

Florida Landlord Tenant Law

Florida has set out laws that govern the rights and responsibilities of landlords and tenants. Entering into a lease may give the landlord and tenant even more rights and responsibilities. This handout highlights issues that affect the rights of landlords and tenants. The Florida Landlord and Tenant Act is found in Section 83 of the Florida Statutes.

ENTERING INTO A RENTAL AGREEMENT

A rental agreement should be in writing. A written rental agreement is generally known as a lease. The tenant should keep a copy of the signed lease in a place where it can be easily found. Military members seeking legal advice on their lease or a review of a lease before signing **MUST** bring the lease with them to legal assistance. There are several terms that should be found in every lease agreement.

Rent: The lease should state the amount of money due each month, when the rent is due, and where it is to be paid. Rent must be paid when it is due. Many leases have a clause that entitles the landlord to a late fee if the rent is not paid on time. Florida law states that if the tenant is late in paying his or her rent, the landlord may send a written “3 day notice” demanding that if rent is not paid within 3 days, not including weekends and holidays, the landlord may terminate the lease. Florida law then sets out the procedures for removing the tenant from the dwelling, including filing suit in county court. These procedures must be followed in accordance with Florida law.

Duration of the Tenancy: The lease should state how long the tenant is renting. If it does not, the law says that the rental period is determined by how often the tenant is supposed to pay rent. For example, if the tenant is to pay rent once a month, the rental period is monthly (known as a month-to-month tenancy). It is important to know the duration of the tenancy if either the landlord or the tenant wants to end the lease.

Military Clause: Florida statutes address most terminations of rental agreements by military members. Thus, military clauses are not necessary. Florida Statute §83.682 states that any servicemember may terminate his or her rental agreement by providing the landlord with at least 30 days **written** notice of termination if:

- * PCS requiring a move of 35 miles or more away from the rental premises
- * Discharge or release from federal or state active duty
- * Member becomes eligible to live in and chooses to move into government quarters
- * TDY for over 60 days to a location 35 miles or more away from the rental premises

(Note: The above list is not exhaustive. A copy of the statute is on the last page of this pamphlet.)

Members wishing to terminate their rental agreements must provide 30 days written notice and either a copy of their official military orders or a written verification signed by the member’s commander. Members should send their written notice with a copy of their orders or written verification from their commander via certified return receipt mail. They should also keep a copy of everything sent to the landlord. This should be done even if the landlord does not require it. The statute also states that the member is not liable for any other rent or damages due to the early termination of the tenancy when they follow the proper procedures. Also, the protections provided to the member may not be waived. For more information, see the statute at the end of this handout and visit the legal office during legal assistance walk-in hours.

Security Deposit: Tenants are generally required to provide a security deposit, which the landlord must keep in a segregated non-interest or interest bearing account within the State of Florida. Within 30 days of

receiving the deposit, the landlord must advise the tenant in writing how the security deposit is being held. Most leases state the charges that will be taken out of the security deposit after the tenant moves from the rental property. These include painting, professional carpet cleaning, and, if pets are involved, flea spraying. To get the most back from the security deposit, the tenant should extensively clean the rental property before moving out. For more tips, see the Housing Office.

MOVING IN

The new tenant should thoroughly examine the condition of the rental property before moving in. Both the landlord and the tenant should do an inspection of the rental property. After the “walk-thru,” the landlord and tenant should write down the condition of all items, especially the following:

- All walls, including paint, holes and cracks;
- The carpet, tile and linoleum;
- All appliances, including the stove, oven, refrigerator, microwave, dishwasher, and garbage disposal;
- The plumbing system, including the toilet, shower and sink; and
- All locks and windows.

Take pictures or video, or make detailed notes of any questionable conditions observed. If necessary, include provisions for repairs in the rental agreement or in a separate, signed agreement. This information will be used when the tenant moves out to determine what damage, if any, the tenant caused. Payment to fix such damage will be billed to the tenant or taken out of the security deposit. “Normal wear and tear” is not a reason for withholding security. Landlords and tenants are cautioned that in disputed security deposit cases, judges often depreciate the value of a damaged item for which the security is withheld and award the depreciated value as opposed to the current replacement value of the damaged item. Torn carpeting and curtains are common examples of potentially depreciated items.

TERMINATION OF THE RENTAL AGREEMENT

The rental agreement legally binds the tenant and the landlord. If the tenant moves out without properly terminating the rental agreement, he or she must still pay the rent. The tenant may have to pay rent until the lease expires or until the landlord can rent the property to another tenant. However, the landlord must make a “good faith” effort to find a new tenant. This is known as “mitigation of damages.” If the entire rental property becomes uninhabitable and the tenant moves out, the tenant does not have to pay rent until the landlord makes it livable again. In some situations, the rent may be reduced if the landlord does not comply with the terms of the rental agreement. These contingencies should be spelled out in the lease agreement.

There are many ways to terminate a rental agreement. Florida law states procedures for terminating rental agreements, and these procedures must be substantially followed.

Lease Expiration: Leases must state the date on which they terminate. If the lease has expired but the tenant is still allowed to live at the rental property and is paying rent, the rental period becomes the period for which rent is due. For example, if rent is paid monthly, the landlord and the “holdover tenant” will be deemed to have entered into a month-to-month lease agreement. This means that if you remain on the premises even 1 day after the rental period ends, the landlord may hold you liable for an entire month’s rent. For this reason, it is important to notify your landlord in advance if you will not be able to vacate the premises by the expiration of the lease. You should try to work out a written agreement detailing how long after the expiration of the lease you intend to stay and what rent you will be responsible for. Your landlord

may agree to let you pay for only the time you actually spend on the premises.

Voluntary Termination: If the duration of the tenancy is month-to-month, either party must give at least 15 days notice prior to the end of the month that he or she wants to terminate the rental agreement. If the tenancy is week-to-week, either must give at least 7 days notice prior to the end of a weekly period.

Noncompliance: The landlord and the tenant have many responsibilities to each other. They both must comply with the terms of the lease and with Florida law. For instance, the landlord must keep the rental property in compliance with building codes, and the tenant must not damage the property and must not unreasonably disturb the neighbors. If either the landlord or the tenant is not complying with these rights and responsibilities, the rental agreement can be terminated.

- If the landlord is in noncompliance, the tenant must give the landlord 7 days written notice. This notice must state what the noncompliance is and indicate that the tenant will terminate the rental agreement in 7 days if the landlord does not come back into compliance with the lease or Florida law (or "cure" the noncompliance).
- If the tenant is in noncompliance, the landlord must give the tenant a similar written notice. This written notice must substantially follow the format required by Florida law.

RETURN OF SECURITY DEPOSIT

Florida law sets out specific time limits for returning the security deposit to the tenant after the tenant moves out.

Unless the lease says otherwise, the tenant must give the landlord written notice by certified mail or personal delivery to the landlord prior to moving from the premises. This notice must include the address where the tenant may be reached. This notice must be provided in addition to any notice of termination of the lease.

After the tenant moves out of the rental property, the landlord must return the security deposit within 15 days. If the landlord wants to withhold part of the security deposit, he or she must give written notice by certified mail to the tenant's last known mailing address within 30 days after the tenant moves out. This notice must comply substantially with Florida law.

If the landlord fails to give 30 days written notice of an intention to withhold part of the security deposit, he or she loses the right to withhold any amount of it. However, if the tenant failed to give the proper certified mail or personal delivery notice that he or she was moving out of the rental property, the landlord does not have to give the tenant the required written notice.

The tenant has 15 days to object to the landlord's intent to withhold part of the security deposit. If the tenant does not object, the landlord may take that part out of the security deposit. The landlord must return the balance of the security deposit within 30 days after the date of the landlord's notice to withhold part of the security deposit.

If the landlord and tenant do not agree as to how much of the security deposit the landlord may keep, either party can sue the other. The winning party is entitled to court costs, plus a reasonable fee for an attorney. The tenant can also file a complaint with the Florida Department of Agriculture and Consumer Services.

Florida Statutes §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 time 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.

This handout may be able to answer some or all of your questions about Florida landlord-tenant law. However, it is not a replacement for legal advice. If you have any further questions or need legal advice, the base legal office offers legal assistance to eligible members of the community. If you have questions concerning a lease agreement, be sure to visit the legal office prior to signing the agreement. Once you sign a lease, you are contractually bound by the agreement unless the lease contains clauses that are contrary to Florida law.