

House Bill No. 1489

An act relating to residential tenancies; amending s. 83.43, F.S.; redefining the term “rental agreement”; defining the term “early termination fee”; amending s. 83.595, F.S.; allowing a landlord to terminate a rental agreement and recover liquidated damages or charge the tenant an early termination fee for breach of the agreement, or both, under certain circumstances; requiring the tenant to indicate acceptance of an early termination fee or liquidated-damages provision in the rental agreement in order for the provision to take effect; providing a limit on the combined total of damages and fees; providing liability of the tenant for rent, other charges due, and rental concessions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 83.43, Florida Statutes, is amended, and subsection (17) is added to that section, to read:

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:

(7) “Rental agreement” means any written agreement, including amendments or addenda, or oral agreement ~~if for a less duration of less than 1 year~~, providing for use and occupancy of premises.

(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, buy-out, or accord and satisfaction agreement.

Section 2. Section 83.595, Florida Statutes, is amended to read:

83.595 Choice of remedies upon breach or early termination by tenant.—

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

(1)(a) Treat the rental agreement lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; ~~or~~

~~(2)(b)~~ Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rent rental stipulated to be paid under the rental lease 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 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 rent other similar rental units but does not require the landlord to give a preference in renting the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent; or

~~(3)(c)~~ 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.

~~(2) If the landlord retakes possession of the dwelling unit for the account of the tenant, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rentals received by the landlord as a result of the reletting shall be deducted from the balance of rent due from the tenant. For purposes of this section, “good faith in attempting to relet the premises” means that the landlord shall use at least the same efforts to relet~~

~~the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to lease other similar rental units but does not require the landlord to give a preference in leasing the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent.~~

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor June 10, 2008.

Filed in Office Secretary of State June 10, 2008.