

CHAPTER 83 LANDLORD AND TENANT

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PART I
NONRESIDENTIAL TENANCIES

83.001 Application.

This part applies to nonresidential tenancies and all tenancies not governed by part II of this chapter.

History.

s. 1, ch. 73-330.

83.01 Unwritten lease tenancy at will; duration.

Any lease of lands and tenements, or either, made shall be deemed and held to be a tenancy at will unless it shall be in writing signed by the lessor. Such tenancy shall be from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

History.

ss. 1, 2, ch. 5441, 1905; RGS 3567, 3568; CGL 5431, 5432; s. 34, ch. 67-254.

83.02 Certain written leases tenancies at will; duration.

Where any tenancy has been created by an instrument in writing from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable, and the term of which tenancy is unlimited, the tenancy shall be a tenancy at will. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then the tenancy shall be from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

History.

s. 2, ch. 5441, 1905; RGS 3568; CGL 5432; s. 2, ch. 15057, 1931; s. 34, ch. 67-254.

83.03 Termination of tenancy at will; length of notice.

A tenancy at will may be terminated by either party giving notice as follows:

- (1) Where the tenancy is from year to year, by giving not less than 3 months' notice prior to any annual period;
- (2) Where the tenancy is from quarter to quarter, by giving not less than 45 days' notice prior to the end of any quarter;
- (3) Where the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and
- (4) Where the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.

s. 3, ch. 5441, 1905; RGS 3569; CGL 5433; s. 34, ch. 67-254.

83.04 Holding over after term, tenancy at sufferance, etc.

When any tenancy created by an instrument in writing, the term of which is limited, has expired and the tenant holds over in the possession of said premises without renewing the lease by some further instrument

in writing then such holding over shall be construed to be a tenancy at sufferance. The mere payment or acceptance of rent shall not be construed to be a renewal of the term, but if the holding over be continued with the written consent of the lessor then the tenancy shall become a tenancy at will under the provisions of this law.

History.

s. 4, ch. 5441, 1905; RGS 3570; CGL 5434; s. 3, ch. 15057, 1931; s. 34, ch. 67-254.

83.05 Right of possession upon default in rent; determination of right of possession in action or surrender or abandonment of premises.

(1) If any person leasing or renting any land or premises other than a dwelling unit fails to pay the rent at the time it becomes due, the lessor has the right to obtain possession of the premises as provided by law.

(2) The landlord shall recover possession of rented premises only:

(a) In an action for possession under s. 83.20, or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the rented premises to the landlord; or

(c) When the tenant has abandoned the rented premises.

(3) In the absence of actual knowledge of abandonment, it shall be presumed for purposes of paragraph (2)(c) that the tenant has abandoned the rented premises if:

(a) The landlord reasonably believes that the tenant has been absent from the rented premises for a period of 30 consecutive days;

(b) The rent is not current; and

(c) A notice pursuant to s. 83.20(2) has been served and 10 days have elapsed since service of such notice.

However, this presumption does not apply if the rent is current or the tenant has notified the landlord in writing of an intended absence.

History.

s. 5, Nov. 21, 1828; RS 1750; GS 2226; RGS 3534; CGL 5398; s. 34, ch. 67-254; s. 1, ch. 83-151.

83.06 Right to demand double rent upon refusal to deliver possession.

(1) When any tenant refuses to give up possession of the premises at the end of the tenant's lease, the landlord, the landlord's agent, attorney, or legal representatives, may demand of such tenant double the monthly rent, and may recover the same at the expiration of every month, or in the same proportion for a longer or shorter time by distress, in the manner pointed out hereinafter.

(2) All contracts for rent, verbal or in writing, shall bear interest from the time the rent becomes due, any law, usage or custom to the contrary notwithstanding.

History.

ss. 4, 6, Nov. 21, 1828; RS 1759; GS 2235; RGS 3554; CGL 5418; s. 34, ch. 67-254; s. 427, ch. 95-147.

83.07 Action for use and occupation.

Any landlord, the landlord's heirs, executors, administrators or assigns may recover reasonable damages for any house, lands, tenements, or hereditaments held or occupied by any person by the landlord's permission in an action on the case for the use and occupation of the lands, tenements, or hereditaments when they are not held, occupied by or under agreement or demise by deed; and if on trial of any action, any demise or agreement (not being by deed) whereby a certain rent was reserved is given in evidence, the plaintiff shall not be dismissed but may make use thereof as an evidence of the quantum of damages to be recovered.

History.

s. 7, Nov. 21, 1828; RS 1760; GS 2236; RGS 3555; CGL 5419; s. 34, ch. 67-254; s. 428, ch. 95-147.

83.08 Landlord's lien for rent.

Every person to whom rent may be due, the person's heirs, executors, administrators or assigns, shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows:

(1) Upon agricultural products raised on the land leased or rented for the current year. This lien shall be superior to all other liens, though of older date.

(2) Upon all other property of the lessee or his or her sublessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of the property on the premises leased.

(3) Upon all other property of the defendant. This lien shall date from the levy of the distress warrant hereinafter provided.

History.

ss. 1, 9, 10, ch. 3131, 1879; RS 1761; GS 2237; RGS 3556; CGL 5420; s. 34, ch. 67-254; s. 429, ch. 95-147.

83.09 Exemptions from liens for rent.

No property of any tenant or lessee shall be exempt from distress and sale for rent, except beds, bedclothes and wearing apparel.

History.

s. 6, Feb. 14, 1835; RS 1762; GS 2238; RGS 3557; CGL 5421; s. 34, ch. 67-254.

83.10 Landlord's lien for advances.

Landlords shall have a lien on the crop grown on rented land for advances made in money or other things of value, whether made directly by them or at their instance and requested by another person, or for which they have assumed a legal responsibility, at or before the time at which such advances were made, for the sustenance or well-being of the tenant or the tenant's family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling, or preparing the crop for market. They shall have a lien also upon each and every article advanced, and upon all property purchased with money advanced, or obtained, by barter or exchange for any articles advanced, for the aggregate value or price of all the property or articles so advanced. The liens upon the crop shall be of equal dignity with liens for rent, and upon the articles

advanced shall be paramount to all other liens.

History.

s. 2, ch. 3247, 1879; RS 1763; GS 2239; RGS 3558; CGL 5422; s. 34, ch. 67-254; s. 430, ch. 95-147.

83.11 Distress for rent; complaint.

Any person to whom any rent or money for advances is due or the person's agent or attorney may file an action in the court in the county where the land lies having jurisdiction of the amount claimed, and the court shall have jurisdiction to order the relief provided in this part. The complaint shall be verified and shall allege the name and relationship of the defendant to the plaintiff, how the obligation for rent arose, the amount or quality and value of the rent due for such land, or the advances, and whether payable in money, an agricultural product, or any other thing of value.

History.

s. 2, ch. 3131, 1879; RS 1764; GS 2240; RGS 3559; CGL 5423; s. 34, ch. 67-254; s. 1, ch. 80-282; s. 431, ch. 95-147.

83.12 Form of writ.

A distress writ shall be issued by a judge of the court which has jurisdiction of the amount claimed. The writ shall enjoin the defendant from damaging, disposing of, secreting, or removing any property liable to distress from the rented real property after the time of service of the writ until the sheriff levies on the property, the writ is vacated, or the court otherwise orders. A violation of the command of the writ may be punished as a contempt of court. If the defendant does not move for dissolution of the writ as provided in s. 83.135, the sheriff shall, pursuant to a further order of the court, levy on the property liable to distress forthwith after the time for answering the complaint has expired. Before the writ issues, the plaintiff or the plaintiff's agent or attorney shall file a bond with surety to be approved by the clerk payable to defendant in at least double the sum demanded or, if property, in double the value of the property sought to be levied on, conditioned to pay all costs and damages which defendant sustains in consequence of plaintiff's improperly suing out the distress.

History.

s. 2, ch. 3131, 1879; RS 1765; GS 2241; s. 10, ch. 7838, 1919; RGS 3560; CGL 5424; s. 34, ch. 67-254; s. 2, ch. 80-282; s. 432, ch. 95-147.

83.13 Levy of writ.

The sheriff shall execute the writ by service on defendant and, upon the order of the court, by levy on property distrainable for rent or advances, if found in the sheriff's jurisdiction. If the property is not so found but is in another jurisdiction, the sheriff shall deliver the writ to the proper sheriff in the other jurisdiction; and the other sheriff shall execute the writ, upon order of the court, by levying on the property and delivering it to the sheriff of the county in which the action is pending, to be disposed of according to law, unless he or she is ordered by the court from which the writ emanated to hold the property and dispose of it in his or her jurisdiction according to law. If the plaintiff shows by a sworn statement that the defendant cannot be found within the state, the levy on the property suffices as service on the defendant.

History.

s. 3, ch. 3721, 1887; RS 1765; GS 2241; RGS 3560; CGL 5424; s. 34, ch. 67-254; s. 3, ch. 80-282; s. 15, ch. 82-66; s. 8, ch. 83-255; s. 433, ch. 95-147.

83.135 Dissolution of writ.

The defendant may move for dissolution of a distress writ at any time. The court shall hear the motion not later than the day on which the sheriff is authorized under the writ to levy on property liable under distress. If the plaintiff proves a prima facie case, or if the defendant defaults, the court shall order the sheriff to proceed with the levy.

History.

s. 4, ch. 80-282.

83.14 Replevy of distrained property.

The property distrained may be restored to the defendant at any time on the defendant's giving bond with surety to the sheriff levying the writ. The bond shall be approved by such sheriff; made payable to plaintiff in double the value of the property levied on, with the value to be fixed by the sheriff; and conditioned for the forthcoming of the property restored to abide the final order of the court. It may be also restored to defendant on defendant's giving bond with surety to be approved by the sheriff making the levy conditioned to pay the plaintiff the amount or value of the rental or advances which may be adjudicated to be payable to plaintiff. Judgment may be entered against the surety on such bonds in the manner and with like effect as provided in s. 76.31.

History.

s. 3, ch. 3131, 1879; RS 1766; s. 1, ch. 4408, 1895; RGS 3561; CGL 5425; s. 34, ch. 67-254; s. 16, ch. 82-66; s. 9, ch. 83-255; s. 434, ch. 95-147.

83.15 Claims by third persons.

Any third person claiming any property so distrained may interpose and prosecute his or her claim for it in the same manner as is provided in similar cases of claim to property levied on under execution.

History.

s. 7, ch. 3131, 1879; RS 1770; GS 2246; RGS 3565; CGL 5429; s. 34, ch. 67-254; s. 17, ch. 82-66; s. 435, ch. 95-147.

83.18 Distress for rent; trial; verdict; judgment.

If the verdict or the finding of the court is for plaintiff, judgment shall be rendered against defendant for the amount or value of the rental or advances, including interest and costs, and against the surety on defendant's bond as provided for in s. 83.14, if the property has been restored to defendant, and execution shall issue. If the verdict or the finding of the court is for defendant, the action shall be dismissed and defendant shall have judgment and execution against plaintiff for costs.

History.

RS 1768; s. 3, ch. 4408, 1895; GS 2244; RGS 3563; CGL 5427; s. 14, ch. 63-559; s. 34, ch. 67-254; s. 18, ch. 82-66.

83.19 Sale of property distrained

(1) If the judgment is for plaintiff and the property in whole or in part has not been replevied, it, or the part

not restored to the defendant, shall be sold and the proceeds applied on the payment of the execution. If the rental or any part of it is due in agricultural products and the property distrained, or any part of it, is of a similar kind to that claimed in the complaint, the property up to a quantity to be adjudged of by the officer holding the execution (not exceeding that claimed), may be delivered to the plaintiff as a payment on the plaintiff's execution at his or her request.

(2) When any property levied on is sold, it shall be advertised two times, the first advertisement being at least 10 days before the sale. All property so levied on shall be sold at the location advertised in the notice of sheriff's sale.

(3) Before the sale if defendant appeals and obtains supersedeas and pays all costs accrued up to the time that the supersedeas becomes operative, the property shall be restored to defendant and there shall be no sale.

(4) In case any property is sold to satisfy any rent payable in cotton or other agricultural product or thing, the officer shall settle with the plaintiff at the value of the rental at the time it became due.

History.

ss. 5, 6, ch. 3131, 1879; RS 1769; GS 2245; RGS 3564; CGL 5428; s. 34, ch. 67-254; s. 19, ch. 82-66; s. 10, ch. 83-255; s. 436, ch. 95-147.

83.20 Causes for removal of tenants.

Any tenant or lessee at will or sufferance, or for part of the year, or for one or more years, of any houses, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from the premises in the manner hereinafter provided in the following cases:

(1) Where such person holds over and continues in the possession of the demised premises, or any part thereof, after the expiration of the person's time, without the permission of the person's landlord.

(2) Where such person holds over without permission as aforesaid, after any default in the payment of rent pursuant to the agreement under which the premises are held, and 3 days' notice in writing requiring the payment of the rent or the possession of the premises has been served by the person entitled to the rent on the person owing the same. The service of the notice shall be by delivery of a true copy thereof, or, if the tenant is absent from the rented premises, by leaving a copy thereof at such place.

(3) Where such person holds over without permission after failing to cure a material breach of the lease or oral agreement, other than nonpayment of rent, and when 15 days' written notice requiring the cure of such breach or the possession of the premises has been served on the tenant. This subsection applies only when the lease is silent on the matter or when the tenancy is an oral one at will. The notice may give a longer time period for cure of the breach or surrender of the premises. In the absence of a lease provision prescribing the method for serving notices, service must be by mail, hand delivery, or, if the tenant is absent from the rental premises or the address designated by the lease, by posting.

History.

s. 1, ch. 3248, 1881; RS 1751; GS 2227; RGS 3535; CGL 5399; s. 34, ch. 67-254; s. 20, ch. 77-104; s. 2, ch. 88-379; s. 1, ch. 93-70; s. 437, ch. 95-147.

83.201 Notice to landlord of failure to maintain or repair, rendering premises wholly untenable; right to withhold rent.

When the lease is silent on the procedure to be followed to effect repair or maintenance and the payment of rent relating thereto, yet affirmatively and expressly places the obligation for same upon the landlord, and the landlord has failed or refused to do so, rendering the leased premises wholly untenable, the tenant

may withhold rent after notice to the landlord. The tenant shall serve the landlord, in the manner prescribed by s. 83.20(3), with a written notice declaring the premises to be wholly untenable, giving the landlord at least 20 days to make the specifically described repair or maintenance, and stating that the tenant will withhold the rent for the next rental period and thereafter until the repair or maintenance has been performed. The lease may provide for a longer period of time for repair or maintenance. Once the landlord has completed the repair or maintenance, the tenant shall pay the landlord the amounts of rent withheld. If the landlord does not complete the repair or maintenance in the allotted time, the parties may extend the time by written agreement or the tenant may abandon the premises, retain the amounts of rent withheld, terminate the lease, and avoid any liability for future rent or charges under the lease. This section is cumulative to other existing remedies, and this section does not prevent any tenant from exercising his or her other remedies.

History.

s. 2, ch. 93-70; s. 438, ch. 95-147.

83.202 Waiver of right to proceed with eviction claim.

The landlord's acceptance of the full amount of rent past due, with knowledge of the tenant's breach of the lease by nonpayment, shall be considered a waiver of the landlord's right to proceed with an eviction claim for nonpayment of that rent. Acceptance of the rent includes conduct by the landlord concerning any tender of the rent by the tenant which is inconsistent with reasonably prompt return of the payment to the tenant.

History.

s. 3, ch. 93-70.

83.21 Removal of tenant.

The landlord, the landlord's attorney or agent, applying for the removal of any tenant, shall file a complaint stating the facts which authorize the removal of the tenant, and describing the premises in the proper court of the county where the premises are situated and is entitled to the summary procedure provided in s. 51.011.

History.

s. 2, ch. 3248, 1881; RS 1752; GS 2228; RGS 3536; CGL 5400; s. 1, ch. 61-318; s. 34, ch. 67-254; s. 439, ch. 95-147.

83.22 Removal of tenant; service.

(1) After at least two attempts to obtain service as provided by law, if the defendant cannot be found in the county in which the action is pending and either the defendant has no usual place of abode in the county or there is no person 15 years of age or older residing at the defendant's usual place of abode in the county, the sheriff shall serve the summons by attaching it to some part of the premises involved in the proceeding. The minimum time delay between the two attempts to obtain service shall be 6 hours.

(2) If a landlord causes, or anticipates causing, a defendant to be served with a summons and complaint solely by attaching them to some conspicuous part of the premises involved in the proceeding, the landlord shall provide the clerk of the court with two additional copies of the complaint and two prestamped envelopes addressed to the defendant. One envelope shall be addressed to such address or location as has been designated by the tenant for receipt of notice in a written lease or other agreement or, if none has been designated, to the residence of the tenant, if known. The second envelope shall be addressed to the

last known business address of the tenant. The clerk of the court shall immediately mail the copies of the summons and complaint by first-class mail, note the fact of mailing in the docket, and file a certificate in the court file of the fact and date of mailing. Service shall be effective on the date of posting or mailing, whichever occurs later; and at least 5 days from the date of service must have elapsed before a judgment for final removal of the defendant may be entered.

History.

s. 2, ch. 3248, 1881; RS 1753; GS 2229; RGS 3537; CGL 5401; s. 1, ch. 22731, 1945; s. 34, ch. 67-254; s. 2, ch. 83-151; s. 3, ch. 84-339; s. 440, ch. 95-147.

83.231 Removal of tenant; judgment.

If the issues are found for plaintiff, judgment shall be entered that plaintiff recover possession of the premises. If the plaintiff expressly and specifically sought money damages in the complaint, in addition to awarding possession of the premises to the plaintiff, the court shall also direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment in favor of the plaintiff and against the defendant for the amount of money found due, owing, and unpaid by the defendant, with costs. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court, and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. Where otherwise authorized by law, the plaintiff in the judgment for possession and money damages may also be awarded attorney's fees and costs. If the issues are found for defendant, judgment shall be entered dismissing the action.

History.

s. 8, ch. 6463, 1913; RGS 3549; CGL 5413; s. 34, ch. 67-254; s. 1, ch. 87-195; s. 4, ch. 93-70; s. 441, ch. 95-147.

Note.

Former s. 83.34.

83.232 Rent paid into registry of court.

(1) In an action by the landlord which includes a claim for possession of real property, the tenant shall pay into the court registry the amount alleged in the complaint as unpaid, or if such amount is contested, such amount as is determined by the court, and any rent accruing during the pendency of the action, when due, unless the tenant has interposed the defense of payment or satisfaction of the rent in the amount the complaint alleges as unpaid. Unless the tenant disputes the amount of accrued rent, the tenant must pay the amount alleged in the complaint into the court registry on or before the date on which his or her answer to the claim for possession is due. If the tenant contests the amount of accrued rent, the tenant must pay the amount determined by the court into the court registry on the day that the court makes its determination. The court may, however, extend these time periods to allow for later payment, upon good cause shown. Even though the defense of payment or satisfaction has been asserted, the court, in its discretion, may order the tenant to pay into the court registry the rent that accrues during the pendency of the action, the time of accrual being as set forth in the lease. If the landlord is in actual danger of loss of the premises or other hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds so held in the court registry.

(2) If the tenant contests the amount of money to be placed into the court registry, any hearing regarding such dispute shall be limited to only the factual or legal issues concerning:

(a) Whether the tenant has been properly credited by the landlord with any and all rental payments made; and

(b) What properly constitutes rent under the provisions of the lease.

(3) The court, on its own motion, shall notify the tenant of the requirement that rent be paid into the court registry by order, which shall be issued immediately upon filing of the tenant's initial pleading, motion, or other paper.

(4) The filing of a counterclaim for money damages does not relieve the tenant from depositing rent due into the registry of the court.

(5) Failure of the tenant to pay the rent into the court registry pursuant to court order shall be deemed an absolute waiver of the tenant's defenses. In such case, the landlord is entitled to an immediate default for possession without further notice or hearing thereon.

History.

s. 5, ch. 93-70; s. 442, ch. 95-147.

83.241 Removal of tenant; process.

After entry of judgment in favor of plaintiff the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put plaintiff in possession.

History.

s. 9, ch. 6463, 1913; RGS 3550; CGL 5414; s. 34, ch. 67-254; s. 1, ch. 70-360; s. 5, ch. 94-170; s. 1371, ch. 95-147.

Note.

Former s. 83.35.

83.251 Removal of tenant; costs.

The prevailing party shall have judgment for costs and execution shall issue therefor.

History.

s. 11, ch. 6463, 1913; RGS 3552; CGL 5416; s. 34, ch. 67-254.

Note.

Former s. 83.37.

PART II RESIDENTIAL TENANCIES

83.40 Short title.

This part shall be known as the Florida Residential Landlord and Tenant Act."

History.

s. 2, ch. 73-330.

83.41 Application.

This part applies to the rental of a dwelling unit.

History.

s. 2, ch. 73-330; ss. 2, 20, ch. 82-66.

83.42 Exclusions from application of part.

This part does not apply to:

- (1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.
- (2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part.
- (3) Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.
- (4) Occupancy by a holder of a proprietary lease in a cooperative apartment.
- (5) Occupancy by an owner of a condominium unit.

History.

s. 2, ch. 73-330.

83.43 Definitions .

As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

- (1) Building, housing, and health codes" means any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.
- (2) Dwelling unit" means:
 - (a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.
 - (b) A mobile home rented by a tenant.
 - (c) A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.
- (3) Landlord" means the owner or lessor of a dwelling unit.
- (4) Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.
- (5) Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.
- (6) Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.
- (7) Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.
- (8) Good faith" means honesty in fact in the conduct or transaction concerned.
- (9) Advance rent" means moneys paid to the landlord to be applied to future rent payment periods, but does not include rent paid in advance for a current rent payment period.
- (10) Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary.
- (11) Deposit money" means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.
- (12) Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's

breach of lease prior to the expiration thereof.

(13) Legal holiday" means holidays observed by the clerk of the court.

History.

s. 2, ch. 73-330; s. 1, ch. 74-143; s. 1, ch. 81-190; s. 3, ch. 83-151; s. 17, ch. 94-170.

83.44 Obligation of good faith.

Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

History.

s. 2, ch. 73-330.

83.45 Unconscionable rental agreement or provision.

(1) If the court as a matter of law finds a rental agreement or any provision of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and effect to aid the court in making the determination.

History.

s. 2, ch. 73-330.

83.46 Rent; duration of tenancies.

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

(3) If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy, the duration is determined by the periods for which wages are payable. If wages are payable weekly or more frequently, then the tenancy is from week to week; and if wages are payable monthly or no wages are payable, then the tenancy is from month to month. In the event that the employee ceases employment, the employer shall be entitled to rent for the period from the day after the employee ceases employment until the day that the dwelling unit is vacated at a rate equivalent to the rate charged for similarly situated residences in the area. This subsection shall not apply to an employee or a resident manager of an apartment house or an apartment complex when there is a written agreement to the contrary.

History.

s. 2, ch. 73-330; s. 2, ch. 81-190; s. 2, ch. 87-195; s. 2, ch. 90-133; s. 1, ch. 93-255.

83.47 Prohibited provisions in rental agreements.

- (1) A provision in a rental agreement is void and unenforceable to the extent that it:
- (a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.
 - (b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.
- (2) If such a void and unenforceable provision is included in a rental agreement entered into, extended, or renewed after the effective date of this part and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover those damages sustained after the effective date of this part.

History.

s. 2, ch. 73-330.

83.48 Attorney's fees.

In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney's fees, from the nonprevailing party.

History.

s. 2, ch. 73-330; s. 4, ch. 83-151.

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

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord or the landlord's agent shall either:

(a) Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or \$50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest. A landlord, or the landlord's agent, engaged in the renting of dwelling units in five or more counties, who holds deposit moneys or advance rent and who is otherwise subject to the provisions of this section, may, in lieu of posting a surety bond in each county, elect to post a surety bond in the form and manner provided in this paragraph with the office of the Secretary of State. The bond shall be in the total amount of the security deposit or advance rent held on behalf of tenants or in the amount of \$250,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to

the Governor for the benefit of any tenant injured by the landlord's violation of this section. In addition to posting a surety bond, the landlord shall pay to the tenant interest on the security deposit or advance rent held on behalf of that tenant at the rate of 5 percent per year simple interest.

(2) The landlord shall, within 30 days of receipt of advance rent or a security deposit, notify the tenant in writing of the manner in which the landlord is holding the advance rent or security deposit and the rate of interest, if any, which the tenant is to receive and the time of interest payments to the tenant. Such written notice shall:

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

(b) State the name and address of the depository where the advance rent or security deposit is being held, whether the advance rent or security deposit is being held in a separate account for the benefit of the tenant or is commingled with other funds of the landlord, and, if commingled, whether such funds are deposited in an interest-bearing account in a Florida banking institution.

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

Subsequent to providing such notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she shall notify the tenant within 30 days of the change according to the provisions herein set forth. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to provide this notice shall not be a defense to the payment of rent when due.

(3) (a) Upon the vacating of the premises for termination of the lease, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or in which to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

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

If the landlord fails to give the required notice within the 15-day period, he or she forfeits the right to impose a claim upon the security deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.

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

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and salespersons, shall constitute compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits

and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

(4) The provisions of this section do not apply to transient rentals by hotels or motels as defined in chapter 509; nor do they apply in those instances in which the amount of rent or deposit, or both, is regulated by law or by rules or regulations of a public body, including public housing authorities and federally administered or regulated housing programs including s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization. With the exception of subsections (3), (5), and (6), this section is not applicable to housing authorities or public housing agencies created pursuant to chapter 421 or other statutes.

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' written notice by certified mail or personal delivery to the landlord prior to vacating or abandoning the premises which notice shall include the address where the tenant may be reached. Failure to give such notice shall relieve the landlord of the notice requirement of paragraph (3)(a) but shall not waive any right the tenant may have to the security deposit or any part of it.

(6) For the purposes of this part, a renewal of an existing rental agreement shall be considered a new rental agreement, and any security deposit carried forward shall be considered a new security deposit.

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records as stated herein, and upon transmittal of a written receipt therefor, the transferor shall be free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. However, nothing herein shall excuse the landlord or agent for a violation of the provisions of this section while in possession of such deposits.

(8) Any person licensed under the provisions of s. 509.241, unless excluded by the provisions of this part, who fails to comply with the provisions of this part shall be subject to a fine or to the suspension or revocation of his or her license by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the manner provided in s. 509.261.

6 83 83.49

(9) In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, no interest shall be due a tenant who wrongfully terminates his or her tenancy prior to the end of the rental term.

History.

s. 1, ch. 69-282; s. 3, ch. 70-360; s. 1, ch. 72-19; s. 1, ch. 72-43; s. 5, ch. 73-330; s. 1, ch. 74-93; s. 3, ch. 74-146; ss. 1, 2, ch. 75-133; s. 1, ch. 76-15; s. 1, ch. 77-445; s. 20, ch. 79-400; s. 21, ch. 82-66; s. 5, ch. 83-151; s. 13, ch. 83-217; s. 3, ch. 87-195; s. 1, ch. 87-369; s. 3, ch. 88-379; s. 2, ch. 93-255; s. 5, ch. 94-218; s. 1372, ch. 95-147; s. 1, ch. 96-146.

Note.

Former s. 83.261.

83.50 Disclosure.

(1) The landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall

disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

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

History.

s. 2, ch. 73-330; s. 443, ch. 95-147.

83.51 Landlord's obligation to maintain premises.

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

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

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

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

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

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

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

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

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2),

the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

History.

s. 2, ch. 73-330; s. 22, ch. 82-66; s. 4, ch. 87-195; s. 1, ch. 90-133; s. 3, ch. 93-255; s. 444, ch. 95-147; s. 8, ch. 97-95.

83.52 Tenants Obligation to Maintain Dwelling Unit

The tenant at all times during the tenancy shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.

(2) Keep that part of the premises which he or she occupies and uses clean and sanitary.

(3) Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.

(5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.

(6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.

(7) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

History.

s. 2, ch. 73-330; s. 445, ch. 95-147.

83.53 Landlord's access to dwelling unit.

(1) The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

(3) The landlord shall not abuse the right of access nor use it to harass the tenant.

History.

s. 2, ch. 73-330; s. 5, ch. 87-195; s. 4, ch. 93-255; s. 446, ch. 95-147.

83.535 Flotation bedding system; restrictions on use.

No landlord may prohibit a tenant from using a flotation bedding system in a dwelling unit, provided the flotation bedding system does not violate applicable building codes. The tenant shall be required to carry in the tenant's name flotation insurance as is standard in the industry in an amount deemed reasonable to protect the tenant and owner against personal injury and property damage to the dwelling units. In any case, the policy shall carry a loss payable clause to the owner of the building.

History.

s. 7, ch. 82-66; s. 5, ch. 93-255.

83.54 Enforcement of rights and duties; civil action.

Any right or duty declared in this part is enforceable by civil action.

History.

s. 2, ch. 73-330.

83.55 Right of action for damages.

If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.

History.

s. 2, ch. 73-330.

83.56 Termination of rental agreement.

(1) If the landlord materially fails to comply with s. 83.51(1) or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with s. 83.51(1) or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

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

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional

act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be adequate if it is in substantially the following form:

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

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. The notice shall be adequate if it is in substantially the following form:

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

(3) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of _____ dollars for the rent and use of the premises (address of leased premises, including county) , Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the _____ day of _____, 19____ .

(landlord's name, address and phone number)

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence.

(5) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes shall comply with the provisions in s. 83.60(2). The court may not set a date for mediation or trial unless the provisions of s. 83.60(2) have been met, but shall enter a default

judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with s. 83.60(2). This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or an agency of local, state, or national government; however, waiver will occur if an action has not been instituted within 45 days of the noncompliance.

(6) If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.

s. 2, ch. 73-330; s. 23, ch. 82-66; s. 6, ch. 83-151; s. 14, ch. 83-217; s. 6, ch. 87-195; s. 6, ch. 93-255; s. 6, ch. 94-170; s. 1373, ch. 95-147.

83.57 Termination of tenancy without specific term.

A tenancy without a specific duration, as defined in s. 83.46(2) or (3), may be terminated by either party giving written notice in the manner provided in s. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.

s. 2, ch. 73-330; s. 3, ch. 81-190; s. 15, ch. 83-217.

83.58 Remedies; tenant holding over.

If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59 [F.S. 1973]. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

History.

s. 2, ch. 73-330.

83.59 Right of action for possession.

(1) If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in s. 51.011 [F.S. 1971], and the court shall advance the cause on the calendar.

(3) The landlord shall not recover possession of a dwelling unit except:

- (a) In an action for possession under subsection (2) or other civil action in which the issue of right of possession is determined;
 - (b) When the tenant has surrendered possession of the dwelling unit to the landlord; or
 - (c) When the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he or she is absent from the premises for a period of time equal to one-half the time for periodic rental payments. However, this presumption shall not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence.
- (4) The prevailing party is entitled to have judgment for costs and execution therefor.

History.

s. 2, ch. 73-330; s. 1, ch. 74-146; s. 24, ch. 82-66; s. 1, ch. 92-36; s. 447, ch. 95-147.

83.595 Choice of remedies upon breach by tenant.

(1) If the tenant breaches the lease for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

- (a) Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; or
- (b) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rental stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from a reletting; or
- (c) Stand by and do nothing, holding the lessee liable for the rent as it comes due.

(2) If the landlord retakes possession of the dwelling unit for the account of the tenant, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rentals received by the landlord as a result of the reletting shall be deducted from the balance of rent due from the tenant. For purposes of this section, good faith in attempting to relet the premises" means that the landlord shall use at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to lease other similar rental units but does not require the landlord to give a preference in leasing the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent.

History.

s. 2, ch. 87-369; s. 4, ch. 88-379; s. 448, ch. 95-147.

83.60 Defenses to action for rent or possession; procedure .

(1) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1) [F.S. 1973], or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with s. 83.64. The defense of a material noncompliance with s. 83.51(1) [F.S. 1973] may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to s. 83.50(1), a resident manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with s. 83.51(1) [F.S. 1973] by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be,

shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with s. 83.51(1) [F.S. 1973]. After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. In the event a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies shall be required to deposit only that portion of the full rent for which the tenant is responsible pursuant to federal, state, or local program in which they are participating.

History.

s. 2, ch. 73-330; s. 7, ch. 83-151; s. 7, ch. 87-195; s. 7, ch. 93-255; s. 7, ch. 94-170; s. 1374, ch. 95-147.

83.61 Disbursement of funds in registry of court; prompt final hearing.

When the tenant has deposited funds into the registry of the court in accordance with the provisions of s. 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause.

History.

s. 2, ch. 73-330; s. 2, ch. 74-146.

83.62 Restoration of possession to landlord.

(1) In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises.

(2) At the time the sheriff executes the writ of possession or at any time thereafter, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line. Subsequent to executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.

History.

s. 2, ch. 73-330; s. 3, ch. 82-66; s. 5, ch. 88-379; s. 8, ch. 94-170; s. 1375, ch. 95-147; s. 2, ch. 96-146.

83.625 Power to award possession and enter money judgment.

In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment with costs in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to the landlord. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. The prevailing party in the action may also be awarded attorney's fees and costs.

History.

s. 1, ch. 75-147; s. 8, ch. 87-195; s. 6, ch. 88-379.

83.63 Casualty damage.

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

History.

s. 2, ch. 73-330; s. 449, ch. 95-147.

83.64 Retaliatory conduct.

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

- (a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;
- (b) The tenant has organized, encouraged, or participated in a tenants' organization; or
- (c) The tenant has complained to the landlord pursuant to s. 83.56(1).

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

History.

s. 8, ch. 83-151; s. 450, ch. 95-147.

83.67 Prohibited practices.

(1) No landlord of any dwelling unit governed by this part shall cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, 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) No landlord of any dwelling unit governed by this part shall prevent 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.

(3) No landlord of any dwelling unit governed by this part shall remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; nor shall the landlord remove the tenant's personal property from the dwelling unit unless said action is taken after surrender, abandonment, or a lawful eviction. If provided in the rental agreement or a written agreement separate from the rental agreement, upon surrender or abandonment by the tenant, the landlord shall not be liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement there shall be printed or clearly stamped on such rental agreement a legend in substantially the following form:

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.

For the purposes of this section, abandonment shall be as set forth in s. 83.59(3)(c).

(4) A landlord who violates the provisions of this section shall be liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney's fees. Subsequent or repeated violations which are not contemporaneous with the initial violation shall be subject to separate awards of damages.

(5) A violation of this section shall constitute irreparable harm for the purposes of injunctive relief.

(6) The remedies provided by this section are not exclusive and shall not preclude the tenant from pursuing any other remedy at law or equity which the tenant may have.

History.

s. 3, ch. 87-369; s. 7, ch. 88-379; s. 3, ch. 90-133; s. 3, ch. 96-146.

83.681 Orders to enjoin violations of this part.

(1) A landlord who gives notice to a tenant of the landlord's intent to terminate the tenant's lease pursuant to s. 83.56(2)(a), due to the tenant's intentional destruction, damage, or misuse of the landlord's property may petition the county or circuit court for an injunction prohibiting the tenant from continuing to violate any of the provisions of that part.

(2) The court shall grant the relief requested pursuant to subsection (1) in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases.

(3) Evidence of a tenant's intentional destruction, damage, or misuse of the landlord's property in an

amount greater than twice the value of money deposited with the landlord pursuant to s. 83.49 or \$300, whichever is greater, shall constitute irreparable harm for the purposes of injunctive relief.

History.

s. 8, ch. 93-255; s. 451, ch. 95-147.

PART III

SELF-SERVICE STORAGE SPACE

83.801 Short title.

Short title.

Sections 83.801-83.809 shall be known and may be cited as the Self-storage Facility Act."

History.

s. 1, ch. 79-404; s. 1, ch. 82-151.

83.803 Definitions.

As used in ss. 83.801-83.809:

(1) Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property. No individual storage space may be used for residential purposes. A self-service storage facility is not a warehouse" as that term is used in chapter 677. If an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the tenant shall be subject to the provisions of chapter 677, and the provisions of this act shall not apply.

(2) Self-contained storage unit" means any unit not less than 600 cubic feet in size, including, but not limited to, a trailer, box, or other shipping container, which is leased by a tenant primarily for use as storage space whether the unit is located at a facility owned or operated by the owner or at another location designated by the tenant.

(3) Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility or self-contained storage unit or his or her agent or any other person authorized by him or her to manage the facility or to receive rent from a tenant under a rental agreement.

(4) Tenant" means a person or the person's sublessee, successor, or assign entitled to the use of storage space at a self-service storage facility or in a self-contained unit, under a rental agreement, to the exclusion of others.

(5) Rental agreement" means any agreement or lease which establishes or modifies terms, conditions, rules, or any other provisions concerning the use and occupancy of a self-service storage facility or use of a self-contained storage unit.

(6) Last known address" means that address provided by the tenant in the latest rental agreement or the address provided by the tenant by hand delivery or certified mail in a subsequent written notice of a change of address.

History.

s. 1, ch. 79-404; s. 2, ch. 82-151; s. 2, ch. 92-36; s. 1, ch. 93-238; s. 452, ch. 95-147.

83.805 Lien

The owner of a self-service storage facility or self-contained storage unit and the owner's heirs, executors, administrators, successors, and assigns have a lien upon all personal property, whether or not owned by the tenant, located at a self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to ss. 83.801-83.809. The lien provided for in this section attaches as of the date that the personal property is brought to the self-service storage facility or as of the date the tenant takes possession of the self-contained storage unit, and the priority of this lien shall be the same as provided in s. 83.08; however, in the event of default, the owner must give notice to persons who hold perfected security interests under the Uniform Commercial Code in which the tenant is named as the debtor.

History.

s. 1, ch. 79-404; s. 3, ch. 82-151; s. 19, ch. 83-217; s. 2, ch. 93-238; s. 453, ch. 95-147.

83.8055 Withholding access to personal property upon nonpayment of rent.

Upon the failure of a tenant to pay the rent when it becomes due, the owner may, without notice, after 5 days from the date the rent is due, deny the tenant access to the personal property located in the self-service storage facility or self-contained storage unit. In denying the tenant access to personal property contained in the self-contained storage unit, the owner may proceed without judicial process, if this can be done without breach of the peace, or may proceed by action.

History.

s. 4, ch. 82-151; s. 3, ch. 93-238.

83.806 Enforcement of lien

An owner's lien as provided in s. 83.805 may be satisfied as follows:

(1) The tenant shall be notified by written notice delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit.

(2) The notice shall include:

(a) An itemized statement of the owner's claim, showing the sum due at the time of the notice and the date when the sum became due.

(b) The same description, or a reasonably similar description, of the personal property as provided in the rental agreement.

(c) A demand for payment within a specified time not less than 14 days after delivery of the notice.

(d) A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

(e) The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.

(3) Any notice given pursuant to this section shall be presumed delivered when it is deposited with the United States Postal Service, registered, and properly addressed with postage prepaid.

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. Inasmuch as any sale may involve

property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.

(a) The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).
2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.
3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 15 days after the first publication.

(b) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.

(5) Any sale or other disposition of the personal property shall conform to the terms of the notification as provided for in this section and shall be conducted in a commercially reasonable manner, as that term is used in s. 679.504(3).

(6) Before any sale or other disposition of personal property pursuant to this section, the tenant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property. Upon receipt of such payment, the owner shall return the property to the tenant and thereafter shall have no liability to any person with respect to such personal property. If the tenant fails to redeem the personal property or satisfy the lien, including reasonable expenses, he or she will be deemed to have unjustifiably abandoned the self-service storage facility or self-contained storage unit, and the owner may resume possession of the premises for himself or herself.

(7) A purchaser in good faith of the personal property sold to satisfy a lien provided for in s. 83.805 takes the property free of any claims, except those interests provided for in s. 83.808, despite noncompliance by the owner with the requirements of this section.

(8) In the event of a sale under this section, the owner may satisfy his or her lien from the proceeds of the sale, provided the owner's lien has priority over all other liens in the personal property. The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale. The balance, if any, shall be held by the owner for delivery on demand to the tenant. A notice of any balance shall be delivered by the owner to the tenant in person or by certified mail to the last known address of the tenant. If the tenant does not claim the balance of the proceeds within 2 years of the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the balance. In the event that the owner's lien does not have priority over all other liens, the sale proceeds shall be held for the benefit of the holders of those liens having priority. A notice of the amount of the sale proceeds shall be delivered by the owner to the tenant or secured lienholders in person or by certified mail to their last known addresses. If the tenant or the secured lienholders do not claim the sale proceeds within 2 years of the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the proceeds.

History.

s. 1, ch. 79-404; s. 5, ch. 82-151; s. 3, ch. 92-36; s. 4, ch. 93-238; s. 454, ch. 95-147.

83.808 Contractual liens.

Nothing in ss. 83.801-83.809 shall be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement nor shall it in any manner impair or affect any other lien

arising at common law, in equity, or by any statute of this state or any other lien not provided for in s. 83.805.

History.

s. 6, ch. 82-151.

83.809 Application of act.

(1) Nothing in this act shall be construed as in any manner impairing or affecting the right of parties to create additional rights, duties, and obligations in and by virtue of a rental agreement. The provisions of ss. 83.801-83.809 shall be in addition to all other rights allowed by law in a creditor-debtor or landlord-tenant relationship.

(2) Chapter 82-151, Laws of Florida, shall apply to all rental agreements entered into, extended, or renewed after July 1, 1982.

History.

ss. 7, 10, ch. 82-151.