



**EVICTIION HANDBOOK**

**Courtesy of**

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## **LANDLORD'S RIGHT TO RECOVER POSSESSION**

A landlord has the right to file an eviction to recover possession of the premises under the following circumstances:

- The rental agreement is terminated and the tenant does not vacate the premises.
- The tenant has failed to timely pay his rent.
- The tenant has materially failed to comply with the rental agreement, or with a material provision of Section 83.52, Florida Statutes, (the statute which sets forth the tenant's obligations during his tenancy).

A landlord is entitled to recover possession of the premises and need not file an eviction in order to do so under the following circumstances:

When the tenant has surrendered possession of the dwelling unit (be sure that the tenant has in fact actually surrendered possession of the dwelling unit to you); or

When the tenant has abandoned the unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he is absent from the premises for a period of time equal to one half the time for periodic rental payments. This presumption shall not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence. F.S. 83.59 (3) (c) Thus, if the tenant is to pay his rent on a monthly basis, then the tenant is presumed to have abandoned the premises if the tenant has not paid the rent for a particular month, and has not been seen by anyone on the premises for at least 15 consecutive days. If there is any doubt as to whether the tenant has abandoned the premises, it is recommended that you do not consider the premises abandoned and that you file eviction proceedings, or

When the last remaining tenant of a dwelling unit is deceased, personal property remains on the premises, rent is unpaid, at least 60 days have elapsed following the date of death, and the landlord has not been notified in writing of the existence of a probate estate or of the name and address of a personal representative.

## **COURT PROCEDURES FOR FILING EVICTIONS**

If the tenant does not vacate the premises at the conclusion of the lease, at the conclusion of a seven-day notice of termination for non-compliance without opportunity to cure, or the tenant fails to pay rent after the three-day notice was served, or fails to cure the non-compliance after a seven-day notice with opportunity to cure has been delivered, and the landlord wishes to recover possession of the premises, the landlord must file an eviction complaint. The landlord may not use self-help remedies to regain possession without filing an eviction action..

The eviction shall be filed in the county court of the county where the premises are situated. F.S. 83.59 (2), F.S. 34.011 (1) The only exception would occur in those instances where the landlord files a complaint for possession and a complaint for rent owed, and the amount of the rent owed exceeds \$15,000.00. Under these circumstances, the action should be filed in the circuit court in the county where the property is situated, because the amount that the landlord is seeking to recover exceeds the county court jurisdiction of \$15,000.00.

Filing a complaint for possession begins an eviction action. All tenants who signed the lease should be named in the complaint and served with a copy of the complaint and summons as described below.

The complaint and summons must be served by the Sheriff's Department, or a court-approved process server.

The complaint and summons should be personally served on the tenant, or a person 15 years of age or older residing at the tenant's usual place of abode. If the tenant cannot be found in the county or there is no person 15 years of age or older residing at the tenant's usual place of abode in the county after at least two attempts to obtain service as provided, the summons may be served by attaching a copy to a conspicuous place on the property described in the complaint or summons. The minimum time delay between the two attempts for service shall be six hours.

Further, if the landlord causes or anticipates causing a defendant to be served with a summons and complaint solely by attaching them to some conspicuous place on the property described in the complaint or summons, the landlord must also provide the Clerk of the Court with an additional copy of the complaint and a pre-stamped envelope addressed to the defendant at the premises involved in the proceedings. The clerk of the court shall then immediately mail the copy 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.

The tenant shall then have five days from the date that the tenant has been served the complaint and summons within which to file an answer to the eviction complaint. The five days do not include the date the summons was served, or weekends or legal holidays. If the fifth day should occur on a weekend or legal holiday, the time for answering the complaint is extended to the end of the next non-weekend or non-holiday day.

#### **PROCEDURE WHEN TENANT DOES NOT TIMELY RESPOND TO COMPLAINT**

If the tenant does not timely respond to the complaint, the landlord may apply for a default to be entered by the clerk of the court, and may request a final judgment to be entered by the court, without any further notice to the defendant, and without the necessity of any hearing.

Once the default has been entered and a final judgment has been entered, then a writ of possession is to be delivered to the sheriff.

A default may not be entered by either the court or clerk if the tenant is in the active military service.

## **PROCEDURE WHEN TENANT DOES FILE TIMELY RESPONSE TO EVICTION COMPLAINT**

If the tenant files a timely response to the eviction complaint, then one of three things may occur.

1. A default may still be entered by the Court against the tenant if the tenant did not deposit the amount of rent owed in the registry of the court or did not file a motion requesting that the court determine the amount of rent that the tenant should deposit in the registry of the court.

Section 83.60 (2), Florida Statutes, specifically requires the tenant to 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, if the tenant imposes any defense other than payment of rent.

Public housing tenants or tenants receiving rent subsidies shall be required to deposit only that portion of the full rent that the tenant is responsible for pursuant to federal, state or local programs in which they are participating. F.S. 83.60 (2)

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 five 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 a tenant with a writ of possession to issue without further notice or hearing thereon.

If the tenant should file a motion to determine the amount of rent owed, documentation in support of the allegations that the rent as alleged in the complaint is error is required.

The tenant is not required to deposit rent in the registry of the court when the tenant claims that he has made the rental payment.

2. If the tenant does timely file an answer to the eviction complaint, and the tenant does deposit the rent in the registry of the court, then the court in Orange County and Osceola County will usually set the matter for mediation. The Courts in Lake, Seminole, Volusia and Brevard typically do not set the case for mediation, but usually schedule the case for a Final Hearing as set forth in paragraph 3 below. The courts in Polk and Hillsborough County may set the matter for mediation or Trial.

The court is not supposed to schedule a date for mediation or trial until the defendant has deposited rent in the registry of the court. F.S. 83.56 (5)(b). However, many times mediation is still set even before the tenant has deposited rent in the registry of the court but when it is, the Court usually requires the tenant to put the amount of rent owed in the registry of the court prior to the date of mediation, and if the tenant fails to do so, the mediation date is cancelled and the landlord may obtain an immediate default judgment against the tenant.

If mediation is scheduled and the plaintiff/landlord fails to appear, the complaint can be dismissed.

If mediation is scheduled and the defendant fails to appear, then a default will be entered against the defendant for failure to appear at mediation.

If mediation is scheduled and the parties can reach an agreement at mediation, the parties will enter into a signed stipulation at mediation and the signed stipulation will be enforced by the court.

If the parties attend mediation and are unable to reach an agreement, then a trial will be scheduled.

Mediation is a process by which third parties (usually volunteers in county court) attempt to get the parties to reach an amicable agreement. Mediators do not have the authority to order any party to do anything and cannot force a settlement on either party. Further, anything that is said at mediation is considered confidential and may not be used in evidence at a trial. The purpose of this rule is to encourage the parties to speak freely, without fear of any statements that they make at mediation being used against them at trial if the case cannot settle.

Witnesses do not appear at mediation, and evidence is not presented to the mediators.

3. If a default is not entered, and mediation is not successful, and the parties have been unable to otherwise settle the case, the case shall be set for trial.

At the trial, the landlord must have all witnesses and documents that the landlord needs to prove its case at the trial.

Written statements by witnesses are not admissible in evidence (they are hearsay) and may not take the place of witnesses appearing live.

The landlord needs to have the actual witness present to prove the facts of the landlord's case. For example, if there is a dispute as to whether the three-day or seven-day notice was properly served, the witness who served the notice must appear at the trial. Further, if the eviction is based on a material non-compliance with the lease (such as a disturbance, damage to property, etc.), the landlord must have the actual witness present who observed the tenant damage the property, cause the noise, etc. It is not sufficient for the landlord to come to trial and state that a particular tenant complained to him about the tenant who is being evicted. The resident who made the complaint must actually appear at the trial and testify to the judge.

## **COMPLAINT FOR RENT OWED**

At the time that an eviction action is filed, the landlord may also file a second count, or Count II, where the landlord is seeking to also recover a money judgment against the tenant for any past due rent and any rent which may accrue up through the time of the trial.

If a complaint for rent is also filed simultaneously with an eviction complaint, a second summons is issued and must also be served on the tenant.

A summons and complaint for rent owed must be personally served on the tenant, or on a person 15 years of age or older who resides with the tenant. Without personal service, the court may not enter a final judgment for money against the tenant. (An exception to this would be where the landlord was unable to get personal service on the tenant but the tenant files an answer to the complaint anyway. The tenant has then submitted himself to the jurisdiction of the court and the court can enter a money judgment against the tenant even if the tenant was not personally served the summons and complaint for past due rent).

## **ATTORNEY'S FEES AND COSTS**

The prevailing party in a landlord/tenant action may recover reasonable attorney's fees and court costs from the non-prevailing party. F.S. 83.48

## **DEFENSE OF A TENANT TO ACTION FOR RENT OR POSSESSION**

It is a complete defense to an eviction action if the landlord has materially failed to comply with the landlord's obligations under Section 83.51, Florida Statutes, if the tenant has taken certain steps.

1. The tenant must deposit the rent owed in the registry of the court as discussed above.
2. The tenant must have given the landlord seven days written notice specifying the landlord's non-compliance and indicating the intention of the tenant not to pay rent by reason thereof. Further, the landlord must have failed to cure the non-compliance within seven days after having been delivered the notice by the tenant.

The amount of rent that the tenant would owe the landlord may be reduced to reflect the diminution in value of the dwelling unit during the period of non-compliance by the landlord with the landlord's requirements under the Florida Residential Landlord and Tenant Act. F.S. 83.60 (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:

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 premise or.

The tenant has organized, encouraged, or participated in a tenants' organization;  
or

The tenant has complained to the landlord pursuant to Section 83.56 (1), Florida Statutes, (which is the statute where the tenant gives the landlord written notice of the landlord's alleged non-compliance with the terms of the lease or the Florida Residential Landlord and Tenant Act) or

The tenant is a servicemember who has terminated a rental agreement pursuant to section 83.682, or

The tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association; or

The tenant has exercised his or her rights under local, state, or federal fair housing laws.

Discrimination under the retaliatory conduct statute 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. F.S. 83.64 (4)

The retaliatory conduct defense 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 non-payment of rent, violation of the rental agreement or reasonable rules, or violation of the terms of the Florida Residential Landlord and Tenant Act. F.S. 83.64 (3).

There are many other defenses that tenants do raise, although the primary ones are that the landlord has not provided proper maintenance, etc. Other common defenses raised by tenants include the fact that the landlord gave them additional time within which to pay the rent and that the eviction action shouldn't have been filed when it was filed. Additionally, for seven-day notices, tenants will often contend that they did not commit the acts for which they are charged. That is why if the case goes to trial, it is imperative that the landlord has specific witnesses who

can testify as to the specific conduct that the tenant allegedly did, which is the basis of the landlord's evictions.

Additionally, Tenants will often attempt to defend an eviction by contending the three day notice, or the 7 day notice is defective for one reason or another. However, in order to contest the validity of the notice, the tenant is required to deposit the rent due in the court registry, F.S. 83.60(2).

### **OTHER DEFENSES AND IMPEDIMENTS TO OBTAINING POSSESSION**

The Soldiers and Sailors Civil Relief Act, (Title 50 U.S.C., Appendix Section 520), precludes a default judgment from being entered against any defendant in the military service.

If the tenant is in the military service, the landlord could schedule a final hearing with the court. The court might enter final judgment after the hearing, depending on what occurred at the hearing.

Alternatively some courts have appointed an attorney to represent the defendant who is on active duty to protect the serviceman's interests. If the court appoints an attorney to represent the tenant, the court will then give that attorney time to try to contact the tenant, and file appropriate responses on behalf of the tenant, and this delays the period of time within which the landlord can obtain a final judgment for possession.

### **FICTITIOUS NAME COMPLIANCE**

The first thing that many attorneys in the Central Florida area do in defense of a landlord/tenant action for possession is check with the Division of Corporation of the Department of State in Tallahassee to determine if the apartment complex has complied with the fictitious name statute. If they have not, then the defendant will file a motion to abate the eviction action, and the court will preclude the apartment complex from proceeding with the eviction until they comply with the fictitious name statute. The tenant is not even required to deposit rent in the registry of the court if the landlord has not complied with the fictitious name statute. In order to check if your property has complied with fictitious name, you can go to [www.sunbiz.org](http://www.sunbiz.org) click on look up a business name and then click on inquire by fictitious name.

### **BANKRUPTCY**

If a tenant files for bankruptcy during an eviction proceeding, the eviction proceeding must immediately stop until the landlord obtains permission form the bankruptcy court to proceed with the eviction.

In order to obtain permission form the bankruptcy court to proceed with the eviction, the landlord must file a motion in the bankruptcy court for "relief from automatic stay". In so doing, you are asking the bankruptcy court to allow you to proceed with the eviction even though the tenant has filed for bankruptcy.

After filing a motion for relief from “automatic stay”, you will be required to attend a preliminary hearing in the bankruptcy court. Usually at the time of the preliminary hearing, the bankruptcy court will give you permission to continue to proceed with your eviction action in county court unless the tenant can give the bankruptcy court valid reasons for delaying the eviction proceeding.

Once the bankruptcy court allows you to continue to proceed, you can pick up where you left off in county court. You do not have to start the entire procedure over. If the tenant does file for bankruptcy, however, it does preclude you from obtaining a judgment for any past due rent up through the date that the tenant filed for bankruptcy, however, you may still proceed in your action for possession, once the bankruptcy court has entered an order allowing you to proceed.

### **LANDLORD’S RIGHTS DURING PENDENCY OF EVICTION PROCEEDING**

When the tenant has deposited funds in the registry of the court, 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. F.S. 83.61

When a landlord is evicting a tenant due to the tenant’s intentional destruction, damage, or misuse of the landlord’s property, the landlord may petition the court for an injunction against the tenant. F.S. 83.681 (1)

Evidence of a tenant’s intentional destruction, damage or misuse of the landlord’s property in the amount greater than twice the amount of money deposited with the landlord, or \$300.00, whichever is greater, shall constitute irreparable harm for the purpose of injunctive relief. F.S. 83.681 (3)

The court may also issue temporary and permanent injunctions where appropriate for other violations of the Florida Residential Landlord and Tenant Act during the pendency of an eviction. F.S. 34.011 (1)

### **PROCEDURE AFTER COURT AWARDS JUDGMENT FOR POSSESSION**

If you are awarded possession by the court, either because of a default of the tenant, or because the tenant failed to appear at mediation, or failed to comply with an agreement reached at mediation, or if the court awards a final judgment for possession after a trial, the procedure for actually obtaining possession of the property is the same.

After entry of a judgment for possession in favor of the landlord, the clerk of the court shall issue a writ of possession 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.

At the time the sheriff executes the writ of possession, or at any time thereafter, the landlord or his 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.

If the landlord requests the sheriff to remain at the premises, 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. The amount of the hourly rate set by the sheriff is:

- \$90.00 for the issuance of the writ of possession (some counties charge more)
- \$31.00 per hour, or portion thereof, for each deputy sheriff required to stand by on the scene after the first hour.

If the property is removed from the premises then neither the sheriff nor the landlord shall be liable to the tenant or any other party for the loss, destruction or damage to the property after it has been removed. F.S. 83.62 (2)

Alternatively, after the sheriff executes the writ of possession, the landlord can elect to retain possession of the tenant's personal property, instead of removing the personal property from the premises as described above, to enforce a landlord's lien as described below. However, if the landlord does this and wishes to enforce their lien, the landlord must comply with the disposition of personal property, Florida Residential Landlord and Tenant Act. F.S. 715.10, et., seq. (see Abandoned Property). The landlord will, however, have a landlord's lien on the tenant's property and can refuse to give the property to the tenant until the tenants pays the landlord any rent owed to the landlord, plus any storage fees for storage of the property (see Landlord's Lien). Very seldom does a landlord elect to enforce a lien, as it requires a number of steps to enforce it, as described below.

### **LANDLORD'S LIEN**

With regard to a residential tenancy, the landlord has a lien on all personal property of the tenant located on the premises for accrued rent due to the landlord under the rental agreement.

The landlord's lien for rent shall attach to the tenant's personal property at the time the sheriff gives the landlord possession of the premises, but it is not required that the tenants' property be removed in order to give the landlord possession of the premises.

This means that the landlord may simply change the locks on the apartment when the sheriff executes the writ of possession, and the landlord now has a lien on all personal property in the apartment for accrued rent due to the landlord under the rental agreement.

Furthermore, since the landlord's lien attaches to all personal property of the tenant located on the premises, this means that the landlord has a lien on property not just in the

apartment, but any other property of the tenant on the premises at the time the sheriff executes the writ of possession. Premises is defined as,

A dwelling unit and the structure of which it is a part in a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenant's generally. F.S. 83.43 (5).

If the tenant is the head of a family, personal property owned by him in the value of \$1,000.00 is exempt from the landlord's lien provided by Section 713.691, Florida Statutes.

If the landlord wishes to enforce its lien, by selling the property and using the money to satisfy the tenant's obligation for accrued rent, the landlord must follow the procedures of the disposition of personal property Florida Residential Landlord and Tenant Act. F.S. 715.10.

### **DAMAGES OWED BY TENANT AFTER SURRENDERING POSSESSION, ABANDONING PREMISES, OR BEING EVICTED**

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 (been absent for 15 days or more and did not pay rent for the month), the landlord may:

- (1) Treat the lease as terminated and retake possession for his own account, thereby terminating any further liability of the tenant, or
- (2) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rent stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from a re-letting, or
- (3) Standby and do nothing, holding the lessee liable for the rent as it comes due, or
- (4) Charge liquidated damages, as provided in the rental agreement, or an early termination fee to the tenant if the landlord and tenant have agreed to liquidated damages or an early termination fee, if the amount does not exceed 2 months' rent, and if, in the case of an early termination fee, the tenant is required to give no more than 60 days notice, as provided in the rental agreement, prior to the proposed date of early termination. This remedy is available only if the tenant and the landlord, at the time of the rental agreement was made, indicated acceptance of liquidated damages or an early termination fee. The tenant must indicate acceptance of liquidated damages or an early termination fee by signing a separate addendum to the rental agreement containing a provision in substantially the following form:

“( )I agree, as provided in the rental agreement, to pay \$\_\_\_\_\_ (an amount that does not exceed 2 months' rent) as liquidated damages or an early termination fee if I elect to terminate the rental agreement, and the landlord waives the right to seek additional rent beyond the month in which the landlord retakes possession.

( ) I do not agree to liquidated damages or an early termination fee, and I acknowledge that the landlord may seek damages as provided by law.

In addition to liquidated damages or an early termination fee, the landlord is entitled to the rent and other charges accrued through the end of the month in which the landlord retakes possession of the dwelling unit and charges for damages to the dwelling unit.

A landlord is not required to give a tenant the liquidated damage option in paragraph (4) above, however most do. It is recommended that the tenant be given the option in paragraph (4) because if the tenant exercises that option, then both the landlord and tenant will know exactly what amount the tenant will be obligated to pay for breaching the lease agreement.

If the tenant and landlord have not agreed to the liquidated option in paragraph (4) the landlords typically, take the option in paragraph (2) that is, they retake possession of the dwelling unit for the account of the tenant, and hold the tenant liable for the difference between the rent stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from a re-letting. Under this method, neither party knows what the tenant will owe for a breach of the lease until the premises is re-rented. It is possible this method could benefit the tenant if the premises is re-rented quickly.

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 re-let the premises. Good faith in attempting to re-let the premises means that the landlord shall use at least the same efforts to re-let the premises as were used in the initial rental or at least the same efforts that the landlord uses in attempting to lease other similar rental units. It does not require the landlord to give a preference in leasing the premises over other vacant dwelling units that the landlord owns or has a responsibility to rent. F.S. 83.595 (2)

### **PROCEDURE FOR EVICTING TENANT FOR FAILURE TO PAY RENT**

If the tenant fails to pay rent when due, and the default continues for three 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 initiate eviction proceedings.

The notice to be given to the tenant must state substantially the following:

You are hereby notified that you are indebted to me in the sum of \$\_\_\_\_ 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 three days (excluding Saturday, Sunday and legal holidays) from the date of delivery of this notice, to-wit: on or before the \_\_\_\_ day of \_\_\_\_, 20 \_\_.

\_\_\_\_\_  
(landlord's name, address, phone #)

The three day notice must have the following information.

- ✓ The notice must be addressed to all tenants who signed the lease.
- ✓ The notice must be addressed to the exact apartment that the tenants live in.
- ✓ The address should also include city and county.
- ✓ The three-day notice may only set forth actual rent owed and may not include anything not called rent; specifically, the three-day notice cannot include late charges, NSF charges, utility charges, or any other charges unless those charges are specifically called rent in the lease.
- ✓ If you do have late charges, and the late charges accrue on a daily basis, it is recommended that you just put the total amount of late charges that are due and owing as of the date that the three-day notice is issued. There is at least one judge that has ruled that a three-day notice that includes an additional late day penalty per day is a void three-day notice because it required the tenant to undertake a mathematical calculation to determine how much is owed on any given day. By utilizing this procedure, you may lose as much as three days late fees, but it is better to lose three days late fees, than to run the risk of having the eviction thrown out if the judge is one who feels that a three-day notice is improper if it requires a tenant to undertake a mathematical calculation.
- ✓ The three-day notice must state the correct expiration date. In calculating the expiration date, you do not count the day that the three-day notice is delivered, and you do not count weekends or legal holidays. Legal holidays for the purpose of a three day notice shall be court-observed holidays only. Not all counties have the same court-observed holidays. You should check with the clerk's office in the county where your property is located to make sure you know when they are observing holidays.
- ✓ If the three-day notice is mailed, you must add five days to the expiration date.
- ✓ In addition, some courts have held that if a rental payment is due in a county other than the county the property is located in, you must add 5 days to your three day notice under the theory that the tenant should be given an additional 5 days to mail you the rent.

After the three-day notice is served, the person who served the three-day notice should indicate when and how the notice was served on the copy of the three-day notice retained by the landlord. This can be critical in those instances where the tenant contends they did not receive the three-day notice.

The three-day notice shall be delivered by one of the following methods:

- 1) Mailing
- 2) Delivering the notice directly to the tenant at the tenant's residence
- 3) If the tenant is absent from the premises, by leaving a copy thereof at the residence. Note you can only leave a copy at the residence if the tenant is absent from the premises, and therefore you must knock on the door first to determine if the tenant is

home before leaving a copy at the residence. The copy should be folded and securely fastened to a conspicuous place on the front door.

Once the three-day notice has been delivered, you are not required to accept any rent from the tenant unless the tenant pays the full amount set forth in the three-day notice. However, if the tenant does tender the full amount owed as set forth in the three-day notice, within the time period specified in the three-day notice, then you are required to accept those monies.

Once the three-day time period has expired, you are not required to accept the rent from the tenant even if they tender the full amount of the rent owed.

If you accept any rent, either full or partial, after the three-day notice has been served, then the three-day notice is void, and you cannot recover possession on that three-day notice.

The three-day notice can demand that rent be paid by cashier's check or money order, and you can refuse to accept a check for payment on a three-day notice. However, you cannot refuse payment of cash, unless your lease specifically states that you will not accept cash as payment for rent.

If you do accept a partial payment of rent, the three-day notice is void, but you can give a new three-day notice for any remaining rent owed. If the tenant does not pay you the full amount of rent under the new three-day notice, then you can file an eviction based on the new three-day notice, F.S. 83.56(5)(a)3.



**THREE DAY NOTICE TO PAY RENT**  
**OR DELIVER POSSESSION**

**TO:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DATE:** \_\_\_\_\_

You are hereby notified that you are indebted to me in the sum of \$\_\_\_\_\_ for rent and use of the premises located at \_\_\_\_\_ City of \_\_\_\_\_, \_\_\_\_\_ County, Florida, now occupied by you and that I demand payment of said rent or possession of the premises within 3 days (excluding Saturdays, Sundays and legal holidays) from the date of delivery of this notice, to wit: on or before the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**Landlord's Name**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City State Zip**

\_\_\_\_\_  
**Telephone**

I HEREBY CERTIFY that I served the original of the foregoing notice upon the addressee by (circle one) (1) US Mail (2) hand delivery (3) leaving or posting at the premises described above in the tenants absence at \_\_\_\_\_M on \_\_\_\_\_, 2014.

\_\_\_\_\_  
Signature

Form provided by Bill McCabe, P.A.

**PROCEDURE FOR FILING EVICTION FOR MATERIAL NON-COMPLIANCE WITH THE LEASE OR MATERIAL NON-COMPLIANCE WITH TENANT’S OBLIGATIONS UNDER THE FLORIDA RESIDENTIAL LANDLORD AND TENANT ACT.**

There are two types of non-compliance by a tenant. One type is a non-compliance that is of a nature that the tenant should be given an opportunity to cure, and the other type of non-compliance is the type where the tenant should not be given an opportunity to cure.

**1. Non-Compliance of a nature that the tenant should be given an opportunity to cure.**

Non-compliance which the tenant should be given an opportunity to cure are those which include, but are not limited to, activities 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. Additionally, other types of non-compliance include failure to pay security deposit, failure to put utilities in the tenant’s name, failure to pay late fees (that are not called additional rent), failure to pay pet deposits, failure to allow maintenance in, etc...

**When a tenant has committed a non-compliance of a nature that he should be given an opportunity to cure, the tenant should be given the following notice:**

You are hereby notified that you are in non-compliance with your lease \_\_\_\_\_(state the non-compliance). Demand is hereby made that you remedy the non-compliance within seven 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 further warning and without your begin given an opportunity to cure the non-compliance.

If you give the tenant a seven-day notice to cure and they do not cure, the default, then you can initiate evictions proceedings at the conclusion of the seven days, without further notice to the tenant. Example, you give the tenant a seven-day notice to remove an unauthorized pet and the tenant fails to do so, then you can immediately initiate eviction proceedings without any further notice to the tenant, since they failed to cure the default within seven days. I recommend, however, that if the tenant does not cure the default within seven days, you give them a seven day without opportunity to cure and then file the eviction at the conclusion of the seven day without opportunity to cure. I recommend this because often the tenant will come in and agree to move. Sometimes they will agree to move, but need a little more time. If this happens, you can have them sign a notice to vacate, stating the date they will vacate. If they do not vacate as agreed, you can then file an eviction based on their notice to vacate. These are usually easier evictions.

Also by giving a seven day without opportunity to cure, they may come in and let you know they did in fact cure the violation.

If the tenant cures the default within seven days, then you cannot file an eviction for that default, because the tenant has cured it.

If the tenant cures the default within seven days, but then repeats the default within 12 months, you can terminate the lease but only after you give the tenant another seven-day notice that you are going to terminate the lease (as discussed below).

You can not collect rent while a seven day notice is outstanding, or it will void that seven day notice.

**2. Non-compliance is of a nature that the tenant should not be given an opportunity to cure.**

The types of non-compliance which the tenant should not be given the opportunity to cure include a subsequent or continuing non-compliance within 12 months of a prior written warning by the landlord of a similar violation, destruction, damage, or misuse of the landlord's or other tenant's property by intentional act, subsequent or continued unreasonable disturbances, commission of crime on the property, threats of bodily injury or harm to management or personnel of management, or falsifying rental application.

If a non-compliance is of a nature that the tenant should not be given an opportunity to cure, the notice should state as follows:

You are advised that your lease is terminated effectively immediately. You shall have seven days from the delivery of this letter to vacate the premises. This action is taken because \_\_\_\_\_(cite the non-compliance).

After seven days from the delivery of the notice has expired, the eviction proceeding can be initiated.

You can not collect any rent from the tenant after the seven day notice has been served. If you do, you will void the notice. If an eviction is filed, the tenant will be required to deposit any rent owed in the court registry in order to raise any defenses.

**Requirements of notice of non-compliance.**

The notice of non-compliance, as the three-day notice, should be addressed to each tenant who has signed the lease, at their specific residence address.

The notice should specifically cite the non-compliance and should state what portion of the lease, rules and regulations, or statute are being violated.

**The notice should also specifically state when the non-compliance occurred and what the non-compliance was. (Example: you have an unauthorized dog in your apartment; or on August 14, 2014, between the hours of 1:00am and 3:00 am you created an unreasonable disturbance by having a party and causing loud noise disturbing your**

**neighbors; or on August 14, 2014, you violated the terms of your lease by threatening the maintenance man.) The notice should set forth the non-compliance with sufficient specificity so the tenant knows exactly what incident you are basing the notice of non-compliance on.**

You are not required to tell the tenant what witnesses observed the non-compliance. However, you should document in your file who observed the non-compliance so you would know what witnesses you will need in court, if it is necessary to go to trial.

The seven-day notice of non-compliance should be served in the exact same manner as the tree-day notice.

In calculating the time period under the seven days, you do not count the day that the seven-day notice was delivered, but you do count weekends and holidays, however, if the last day of the seven day period ends on a Saturday, Sunday or legal holiday, then the period shall be extended until the end of the next day which is neither a Saturday, Sunday or legal holiday. (Rule 1.090 (a), Fla. R. Civ. Pro.)

If you accept rent after the delivery of a seven-day notice, then you have voided that seven-day notice and cannot evict a tenant based on that seven-day notice. F.S. 83.56 (5). However, you can evict the tenant for any subsequent or continuing non-compliance. Thus, for example, if you accept rent knowing that the tenant has an unauthorized pet, then you can not evict the tenant up to that point for the unauthorized pet, but if the tenant keeps the unauthorized pet, you can give the tenant a new seven-day notice and if the tenant has not removed the pet at the end of the new seven-day notice, you can file an eviction based on the new seven-day notice of non-compliance.

**SEVEN DAY NOTICE  
OF NON-COMPLIANCE  
(WITH OPPORTUNITY TO CURE)**

**TO:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Date:** \_\_\_\_\_

**You are hereby notified that you are in non-compliance of your lease agreement and/or Florida Law for the following reasons:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**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 further warning and without your being given an opportunity to cure the noncompliance.**

\_\_\_\_\_  
Landlord  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City State Zip  
\_\_\_\_\_  
phone

**I HEREBY CERTIFY that the original of the foregoing notice upon the addressee at the aforementioned address by (circle one) (1) US Mail (2) Hand Delivery (3) Leaving or Posting at the premises at \_\_\_\_\_ .M on the \_\_\_\_\_ day of \_\_\_\_\_ .**

\_\_\_\_\_  
Signature  
**SEVEN DAY NOTICE TO VACATE**

**DUE TO NON-COMPLIANCE  
(WITHOUT OPPORTUNITY TO CURE)**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

You are hereby 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Landlord  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City State  
\_\_\_\_\_  
Phone

I HEREBY CERTIFY that the original of the foregoing notice upon the addressee at the aforementioned address by (circle one) (1) US Mail (2) Hand Delivery (3) Leaving or Posting at the premises at \_\_\_\_\_ .M on the \_\_\_\_\_ day of \_\_\_\_\_ .

\_\_\_\_\_  
Signature

**MEANS OF TERMINATING LEASE**

If the rental agreement provides that a lease terminates on a specific date, then the lease automatically terminates on that specific date, and no action is required by the landlord to terminate the lease (action may be required by the landlord to recover possession of the premises.)

If the lease has a provision such as the following:

**Either party may terminate this agreement at the end of the initial term by giving the other party \_\_\_ days written notice prior to the end of the term, but if no notice is given, then the agreement will be extended on a month-to month basis on the same terms and conditions contained in this agreement. \_\_\_ days written notice by either party is required prior to termination during such month-to-month term.**

Then notice must be given in accordance with the lease agreement in order to terminate the lease. A rental agreement with a specific duration may require the tenant to notify the landlord within a specified period before vacating the premises at the end of the rental agreement, if such provision requires the landlord to notify the tenant within such notice period if the rental agreement will not be renewed; however, a rental agreement may not require more than 60 days notice from either the tenant or the landlord, F.S. 83.575(1). Additionally, if you wish to charge a tenant for giving insufficient notice, you must, per F.S. 83.575(2)(2013) give the tenant written notice within 15 days of the start of the notification period of his obligations under the notification provisions contained in your lease. Your notice must also advise the tenant of exactly what his liability will be if he fails to give the required notice prior to vacating the premises.

If no notice of termination is given by either party and the tenant remains on the premises then the lease becomes a Month to Month tenancy. If the lease is a month to month tenancy, then, per F.S. 83.57(3)(2013) either party may terminate the lease agreement by giving the other party at least 15 days notice prior to the end of any monthly period to terminate a month-to-month lease. If the written lease provides for more than 15 days notice to terminate a month to month lease, I still believe, based on F.S. 83.575(3)(2013) that the tenant can terminate the lease by giving the 15 day notice provided for in F.S. 83.57(3)(2013). I would recommend, however, that the landlord give the amount of notice set forth in the lease agreement to terminate a Month to Month tenancy.

If a written lease does not provide the date or the manner in which it is terminated, then the lease is terminated as follows:

- ✓ When the tenancy is from year-to-year, by giving not less than 60 days notice prior to the end of any annual period.
- ✓ When the tenancy is from quarter-to-quarter, by giving not less than 30 days notice prior to the end of any quarterly period.
- ✓ When tenancy is from month-to-month, by giving not less than 15 days notice prior to the end of any monthly period.
- ✓ When tenancy is from week-to-week, by giving not less than seven days notice prior to the end of any weekly period. F.S. 83.56 (1) – (4).

Notice of termination of a lease by the landlord must be given in writing and mailed to the tenant (it is not necessary that it be by certified mail) or by delivering a true copy of it to the tenant at his residence, or if the tenant is absent from the residence, by leaving a copy thereof at the residence. F.S. 83.57.

### **MEANS OF TERMINATING LEASE UNITED STATES ARMED FORCES MEMBER**

- (1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:
  - (a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;
  - (b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;
  - (c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty;
  - (d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;
  - (e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or
  - (f) The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.
- (2) The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.
- (3) In the event a servicemember dies during active duty, an adult member of his or her immediate family may terminate the servicemember's rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the servicemember was on active duty or a written verification signed by the servicemember's commanding officer and a copy of the servicemember's death certificate.
- (4) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such times as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the



contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable..

(5) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

### **PROCEDURE FOR INITIATING EVICTION WHEN LEASE IS OVER AND TENANT FAILS TO VACATE**

When the lease is over, and the tenant fails to vacate the premises, the landlord need not give the tenant any further notices before filing an eviction action. Instead, an eviction action can be filed immediately the day after the lease terminated, if the tenant has failed to vacate the premises.

Similarly, the landlord may recover double rent for the period of time that the tenant remains in possession after the lease is terminated. F.S. 83.58

Also, in those instances where the tenant has given notice that the lease is terminated, the landlord may initiate an eviction action on the day after the tenant advises the landlord that the lease is terminated, if the tenant remains in possession of the premises. Thus, if the tenant gives the landlord a 15-day notice terminating a month-to-month lease, and the tenant fails to move out of the premises at the end of the time period specified in the notice, then the landlord may immediately initiate an eviction proceeding and the tenant is also responsible for double rent for the period of time that he remains on the premises.

**REMINDER OF NOTICE REQUIREMENT BEFORE VACATING PREMISES  
AT END OF LEASE**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

This Notice is to remind you that paragraph \_\_\_\_\_ of your lease agreement requires you to provide the landlord with \_\_\_\_\_ days notice before vacating the premises at the end of your lease agreement. Your lease agreement will terminate on \_\_\_\_\_, unless you renew your lease agreement.

If you intend to vacate the premises at the termination of your current lease agreement, please provide us with at least \_\_\_\_\_ days notice of your intent to vacate the premises as required by your lease agreement. If you vacate the premises at the termination of your lease agreement, but fail to give us the required notice, you will be obligated to pay us the following liquidated damages as set forth in paragraph \_\_\_\_\_ of your lease agreement:

Rental Amount to cover the time period of the  
insufficient notice (not to exceed 60 days of rent)

\_\_\_\_\_  
(amount)

If you wish to renew your lease agreement, please contact management at your earliest convenience.

\_\_\_\_\_  
landlord

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Number

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above notice was (a) hand delivered (b) Posted on the premises in the absence of the tenant at the above address (c) mailed to the above named tenant by certified mail on \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature

**NOTICE OF TERMINATION OF LEASE**

**TO:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DATE:** \_\_\_\_\_

Please be advised that pursuant to paragraph \_\_\_\_ of your lease agreement with \_\_\_\_\_, your tenancy will be terminated effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_. You are therefore requested to remove yourself and all of your possessions from the aforesaid property, to-wit: on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

If you fail to vacate the premises, we will be forced to take what legal action is necessary to recover possession of the premises and pursuant to Florida Statute 83.58 (2014) you will be responsible for double the monthly rent.

Please govern yourself accordingly.

\_\_\_\_\_  
**Landlord**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City State Zip**

I Hereby certify that I served the original of the foregoing notice upon the addressee at the aforementioned address by (circle one) (1) US Mail (2) Hand Delivery (3) Leaving or posting at the premises on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_m.

\_\_\_\_\_  
**Signature**

**NOTICE OF NON-RENEWAL**

**To:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Date:** \_\_\_\_\_

Please be advised that \_\_\_\_\_ has opted to exercise their option to not renew your lease agreement. You will be expected to vacate the premises on or before \_\_\_\_\_, which is the end of your lease term.

When you vacate the premises, please remove all of your personal belongings and return your keys to the office. In the event that you do not vacate the premises by said date, legal action may be taken in which you may be held liable for double rent, court cost and attorney's fees.

**PLEASE GOVERN YOURSELF ACCORDINGLY.**

\_\_\_\_\_  
**Landlord**

\_\_\_\_\_  
Address

\_\_\_\_\_  
City                      State                      Zip

\_\_\_\_\_  
Phone Number

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above notice was (a) hand delivered (b) Posted on the premises in the absence of the tenant at the above address (c) mailed to the above named tenant by certified mail on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

**NOTICE OF TERMINATION OF MONTH-TO-MONTH TENANCY**

TO: \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Please be advised that management has chosen to terminate your month-to-month tenancy. You are therefore requested to remove yourself and all of your possessions from the aforesaid property to wit: on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. This notice is given pursuant to Florida Statute §83.57.

If you fail to vacate the premises, we will be forced to take what legal action is necessary to recover possession of the premises and pursuant to Florida Statute 83.58 (2014) you will be responsible for double the monthly rent. You may also be liable for any attorney’s fees and/or court costs which may be incurred as a result of your not timely vacating the premises.

**PLEASE GOVERN YOURSELF ACCORDINGLY.**

_____		
<b>Landlord</b>		
_____		
Address		
_____		
City	State	Zip
_____		
Phone		

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above notice was (a) hand delivered (b) Posted on the premises in the absence of the tenant at the above address (c) mailed to the above named tenant by certified mail on \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
**Signature**

**NOTICE OF TERMINATION OF LEASE**

**(Of Former Employee in possession as incident of employment)**

TO: \_\_\_\_\_ DATE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please be advised that your tenancy with \_\_\_\_\_ is hereby terminated effective the \_\_\_\_\_ 20\_\_\_. You are therefore requested to remove yourself and all of your possessions from the aforesaid property within 15 days from the date of delivery of this notice, to-wit: on or before \_\_\_\_\_.

As you know, your employment with \_\_\_\_\_ was terminated on \_\_\_\_\_, 20\_\_\_\_\_. We are hereby advising you that you must vacate by \_\_\_\_\_, 20\_\_\_\_\_. This notice is given pursuant to Florida Statute §83.46 (3) 2014.

If you fail to vacate the premises, we will be forced to take what legal action is necessary to recover possession of the premises and pursuant to Florida Statute 83.58 (2014) you will be responsible for double the monthly rent for each day you remain on the premises beyond the date you are to vacate as stated hereinabove.

**PLEASE GOVERN YOURSELF ACCORDINGLY.**

\_\_\_\_\_  
**Landlord**

\_\_\_\_\_  
**Property Address**

\_\_\_\_\_  
**City State Zip**

\_\_\_\_\_  
**Phone Number**

I Hereby certify that I served the original of the foregoing notice upon the addressee at the aforementioned address by (circle one) (1) US Mail (2) Hand Delivery (3) Leaving or posting at the premises on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_.m.

\_\_\_\_\_  
**Signature**

**NOTICE TO VACATE**

I/We \_\_\_\_\_ hereby agree to vacate the premises located at \_\_\_\_\_, which we now are renting no later than \_\_\_\_/\_\_\_\_/\_\_\_\_. In exchange for vacating at this time, Management agrees to not file any legal action for eviction prior to this time if I/We continue to comply with the terms of our lease and Florida Law.

I/We agree that any abandoned property that is left behind after the above date may be disposed of by management without notice and I/We agree to hold Management, the owners of the premises and any agents or employees harmless for such abandoned property.

I/We agree that this NOTICE TO VACATE must be signed by us AND returned to Management by hand delivery to the property manager or assistant manager no later than 5:00 PM on \_\_\_\_/\_\_\_\_/\_\_\_\_ or Management may begin legal procedures at any time.

I/We agree that his document and our vacating shall have no effect upon any financial obligations unless otherwise agreed to in writing by management.

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Resident

Additional agreements by Management if Residents vacate per this agreement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Management

\_\_\_\_\_  
Date

**TENANT VACATING AGREEMENT/ROOMMATE RELEASE  
(OTHER TENANT(S) REMAINING)**

The undersigned Tenant hereby agrees that he/she has completely vacated the premises known as \_\_\_\_\_ or will vacate the premises no later than \_\_\_/\_\_\_/\_\_\_\_.

Tenant understands that \_\_\_\_\_ shall continue to reside on the premises and is subject to all the terms and conditions of the Lease Agreement and any renewals.

Tenant agrees to relinquish all rights to the security deposit, advance rent, and prepaid fees or charges and agrees that nothing is owed to tenant by the landlord or its agent(s).

Tenant agrees to release, acquit, satisfy and forever discharge the owner of the premises, any other owners of the rental premises, any agents of the owners, its owners, agents, employees and assigns, for and from all manner of action and actions, cause and causes of action, suites, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which tenant ever had, now have, or which any personal representative, successor, heir or assign tenant, hereafter can, shall or may have, arising out of the tenancy.

Tenant agrees to hold the property owner and/or it agent(s) harmless for damage or loss to any items of personal property left on or about the premises by tenant.

The owner by and through its agent(s) hereby releases tenant from the obligations of the lease and any renewals.

DATED: \_\_\_\_\_

\_\_\_\_\_  
LEAVING TENANT

\_\_\_\_\_  
OWNER OR AGENT

\_\_\_\_\_  
REMAINING TENANT

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness



F.S. 83.67 Prohibited practices.-

(5) A landlord of any dwelling unit governed by this part shall not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; and the landlord shall not 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 is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement there must 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, ABANDONMENT OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT,, AS PROVIDED BY CHAPTER 83 FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.**

It is essential that this provision be in your lease agreement. If it is not in your lease agreement, you will be required to follow the below set forth removal of personal property procedure if the tenant surrenders or abandons the premises and leaves personal belongings in the rental unit.

**715.104 Notification of former tenant of personal property remaining on premises after tenancy is terminated**

If a landlord recovers possession of the premises and the personal property in the apartment has not been removed as part of the eviction process in accordance with Florida Statute 83.60(2) as discussed on page 8 and 9, or the lease does not contain the provision set forth in Florida Statute 83.67(5) as described on page 30, then the procedure discussed herein below must occur.

(1) When personal property remains on the premises after a tenancy has been terminated or expired and the premises have been vacated by the tenant, through eviction or otherwise, the landlord shall give written notice to such tenant and to any other person the landlord reasonably believed to be the owner of the property.

(2) The notice shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by 715.11 does not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box or other container which is locked, fastened or tied in a manner which deters immediate access to its contents may be described as such without describing its contents. The notice shall advise the person to be notified that reasonable costs of storage may be charged before the property is returned and the notice shall state where the property may be claimed and the date before which the claim must be made. The date specified in the notice shall be a date not fewer than 10 days after the notice is personally delivered or, if mailed, not fewer than 15 days after the notice is deposited in the mail.

(3) The notice shall be personally delivered or sent by first class mail, postage prepaid, to the person to be notified at her or his last known address and, if there is reason to believe that the notice sent to that address will not be received by that person, also delivered or sent to such other address, if any known to the landlord where such a person may reasonably be expected to receive the notice.

**715.107 Storage of Abandoned Property**

The personal property described in the notice either shall be left on the vacated premises or be stored by the landlord in a place of safekeeping until the landlord either releases the property pursuant to 715.108 or disposes of the property pursuant to 715.109. The landlord shall exercise reasonable care in storing the property but he is not liable to the tenant or any other owner for any loss unless caused by the landlord's deliberate or negligent act.

**715.108 Release of Personal Property**

(1) The personal property described in the notice shall be released by the landlord to the former tenant or, at the landlord's option, to any person believed by the landlord to be its owner, if such tenant or other person pays the reasonable costs of storage and advertising and takes possession of the property not later than the date specified in the notice for taking possession.

(2) Where personal property is not released pursuant to subsection (1) and the notice stated that the personal property will be sold at a public sale, the landlord shall release the personal property to the former tenant if he claims it prior to the time it is sold and pays the reasonable costs of storage and advertising and sale incurred prior to the time the property is withdrawn from sale.

### **715.109 Sale or Disposition of Abandoned Property**

(1) If the personal property described in the notice is not released pursuant to 715.108, it shall be sold at public sale by competitive bidding. However, if the landlord reasonably believes that the total resale value of the property not released is less than \$500.00, he may retain such property for his own use or dispose of it in any manner he chooses. Nothing in this section shall be construed to preclude the landlord or tenant from bidding on the property at the public sale. The successful bidder's title is subject to the ownership rights, liens, and security interest which have priority by law.

(2) Notice of the time and place of the public sale shall be given by an advertisement of the sale published once a week for two consecutive weeks in a newspaper of general circulation where the sale is to be held. The sale must be held at the nearest suitable place to that where the personal property is held or stored. The advertisement must include a description of the goods, the name of the former tenant, and the time and place of the sale. The sale must take place at least 10 days after the first publication. If there is not newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The last publication shall be at least 5 days before the sale is to be held. Notice of sale may be published before the last of the dates specified for taking possession of the property in any notice given pursuant to 715.104

**NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY**  
**(Property worth less than \$500.00)**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

When you vacated the premises at \_\_\_\_\_  
\_\_\_\_\_ the following personal property remained \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**You                    may                    claim                    this                    property                    at:**  
\_\_\_\_\_  
\_\_\_\_\_

Unless you pay the reasonable costs of storage and advertising, if any, for all the above described property and take possession of the property which you claim, not later than \_\_\_\_\_, 20\_\_\_\_, this property may be disposed of pursuant to Florida Statute 715.109.

Because this property is believed to be worth less than \$500.00, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above. F.S. 715.105 (2) (b).

\_\_\_\_\_  
**Signature of Landlord**

\_\_\_\_\_  
**Printed**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City                    State                    Zip**

\_\_\_\_\_  
**Phone Number**

**NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY**  
**(Property worth over \$500.00)**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

When you vacated the premises at \_\_\_\_\_,  
the following personal property remained:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You may claim this property at: \_\_\_\_\_  
\_\_\_\_\_

Unless you pay the reasonable costs of storage and advertising, if any, for all the above described property and take possession of the property which you claim, not later than \_\_\_\_\_, 20\_\_\_\_, this property may be disposed of pursuant to Florida Statute 715.109.

If you fail to reclaim property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property has been sold and the cost of storage, advertising, and sale are deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within one year after the county receives the money. F.S. 715.105 (2) (a).

\_\_\_\_\_  
**Landlord**

\_\_\_\_\_  
**Landlord's printed name**

\_\_\_\_\_  
**Landlord's address**

\_\_\_\_\_  
**City, State, Zip**

\_\_\_\_\_  
**Phone Number**

**NOTICE OF INTENTION TO IMPOSE A CLAIM ON SECURITY DEPOSIT**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

This is a notice of the Landlord's intention to impose a claim for damages in the amount of \_\_\_\_\_ upon your security deposit as indicated below. It is sent to you as required by Florida Statutes 83.49 (3).

Amount of Security Deposit \$ \_\_\_\_\_  
Interest if due \$ \_\_\_\_\_  
Total Security Deposit and interest (if due) \$ \_\_\_\_\_

Less rent owed:

\_\_\_\_\_ \$ \_\_\_\_\_  
Damages/Cleaning

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

Total Damages and Rent due: (-) \$ \_\_\_\_\_

Total due to: ( ) Landlord  
( ) Tenant \$ \_\_\_\_\_

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 the Landlord will be authorized to deduct its claim from your security deposit. Your objection must be sent to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that the original of the above notice was mailed to the above named via certified mail, return receipt requested on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Signature

## **FICTITIOUS NAME**

A person may not engage in business under a fictitious unless the person first registers the name with the Division of Corporations. F.S. 865.09(3).

If a business fails to comply with this act, the business, its members, and those interested in participating in such business may not maintain any action, suit, or proceeding in any court of this state until this section is complied with. Any person who fails to comply with this act commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

The fictitious name must be advertised one time in a newspaper in the county where the applicant's principal place of business will be located.

If a change of ownership occurs, the owner(s) of record must file a cancellation and re-registration within 30 days of the change.

Fictitious names are valid for 5 years and expire on December 31<sup>st</sup> of the fifth year.

Each fictitious name registration must be renewed between July 1 and December 31 of the expiration year to maintain registration under this act. The Division of Corporation will mail to the last reported mailing address, at least 3 months prior to its expiration date, a statement of renewal. Please keep current address on file with the Division of Corporations.

You can check on the status of your fictitious name, or register your fictitious name by contacting the Division of Corporations at [www.sunbiz.org](http://www.sunbiz.org).



# Florida Statutes

## Chapter 83 Part II

### Landlord/Tenant Act

#### Residential Tenancies (2013)

83.40	Short Title
83.41	Application.
83.42	Exclusions from application of part.
83.43	Definitions.
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83.46	Rent; duration of tenancies.
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83.62	Restoration of possession to landlord.
83.625	Power to award possession and enter money judgment.
83.63	Casualty damage.
83.64	Retaliatory conduct.
83.67	Prohibited practices.
83.681	Orders to enjoin violations of this part.

**83.682 Termination of rental agreement by a servicemember**

**83.40 Short title.** - This part shall be known as the "Florida Residential Landlord and Tenant Act."

**83.41 Application.** - This part applies to the rental of a dwelling unit.

**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 in which the buyer has paid at least 12 months' rent or in which the buyer has paid at least 1 months rent and a deposit of at least 5 percent of the purchase price of the property..
- (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.

**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 a 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, damaged 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 holiday observed by the clerk of the court.
- (14) "Servicemember" shall have the same meaning as provided in s. 250.01.
- (15) "Active Duty" shall have the same meaning as provided in s. 250.01.
- (16) "State active duty" shall have the same meaning as provided in s. 250.01.
- (17) "Early Termination fee" means any charge, fee, or forfeiture that is provided for in a written rental agreement and is assessed to a tenant when a tenant elects to terminate the rental agreement, as provided in the agreement, and vacates a dwelling unit before the end of the rental agreement. An early termination fee does not include:
  - (a) Unpaid rent and other accrued charges through the end of the month in which the landlord retakes possession of the dwelling unit.
  - (b) Charges for damages to the dwelling unit.
  - (c) Charges associated with a rental agreement, settlement, release, buyout-, or accord and satisfaction agreement.

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

**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 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.

**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.

**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.

**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. The right to attorney fees in this section may not be waived in a lease agreement. However, attorney fees may not be awarded under this section in a claim for personal injury damages based on a breach of duty under s. 83.51.

**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 his 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 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 his 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 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, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit.

Subsequent to providing such written 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 must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

- 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 a security deposit is being held or state that the landlord has posted a surety bond as provided by law.
- c. State whether the tenant is entitled to interest on the deposit.
- d. Contain the following disclosure;

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITIS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMANT A REFUND.

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

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

- (3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant. For all other deposits:

a. Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days 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 Statues. 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 30 day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the 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. The failure of the tenant to make a timely objection does not waive any rights of the tenant to seek damages in a separate action.

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 sales person, 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 tenant 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 to the new owner or agent and upon transmittal of a written receipt therefore, the transferor is free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. There is a rebuttable presumption that any new owner or agent received the security deposit from the previous owner or agent; however, this presumption is limited to 1 month's rent. This subsection does not excuse the landlord or agent for a violation of other 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 license by the Division of Hotels and Restaurants of the Department of Business Regulation in the manner provided in s. 509.261.
- (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 tenancy prior to the end of the rental term.

**83.50 Disclosure. -**

- (1) The landlord, or a person authorized to enter into a rental agreement on his 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 his 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 his 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.



**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. The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement,. The landlord is not 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 therefore.
  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 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..

**83.52 Tenant's 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.

**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, mortgages, tenants, workmen, 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 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.

**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.

**83.54 Enforcement of rights and duties; civil action.** - Any right or duty declared in this part is enforceable by civil action. A right or duty enforced by civil action under this section does not preclude prosecution for a criminal offense related to the lease or leased property.

**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 party, the aggrieved party may recover the damages caused by the noncompliance.

**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 the 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 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 part 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. If such noncompliance recurs within 12 months after notice, an eviction action may commence without delivering a subsequent notice pursuant to paragraph (a) or this paragraph. The notice shall be 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 further warning and 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 \_\_\_\_\_, (year).**

(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. The notice requirements of subsections (1), (2) and (3) may not be waived in the lease.

(5)(a) 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. However, a landlord does not waive the right to terminate the rental agreement or to bring a civil action for that noncompliance by accepting partial rent for the period. If partial rent is accepted after posting the notice for nonpayment, the landlord must:

1. Provide the tenant with a receipt stating the date and amount received and the agreed upon date and balance of rent due before filing an action for possession;
2. Place the amount of partial rent accepted from the tenant in the registry of the court upon filing the action for possession; or
3. Post a new 3-day notice reflecting the new amount due.

(b) 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 of s. 83.60(2). The court may not set a date for mediation or trial unless provisions of s. 83.60(2) have been met, but must 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).

(c) 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 after the landlord obtains actual knowledge of the noncompliance.

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

**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 day' 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.

**83.575 Termination of tenancy with specific duration. –**

(1) A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord within a specific period before vacating the premises at the end of the rental agreement, if such provision requires the landlord to notify the tenant within such notice period if the rental agreement will not be renewed; however, a rental agreement may not require more than 60 days notice from either the tenant or the landlord.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant's obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide such written notice to the tenant within 15 days before the start of the notification period contained in the lease. The written notice shall list all fees, penalties, and other charges applicable to the tenant under this subsection.

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

**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 permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59. 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.

**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, and the court shall advance the cause on the calendar.
- (3) The landlord shall not recover possession of a dwelling unit except:
  - a. In a action for possession under subsection (2) or other civil action in which the issue of right of possession is determined; or
  - 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 does not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence; or

- d. When the last remaining tenant of a dwelling unit is deceased, personal property remains on the premises, rent is unpaid, at least 60 days have elapsed following the date of death, and the landlord has not been notified in writing of the existence of a probate estate or of the name and address of a personal representative. This paragraph does not apply to a dwelling unit used in connection with a federally administered or regulated housing program, including programs under s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended.
- (4) The prevailing party is entitled to have judgment for costs and execution therefore.

**83.595 Choice of remedies upon breach by tenant.**

If the tenant breaches the rental agreement 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:

- (1) Treat the rental agreement as terminated and retake possession for his or her own account, thereby terminated any further liability of the tenant;
- (2) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rent stipulated to be paid under the rental agreement, and what, in good faith, the landlord is able to recover from a reletting. If the landlord retakes possession, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rent received by the landlord as a result of the reletting must be deducted from the balance of rent due from the tenant. For the purposes of this subsection the term "good faith in attempting to relet the premises" means that the landlord uses 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.
- (3) Stand by and do nothing, holding the lessee liable for the rent as it comes due; or
- (4) Charge liquidated damages, as provided in the rental agreement, or an early termination fee to the tenant if the landlord and tenant have agreed to liquidated damages or an early termination fee, if the amount does not exceed 2 months' rent, and if, in the case of an early termination fee, the tenant is required to give no more than 60 days' notice, as provided in the rental agreement, prior to the proposed date of early termination. This remedy is available only if the tenant and the landlord, at the time the rental agreement was made, indicated acceptance of liquidated damages or an early termination fee. The tenant must indicate acceptance of liquidated damages or an early termination fee by signing a separate

addendum to the rental agreement containing a provision in substantially the following form:

( ) I agree, as provided in the rental agreement, to pay \$\_\_\_\_\_ (an amount that does not exceed 2 months' rent) as liquidated damages or an early termination fee if I elect to terminate the rental agreement, and the landlord waives the right to seek additional rent beyond the month in which the landlord retakes possession.

( ) I do not agree to liquidated damages or an early termination fee, and I acknowledge that the landlord may seek damages as provided by law.

(a) In addition to liquidated damages or an early termination fee, the landlord is entitled to the rent and other charges accrued through the end of the month in which the landlord retakes possession of the dwelling unit and charges for damages to the dwelling unit.

(b) This subsection does not apply if the breach is failure to give notice as provided in s. 83.575.

**83.60 Defenses to action for rent or possession; procedure. -**

(1)(a) 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), 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 landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.

(b) The defense of a material noncompliance with s. 83.51(1) 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) 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). 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 that 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. If 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 are 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.

**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.

**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. Saturdays, Sundays and legal holidays do not state the 24 hour notice period.
- (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.

**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.**

**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 his 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).

**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);
  - d. The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682.
  - e. The tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association; or
  - f. The tenant has exercised his or her rights under local, state, or federal fair housing laws.
- (2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him 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.

**83.67 Prohibited practices. -**

- (1) A landlord of any dwelling unit governed by this part shall not 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) A landlord of any dwelling unit governed by this part shall not 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 boot lock or similar device.
- (3) A landlord of any dwelling unit governed by this part shall not discriminate against a servicemember in offering a dwelling unit for rent or in any of the terms of the rental agreement.
- (4) A landlord shall not prohibit a tenant from displaying one portable, removable, cloth or plastic United States flag, not larger than 4 and ½ feet by 6 feet, in a respectful manner in or on the dwelling unit regardless of any provision in the rental agreement dealing with flags or decorations. The United States flag shall be displayed in accordance with s. 83.52(6). The landlord is not liable for damages caused by a United States flag displayed by a tenant. Any United States flag may not infringe upon the space rented by any other tenant.
- (5) A landlord of any dwelling unit governed by this part shall not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; and the landlord shall not remove the tenant's personal property from the dwelling unit unless such action is taken after surrender, abandonment, recovery of possession of the dwelling unit due to the death of the last remaining tenant in accordance with s. 83.59(3)(d), 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 is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement there must 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 ,OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSTION OF THE TENANT'S PERSONAL PROPERTY.

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

- (6) 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.
- (7) A violation of this section shall constitute irreparable harm for the purposes of injunctive relief.

- (8) 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. The remedies provided by this section shall also apply to a servicemember who is a prospective tenant who has been discriminated against under subsection (3).

**83.681 Orders to enjoin violations of this part. -**

- (1) A landlord who gives notice to a tenant of his 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 \$300.00, whichever is greater, shall constitute irreparable harm for the purposes of injunctive relief.

**83.682 Termination of rental agreement by a servicemember. - -**

- (1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:
  - (a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;
  - (b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;
  - (c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty;
  - (d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;
  - (e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or
  - (f) The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.
- (2) The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.
- (3) In the event a servicemember dies during active duty, an adult member of his or her immediate family may terminate the servicemember's rental agreement by providing the

landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the servicemember was on active duty or a written verification signed by the servicemember's commanding officer and a copy of the servicemember's death certificate.

(4) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such times as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable..

(5) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.