

PART THREE: RIGHTS OF RESIDENTIAL TENANTS

A. INTRODUCTION

The rights of residential tenants in Florida are governed by the Florida Residential Landlord Tenant Act, which is found at Florida Statutes 83.40 et seq., also known as Part II of the Landlord and Tenant Act. That Act applies to persons who occupy a dwelling unit, under the provisions of a rental agreement which calls for the payment of periodic rent in exchange for occupancy. That Act does not apply, in most cases, to transient occupancy in a mobile home park, recreational vehicle park, or to hotels, motels, rooming houses or similar public lodging. Florida Statute § 83.42(3). A second important source of tenant rights is the lease between the landlord and tenant, should one exist. The lease may add additional terms and protections for tenants, but may not lawfully waive or preclude rights found in the Act. Florida Statute § 83.47

B. TERMINATION OF A TENANCY

In Florida, absent a written lease provision to the contrary, duration of a tenancy is determined by the frequency with which a tenant pays rent. Pursuant to Florida Statute § 83.46, tenants who pay rent weekly are week to week tenants; tenants who pay rent monthly are month to month tenants, and tenants who pay rent annually are year to year tenants. If the tenant does not pay rent but receives the dwelling unit as an incident of employment, the duration of the tenancy is determined by the frequency with

which he is paid wages. For example, if wages are paid weekly, the tenancy is week to week. Florida Statute § 83.46. Termination of all such tenancies by either party must be done by written notice mailed or hand delivered to the other party. Generally, a week to week tenancy requires the delivery of such a notice not less than seven days prior to termination, while a month to month tenancy requires not less than fifteen days prior notice for termination and a year to year tenancy requires not less than sixty days prior notice. Florida Statute § 83.57.

However, if the landlord seeks to terminate because the tenant is behind in the payment of rent, the law requires only the delivery of a three day notice. The notice must advise the tenant that they have three working days to pay rent or their tenancy will terminate. Florida Statute § 83.56(3). Unfortunately, Florida law makes no provision for any sort of moratorium of a tenant's rent obligation due to loss of income during a disaster. Conversely, the landlord's obligation to give the proper amount of written notice to a tenant prior to lease termination does not abate after a disaster. But see, Florida Statute § 83.63 for rights of tenants whose rental premises are damaged or destroyed.

After the landlord has terminated a tenancy, by giving the proper amount of written notice, he must then file an action for possession in the county court where the property is located. He may not use self-help eviction methods to regain possession.

C. PROHIBITED PRACTICES

Florida Statute § 83.67 of the Florida Residential Landlord and Tenant Act prohibits constructive or self-help evictions by landlords. Specifically, the Act prohibits

landlords from:

1. directly or indirectly causing the termination or interruption of utility services including, but not limited to water, heat, light, electricity, gas, elevator, garbage collection or refrigeration, whether or not the utility service is under the control of or payment is made by the landlord;
2. preventing the tenant from gaining reasonable access to the dwelling unit by any means including, but not limited to changing the locks or using any bootlock or similar device; and
3. removing outside doors, locks, roof, walls, or windows, or personal property of the tenant except for maintenance purposes.

If the landlord takes actions prohibited by this Section, the tenant is entitled to sue for an award of actual and consequential damages or three months rent whichever is greater, as well as attorney fees and costs. Separate awards are permitted for subsequent or repeated violations which are not contemporaneous with the initial violation. Note that this section only applies to the landlord's intentional conduct and not any loss of utilities or other prohibited activities caused by a disaster.

However, it is not a prohibited practice for a landlord to take possession of the property if the tenant has abandoned the property pursuant to Florida Statute 83.59. Unless the landlord has received written notification of absence from the tenant, a landlord may presume that a tenant has abandoned the tenancy if the tenant is behind in rent and has been absent from the premises for a period of time equal to one-half the

time for periodic rental payments. The presumption does not apply if the rent is current or the tenant has notified the landlord in writing of an intended absence. Florida Statute § 83.59(3)(a).

Just after a disaster, it is common for tenants to be away from their rented property for extended periods of time as a result of evacuation or lack of utilities. It is recommended that the tenants send written notification to their landlords of their extended absence, and that they also make some provision with the landlord concerning their rental payments.

D. SECURITY DEPOSITS

Florida Statute 83.49 § governs a landlord's obligations with respect to the return of security deposits. This provision applies to all private landlord tenant relationships. It does not apply to hotels, motels or situations in which the amount of rent is regulated by law or regulations of a public body such as a public housing authority.

1. Landlord's responsibilities

Under the provisions of Florida Statute § 83.49, the landlord must exercise one of three options upon receipt of a security deposit: a) Deposit in a separate non interest bearing account for the benefit of tenants; b) Deposit in a separate interest bearing account and allow tenant to collect at least 75% of the annualized interest; c) Post a surety bond with the clerk of the circuit court. The landlord has 30 days from receipt of the advance rent or security deposit to notify the tenant in writing of the manner in which he/she is holding these monies. Once the tenant vacates the unit, if the landlord does not intend to make any claims, he/she has 15 days to return the security deposit (with

interest accrued). If the landlord decides to claim a portion of the security deposit, he/she has 30 days to give the tenant written notice by certified mail of his/her intent to impose a claim and the reason for imposing the claim. **If the landlord fails to give the required notice within the 30 day period, he or she forfeits the right to impose a claim upon the security deposit.** There are no statutory provisions for a more immediate return of a tenant's deposit after a disaster.

2. Tenant's responsibilities:

When a tenant vacates the premises, he or she has a duty to inform the landlord in writing of the address where the tenant may be reached. Failure to disclose this information relieves the landlord of the notice requirement but does not waive any right the tenant may have to the security deposit. Tenants who have vacated after a disaster should be advised to send a forwarding address to their landlords.

E. RENT WITHHOLDING AND MAINTENANCE OF PREMISES

1. Landlord's responsibilities

Florida Statute 83.51 describes the landlord's obligation to maintain the premises. These include: a) compliance with all applicable building, housing and health codes. If no codes are applicable, the landlord must maintain roofs, windows, screens, doors, floors, steps, porches, exterior walls, plumbing and structural components. b) The landlord must make reasonable provisions for: extermination; locks and keys; clean and safe common areas; garbage removal; heat, running water and hot water. **The obligations under part b) may be modified in writing in the case of single family homes or duplexes;**

2. Tenant's Responsibilities:

The tenant has a duty to keep the premises clean and sanitary, and to repair any damage caused by his usage. The landlord is not responsible to the tenant for conditions created or caused by the negligent or wrongful acts or omissions of the tenant, his/her family or guests. The tenant has a duty to notify the landlord in writing of his/her material noncompliance with Florida Statute § 83.56. The tenant's written notice must specify the non-compliance and provide notice of the tenant's intent to withhold rent unless the deficiencies are corrected within 7 days. After a disaster, a tenant who cannot get a commitment to make repairs from his or her landlord should be assisted with the preparation of such a 7 day letter, listing the material problems requiring repair and specifying that rent will no longer be sent after the passage of seven days time. The tenant should also be advised to save the withheld rent.

If the landlord completes the repairs within the 7 day time-frame, the tenant must tender the full amount of rent. If the landlord does not complete the repairs and files an action for non-payment of rent, the tenant should raise the noncompliance as a defense to the eviction. A material non-compliance with Florida Statute § 83.51 is a complete defense to an action for possession based on nonpayment of rent. At the eviction hearing, the tenant may ask the court for a reduction of rent based on the diminution in value of the dwelling during the period of the landlord's non-compliance.

It is important to note that Florida Statutes do not provide tenants an opportunity to repair and deduct. Additionally, if the landlord files an action for non-payment of rent, the court will require the tenant to post the entire amount of rent due into the court registry

prior to making a decision on the underlying eviction or as to diminution of value.

F. CASUALTY DAMAGE

Florida Statute § 83.63 of the Florida Residential Landlord and Tenant Act sets forth the rights of tenants whose rental premises are damaged or destroyed for reasons not attributable to their own wrongful or negligent acts. The rights set forth in the Act apply when the enjoyment of the premises is substantially impaired. The Act provides tenants with two options

1. In cases where the disaster has rendered the property completely uninhabitable, the tenant may immediately terminate the tenancy and vacate the premises; or

2. In cases where the disaster has rendered only a portion of the premises uninhabitable, the tenant may vacate the part of the premises rendered unusable by the casualty and reduce their rent by the fair rental value of the part of the premises damaged or destroyed.

The statute is not clear as to how the tenant should terminate the tenancy or determine the amount of rent reduction. While not specifically required, it would be wise for tenants to provide written notice to their landlord of their choice to either terminate the tenancy or to vacate part of the premises, as well as the basis for any decision to reduce a portion of the rent. Tenants often wish to know if their landlord is responsible for providing them with alternate housing when a disaster has rendered their premises uninhabitable, but nothing in the statute requires a landlord to do so. Should the tenant make the decision to vacate, it should be noted that the landlord is still subject to the

provisions of the statute which govern the return of security deposits.

It is important to note that the right to terminate the tenancy for casualty damage is given to the tenant, not to the landlord. If the tenant chooses to remain in the damaged premises, the landlord has an obligation to maintain the property pursuant to Florida Statute § 83.51. See Baldo vs. Georgoulakis, 1 Fla. L. Weekly Supp. 432b (Dade County, 1993).

G. PERSONAL PROPERTY DAMAGE

Residential tenants will frequently inquire as to whether or not the landlord is responsible for any personal property which was inside their rental unit and which was damaged due to a disaster or its aftermath. If a written lease exists, it is important to examine its terms carefully although it should be noted that most Florida leases exonerate the landlord of any responsibility for the tenant's personalty and many urge the tenant to carry renters' insurance. The Florida Statute does not deal with this issue and, absent negligence, it is doubtful that the landlord would be responsible for the value of the damaged personal property. However, the tenant may wish to make a claim with the Federal Emergency Management Agency (FEMA) for the value of the destroyed items.

H. GUESTS

Another topic of inquiry for tenants is their ability to have displaced family or friends stay with them at their rental premises after a storm. Again, the Florida Statute is silent as to this issue and the terms of the written lease or oral agreement will govern their right to add members to their households. Again, there is no moratorium on

enforcement of the lease provisions due to exigent circumstances and the tenant who allows displaced family members to reside at his rental unit may find that he has committed a lease violation. However, under the terms of Florida Statute § 83.56(2)(b), he should be sent a notice giving him 7 days in which to correct the violation before any eviction action could proceed.