

83.56 Termination of rental agreement.—

(5)If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes shall comply with the provisions in s. 83.60(2). The court may not set a date for mediation or trial unless the provisions of s. 83.60(2) have been met, but shall enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with s. 83.60(2). This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or an agency of local, state, or national government; however, waiver will occur if an action has not been instituted within 45 days of the noncompliance.

Comments:

*Harry Heist - Here is a brief synopsis of why it is so important to have Florida Statute 83.56(5) changed to have the last sentence to read 90 days rather than 45 days.

According to Florida Statute 83.56(5) an action must be instituted within 45 days of actual noncompliance for Section 8, 236 properties, and pubic housing. It is extremely difficult to evict many of these tenants because of the interpretation by County Court Judges as to the 45 day rule. Specifically, Judges have considered that the actual incident occurrence, rather than when management finds out about the incident, is the relevant time period to begin counting the 45 days. Additionally, terminating lease through notice does not constitute “instituting” an action, but rather filing the eviction itself. In many cases property managers do not find out until weeks later that an incident has occurred because the police have made an arrest and the report is not available for seven days after the incident. These properties require five days mail time for a notice, thus 15 day notices are applicable on violations in these instances.

Additionally, Model Assisted Housing leases, 236 leases, require 30 day notices to terminate the lease, if a lease violation and not a violation of Florida Statutes that has occurred. Thus, giving 30 days notice plus 5 days for mail time means that the action must be instituted almost immediately after the expiration of the notice, prohibiting any investigation as to whether it is based on just rumor or actual occurrence.

Under the current interpretation of the Statute a tenant could commit murder on the property, be arrested and if the action hasn't been filed for eviction within 45 days the landlord would have waived his right to evict the murderer. The only recourse management would have would be to wait until the end of the murder trial for an actual conviction, and even such termination would result in having to track the case since most tenants will not voluntarily tell management that a conviction has occurred.

*Lainie J. Simon - 83.56--make clear that a landlord can accept partial payments without waiving right to rest of the month's payment.

*Jeffrey R. Mazor - 83.56(5) – too vague as to when the Landlord will be deemed to have waived which remedies; vague as to whether the Landlord waives only right to evict or even right to bring a civil action for money damages

This section was also the subject of a recent email stream on the listserve.

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

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

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

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

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

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

Comments:

*Jeffrey R. Mazor - 83.56(2) – Do we have to serve a 7-day non-cure notice (in order to file for eviction) if a tenant fails to cure after service of a 7-day cure notice

*Harry Heist - I have always been baffled about whether a 7 Day Notice of Termination must be given after the 7 Day Cure expiration and have advised my clients to do this in the interest of caution. It would be nice if this were more clear.

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

(3)(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 Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address) .

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit.

Comments:

*Lainie J. Simon - The security deposit 15/30 day notice-return funds deadlines.

Makes no sense to have 15 days to return funds but 30 days to give notice of reasons to keep funds. How about 30/30? (83.49). Also, what is the exception for five or fewer units

83.60 Defenses to action for rent or possession; procedure.—

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default

judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. In the event a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies shall be required to deposit only that portion of the full rent for which the tenant is responsible pursuant to federal, state, or local program in which they are participating.

Comments:

*David Weisman- Section 83.56 (3) Sets forth the three day notice. The section provides that the notice shall 'contain a statement in substantially the following form:'

Tenant defense lawyers get many cases thrown out for minor deficiencies in this statement. I suggest some language that would soften this result so that a tenant who does not pay cannot get more free time. For example, make the Tenant post the rent in order to challenge these deficiencies rather than subject the case to dismissal.

*Lainie J. Simon - 83.60--when the tenant interposes some defense (he said I could have more time, my a/c doesn't work, there is a leak--never any notice and usually not true) but doesn't pay rent into the court registry, the court, after a delay, sets a hearing telling the tenant that it has to pay something to the registry, etc, thereby causing a delay and depriving the landlord of its default. Perhaps there should be some clarity there, or give the landlord the right to set a motion calendar hearing or something. If the courts simply refuse to follow this (and they do, locally anyway) maybe some little procedure to push it along.

*Jeffrey R. Mazor - 83.60 – possible amendment to persuade judges to enter defaults when required to do so (instead of setting mediations).