of the deposit, whichever the landlord elects.²
- The landlord may hold and use the monies, so long as the landlord posts a surety bond³ and pays the tenant 5 percent interest.⁴

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.⁵ If the landlord fails to give the required notice within the 15-day

¹ Section 83.49(1)(a), F.S.

² Section 83.49(1)(b), F.S.

³ The amount of the surety bond must be at least the total of security deposits, limited to \$50,000 countywide or \$250,000 statewide.

⁴ Section 83.49(1)(c), F.S.

⁵ Section 83.49(3), F.S. The form of notice is prescribed in the statute.

period, the landlord forfeits the right to impose a claim upon the security deposit,⁶ but the landlord may still sue to collect damages in civil court.⁷

If the landlord makes a claim against the deposit, the tenant 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.⁸ 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.⁹

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.¹⁰ Where interest is required to be paid to the tenant, the landlord must annually pay the earned interest directly to the tenant, or give the tenant a credit against rent. However, no interest is due to a tenant who wrongfully terminates his or her tenancy prior to the end of the rental agreement.¹¹

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. 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.¹²

If the landlord prevails in an eviction action, the statutes specify the clerk of the court issue a writ 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."¹³ 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

⁶ Section 83.49(3)(a), F.S.

⁷ *Durene v. Alcime*, 448 So.2d 1208 (Fla. 3rd DCA 1984).

⁸ Section 83.49(3)(b), F.S.

⁹ Section 83.49(3)(c), F.S.

¹⁰ Section 83.49(5), F.S.

¹¹ Section 83.49(9), F.S.

¹² Section 83.67(3), F.S.

¹³ Section 83.62(1), F.S.

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.¹⁴

Disposition of Personal Property Landlord and Tenant Act

The disposition of personal property of a tenant remaining at the conclusion of the lease term may also be governed by the Disposition of Personal Property Landlord and Tenant Act (Act).¹⁵ A landlord is not required to follow this Act, its provisions are optional.¹⁶

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 follow 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 10 days after the notice is personally delivered or, if mailed, not fewer than 15 days after the notice is deposited in the mail.¹⁷

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.¹⁸ 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.¹⁹ A landlord who follows these procedures is not liable to a former tenant or other owner of personal property for loss or damage to the property.²⁰

C. EFFECT OF PROPOSED CHANGES:

Florida Residential Landlord and Tenant Act

If a landlord elects to place a security deposit in an interest-bearing account, this bill changes the interest that the landlord must pay to the tenant who posted the security deposit from 75 percent of the annualized average interest rate payable on the account to 50 percent of the accumulated interest paid on the account, unless otherwise agreed to in

¹⁴ Section 83.62(2), F.S.

¹⁵ Sections 715.10 to 715.111, F.S.

¹⁶ Section 715.101(2), F.S.

¹⁷ Section 715.104, F.S.

¹⁸ Section 715.109(1), F.S.

¹⁹ Section 715.109(4), F.S.

²⁰ Section 715.11, F.S.

writing. The bill further provides that interest payable to a tenant is to be paid to the tenant upon return of the security deposit.

This bill also provides 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 comply with the provisions of s. 715.104, F.S. (notice of sale of property under the Disposition of Personal Property Landlord and Tenant Act). This bill also makes grammatical changes to s. 83.67(3), F.S.

Disposition of Personal Property Landlord and Tenant Act

This bill increases 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. 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A bill proponent asserts that landlords usually elect to place deposit monies in a non-interest bearing account because the 25 percent share of the interest that a landlord would receive from placing the monies in an interest bearing account is insufficient to cover the administrative costs of accounting for the interest owed to tenants. The bill proponent also

asserts that this bill may encourage landlords to place funds currently held in non-interest bearing accounts into interest-bearing accounts that would benefit landlords and tenants.²¹

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:

It is unclear why this bill would provide that, when a tenant and landlord agree that the landlord is not responsible for property of the tenant under s. 83.67, F.S., the landlord need not comply with s. 715.104, F.S. Section 715.104, F.S., is only part of a set of statutes that are specifically optional. See s. 715.101(2), F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Real Property & Probate met on February 21, 2000. One amendment, and amendments to the amendment, were considered and adopted:

1. The sponsor introduced an amendment to sections 1 and 2 of this bill to substantially conform those sections to CS/SB 696. This amendment restores to current law s.

²¹ Meeting with Jodi Chase, Esquire, February 9, 2000.

83.49(1)(c), F.S., regarding interest payable when a landlord elects to post a surety bond. This amendment restores to current law the provision giving a tenant 15 days to object to a claim against the tenant's deposit. This amendment also removes the reference to the Disposition of Personal Property Landlord and Tenant Act and the reference to evictions in s. 83.67(3)(a), F.S. This amendment makes grammatical changes to s. 83.67(3)(a), F.S.; and amends s. 83.49(9), F.S., to reflect the change to s. 83.49(1)(b), F.S., whereby accrued interest is payable to a tenant when the security deposit is returned rather than annually. Three amendments to this amendment were adopted:

1. This amendment to the amendment restores the reference to the Disposition of Personal Property Landlord and Tenant Act in s. 83.67(3)(a), F.S.
2. and 3. These amendments to the amendment remove the change that would extend from 15 to 30 days the time within which a landlord must give notice to a tenant of the landlord's intent to make a claim against a security deposit.

The amendment, as amended, was adopted, and the bill was reported favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Alan W. Livingston

Rebecca R. Everhart

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

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