

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1527 Landlords and Tenants
SPONSOR(S): Brandenburg
TIED BILLS: **IDEN./SIM. BILLS:** SB 2666

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		DeJesus	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Current law provides that a tenant may be required to pay liquidated damages if the tenant fails to give the required notice before vacating the premises at the end of the rental agreement.

This bill amends section 83.575(2), F.S., to specify a rental agreement “with a specific duration” and adds a requirement that the landlord provide written notice to the tenant specifying the tenant’s obligations under the notification provision contained in the lease and the date the rental agreement is terminated before the tenant may be held liable.

This bill also amends section 83.575(2), F.S., to require that the landlord provide such written notice to the tenant within 15 days before the start of the notification period contained in the lease. This bill requires that the written notice list all fees, penalties, and other charges to the rental agreement.

This bill appears to have no fiscal impact on state or local governments.

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

STORAGE NAME: h1527.ju.doc
DATE: March 10, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

To the extent this bill places more responsibility on the landlord to provide notice to a tenant before the tenant is liable, it may increase the personal responsibility of landlords.

To the extent this bill relieves a tenant of liability for liquidated damages, it may decrease personal responsibility of tenants.

B. EFFECT OF PROPOSED CHANGES:

FLORIDA’S LANDLORD – TENANT LAW

Part II of chapter 83, F.S., entitled “Florida Residential Landlord and Tenant Act” governs the relationship between landlords and tenants in a residential lease agreement.¹ Such issues as payment of rent,² duration of leases,³ security deposits,⁴ maintenance of the dwelling and premises,⁵ and termination of rental agreements⁶ are addressed by chapter 83.

Section 83.67, F.S., prohibits certain acts by a landlord in a residential lease. Specifically, the following acts are prohibited:

- Terminating or interrupting of any utility service furnished to the tenant;
- Denying tenant reasonable access to the dwelling, e.g., changing the locks;
- Discriminating against a service member in offering the dwelling for rent or in any of the terms in the rental agreement; and
- Removing outside doors, locks, roof, walls, windows, or removing the tenants’ personal property unless taken pursuant to surrender, abandonment or a lawful eviction.

A landlord who violates any of these provisions is liable for actual and consequential damages or three months’ rent, which ever is greater. The landlord is also liable for costs and attorney’s fees.⁷

Section 83.575, F.S., provides that a rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the agreement.⁸ The rental agreement may not require more than 60 days’ notice before vacating the premises.⁹

¹ 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. See s. 83.43, F.S.

² See 83.46, F.S.

³ *Id.*

⁴ See s. 83.49, F.S.

⁵ See ss. 83.51 and 83.52, F.S.

⁶ See s. 83.56, F.S.

⁷ See s. 83.67(5), F.S.

⁸ See s. 83.575(1), F.S.

Section 83.575(2), F.S., provides that the rental agreement may provide that the tenant may be liable for liquidated damages if the tenant fails to give the required notice before vacating the premises at the end of the rental agreement. The liquidated damages are determined as specified in the rental agreement.¹⁰ Additionally, the section provides that if the tenant remains in the rental unit after the termination of the rental agreement with the landlord's permission and fails to give timely notice as required in s. 83.57, F.S.,¹¹ prior to leaving, the tenant is liable to the landlord for one month's rent.¹²

It has been reported that s. 83.575, F.S., provides for the potential abuse by landlords to employ predatory practices to impose and collect fees from tenants.¹³ The section currently allows for a landlord to collect liquidated damages from a tenant if the tenant fails to give notice before vacating the premises if notice is required by the rental agreement.¹⁴

PROPOSED CHANGES

This bill amends s. 83.575(2), F.S., to clarify that the rental agreement is one "with specific duration." This bill also amends s. 83.575(2), F.S., to require the landlord to provide written notice of the notification provision and termination date contained in the lease 15 days before the notification period is scheduled to commence. The bill requires that the notice list all fees, penalties, and other charges to the rental agreement.

C. SECTION DIRECTORY:

Section 1. Amends s. 83.575(2), F.S., clarifying a rental agreement be with a specific duration; and requires that the landlord provide written notice of the notification provision and termination date, including fees, penalties, and other charges to the rental agreement.

Section 2. Provides that this act shall take effect upon becoming a law.

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.

⁹ *Id.*

¹⁰ See s. 83.575(2), F.S.

¹¹ Section 83.57(3) requires either party wishing to terminate a tenancy without a specific duration to give at least 15 days' notice prior to the end of any monthly period if the tenancy is from month-to-month.

¹² See 83.575(3), F.S.

¹³ See "Well-heeled landlords have a new weapon." *The Sun-Sentinel*, Douglas C. Lyons, March 6, 2004.

¹⁴ See s. 83.575(2), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could have a negative fiscal impact on owners/operators of rental properties because it establishes a duty to provide written notice to the tenant of the tenants' obligations. To the extent that the owners/operators fail to meet the requirements of notice this bill requires, they may not be able to recover liquidated damages from tenants who move at the end of the rental agreement. However, the fiscal impact of this bill on owners/operators of rental properties is indeterminate because it is unknown how many of these parties are affected and what amounts are stated as liquidated damages in such rental agreements.

This bill could have a positive fiscal impact on tenants because they will receive a written notice of their obligations before any liquidated damages could potentially be assessed against them.

D. FISCAL COMMENTS:

None.

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, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

IMPAIRMENT OF CONTRACTS

Article I, Section 10, of the Constitution of the United States is the "Contract Clause" that prohibits states from passing laws which substantially impair contract rights.¹⁵ Also, common law provides that the government cannot adversely affect substantive rights once such rights have vested.¹⁶ To determine whether a particular regulation violates the Contract Clause, courts use a balancing test. Courts measure the severity of contractual impairment against the importance of the interest advanced by the regulation and also look at whether the regulation is reasonable and narrowly tailored to the state's interest.¹⁷ This bill may impair existing contractual rights because many landlords have contractually agreed to abide by certain terms and have relied on the enforcement of these terms in choosing to rent properties in certain apartment complexes. This bill may invalidate, in part, such contractual agreements thus implicating the Contract Clause of the United States Constitution.

Similarly in Florida's Constitution, Article I, Section 10, provides in relevant part, "[n]o . . . law impairing the obligation of contracts shall be passed." The Florida Supreme Court discussed several factors for determining whether a government impairment of private contracts is permissible.¹⁸ The court explained that it must weigh the degree of impairment against "the evil which [the regulation] seeks to remedy."¹⁹ This analysis "requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power."²⁰ The public purpose in imposing the regulation

¹⁵ *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398 (1923).

¹⁶ *Bitterman v. Bitterman*, 714 So. 2d 356 (Fla. 1998).

¹⁷ *Allied Structural Steel v. Spannaus*, 438 U.S. 234 (1978).

¹⁸ *Pomponio v. Cladridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980).

¹⁹ *Id.* at 780.

²⁰ *U.S. Fidelity & Guaranty Co. v. Department of Insurance*, 453 So.2d 1355, 1360 (Fla.1984)

must be significant and legitimate, and the regulation must not unreasonably intrude into the parties' bargain to a degree greater than is necessary to achieve the stated public purpose.²¹

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 24, consider replacing "rental agreement" with "tenant" for clarity purposes.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

²¹ *Pomponio*, 378 So.2d at 780.