HWW
ATTORNEYS AT LAW

EXPLANATION OF THE 2013 CHANGES TO THE LANDLORD-TENANT ACT

By

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On June 7, 2013, Governor Rick Scott signed into law House Bill 77, the most extensive change in over 20 years to the Residential Landlord-Tenant Act found in Florida Statutes, Section 83 Part II. The changes, additions and subtractions help to clarify some of the greyer areas of law that have developed over the years, and give guidance to property managers, attorneys and judges. The landlord-tenant relationship is affected by the lease agreement, statutory law and decisions by judges creating case law when the statute or lease is unclear. In the residential setting, most cases are decided in county court. If a judge rules in a way that may not be in accordance with the law, other judges often will follow suit. This creates situations where in one county or circuit the judges rule one way, and in another county or circuit, the judges rule an opposing way. Often judges in the same county or circuit will rule in opposing ways. Inconsistencies create a problem of uncertainty for property managers, and since under Florida law, the prevailing party in a Landlord-Tenant action is entitled to an award of attorney's fees, the stakes can get extremely high for all parties involved. The Landlord-Tenant Act in Florida is extremely fair, and for the most part clear and concise, but nothing is perfect. The changes to the law clarify a number of areas of the law which will be examined here. Just because the law has changed, we must warn property managers that not all judges will follow the law, especially in the beginning, and some still will interpret the law in a way that you and your attorney may disagree with. When this occurs, there is an option of filing an appeal to a higher court, but due to the expense and time involved, this is not usually done. This article will explain the new law as it pertains to the multi-family manager. The new law goes into effect on July 1, 2013, and the new security deposit disclosure wording must be placed in all leases beginning on January 1, 2014.

ATTORNEY'S FEES

Prior Law – The Landlord-Tenant Act provides that the prevailing party in a case seeking to enforce the provisions of a rental agreement or the Landlord-Tenant Act is entitled to an award of attorney's fees. In some cases, residents would be injured on a property, a slip and fall for example, and the attorney for the injured party would seek attorney's fees. Personal injury law does not provide that the injured person receives attorney's fees, but this grey area was being exploited by some personal injury attorneys to ask for and receive attorney's fees.

New Law- The new language clarifies that attorney's fees will NOT be awarded in an action in which a person was injured on a rental property, AND a lease cannot be modified to allow management to attempt to force residents to waive away their rights to attorney's fees in non-personal injury cases.

SECURITY DEPOSITS AND ADVANCE RENT

Prior Law – It was unclear in prior law whether management had to notify the resident if a bank's name had changed, was sold, or one bank merged with another. That bank would be the one holding the deposits.

New Law – Management is now clearly not required to notify the resident of a bank change, merger or bank sale.

Prior Law – Management was required to provide the resident with a section of Florida Statutes 83.49(3), explaining timing and procedures that governed management and residents if management were to make a claim upon the deposit, return the deposit, or if the resident disputed claims made against the deposit.

New Law- A brand new disclosure is now required in the lease for all leases beginning January 1, 2014. Until that time, you can continue to use the old law wording, or you can update your lease right now. The new disclosure clarifies that you do not have to notify the resident if you are using the advance rent when it becomes due, clarifies that management has 30 days from the time of resident "move out" to send the Notice of Intention to Impose the Claim on Security Deposit, and encourages management and residents to try to informally settle disputes, and if not, either party can sue as before. Basically the procedures regarding security deposits have not

changed, just the new disclosure is required. If a resident disputes, the new law still does not clarify if management is permitted to retain the "disputed" amount, or if the disputed amount can be disbursed or put into your company's operating account.

Prior Law – If management failed to send out the Notice of Intention to Impose Claim on Security Deposit in time or properly, it was unclear if management had to refund the entire amount of the deposit or could "set it off" against the amount the resident may have owed and return the rest to the resident.

New Law – It is clear now that if management fails to send out the Notice of Intention to Impose Claim on Security Deposit in time or properly, the management MUST return 100% of the deposit, but still can sue the resident in court and get a judgment for the underlying claim in the event management went to court and prevailed.

Prior Law – Nothing addresses the safety or security of a resident's security deposit on a sale of a property, and often the old owner or manager kept it; hence the resident lost it with no recourse against the long gone prior owner.

New Law – There is a rebuttable presumption that the new owner or management received the deposit from the old owner or management, and this presumption is limited to one month's rent.

SCREENS

Prior Law – Management was responsible for screens. This created a problem, as often the screens were damaged or destroyed by the resident, guest, child or pet, and management continually had to make repairs and replacements.

New Law – At the beginning of the lease, management must make sure the screens are installed and in reasonable condition, and management now only must repair screens once annually. We still recommend you keep up screens as it can become a code enforcement/inspection issue.

CRIMINAL OFFENSES

Prior Law – Rights and duties under the Landlord-Tenant Act were enforceable only by civil action.

New Law – If there is a crime by management or resident, the law is now clarified to show that it now can be enforced by a criminal action as well.

CURABLE NONCOMPLIANCES

Prior Law – If a resident committed a curable noncompliance, that resident was given a Seven Day Notice of Noncompliance with Opportunity to Cure. If the resident committed the act again within 12 months, management would arguably have to serve the resident a Seven Day Notice of Termination and wait seven more days before filing an eviction.

New Law – After a resident is given a Seven Day Notice of Noncompliance with Opportunity to Cure and the seven days are up, if the resident subsequently commits the same or similar offense, NO NEW NOTICE must be given, and management can go straight to eviction. NOTE: We still recommend that in many instances, you serve a new Seven Day Notice of Noncompliance with Opportunity to Cure or a Seven Day Notice of Termination prior to evicting depending on the type of offense and time periods elapsing.

PARTIAL RENT

Prior Law – Some judges, very few actually, incorrectly were ruling that if management accepted a partial rent payment, management could not take any action against that resident in that month that partial payment was accepted: no notices, no evictions. This interpretation of the law actually hurt residents, as management would simply evict and not bother trying to work with the resident.

New Law – It is now clear that management can accept a partial rent payment and also proceed with an eviction that same month if management does one of 3 things: (1) Give the resident a receipt for the partial rent accepted, OR (2) Place the amount of the partial rent into the Court Registry if an eviction is filed, OR (3) post a new 3-day notice. Most attorneys including us will recommend that you do #3: post a new 3-day notice with the balance owed. The new law has a “glitch”; it indicates a posting is required for the new 3-day notice. Does this mean management cannot “hand deliver” the new 3-day notice? No one knows yet. We recommend following the existing standard of the law, which allows a posting if the resident

does not come to the door in an effort to hand-deliver the three-day notice. If you hand-deliver the 3-day notice, you can also additionally post a copy of the new 3-day notice in an abundance of caution.

SUBSIDIZED HOUSING/CRIME/NONCOMPLIANCES/EVICTIONS

Prior Law – In certain subsidized/government housing, if management did not file an eviction against a resident within 45 days of the resident committing a crime or noncompliance on the property, management would be prohibited by law from filing an eviction. The problem was that often management did not find out about the crime or noncompliance until after 45 days had gone by.

New Law – Management now has 45 days from the time management DISCOVERS the crime or noncompliance has occurred to file an eviction action.

NOTICE TO RESIDENT OF LEASE ENDING

Prior Law – Management could require a resident to give management notice prior to the end of the lease stating that the resident is vacating.

New Law – Now there is reciprocity. If management requires 30 days' notice from the resident, then management must also give 30 days' notice. The notice required can be up to 60 days, and it must be the same for the management and the resident.

EVICTIONS

Prior Law – If a 3-day notice had a defect, no matter how small or insignificant, the resident or resident's attorney could file a motion to dismiss, get the case thrown out of court, and in some cases, attorneys were getting huge awards of attorney's fees. This type of decision might help the nonpaying resident in the short run, but was in no way helping the general public who had to pick up the slack caused the landlord's higher cost of doing business, hurting management companies, and especially the mom and pop rental property owner who did not know the law inside and out.

New Law- Judges are now NOT to dismiss cases because a 3-day notice is defective. The resident MUST place the rent money into the court registry prior to objecting to notice deficiencies, and if there

is a defect in the notice, management now legally has the ability to cure the defect in the notice, serve a new one, or file an amended pleading rather than have the case dismissed. We are hoping the judges will follow this very clear new law.

WRIT OF POSSESSION

Prior Law – Generally, the writ of possession, the final stage in the eviction, was never served on a Saturday, Sunday or Legal Holiday, and these days were excluded in the 24 hour computation of time from service of the writ of possession to execution of the writ of possession.

New Law – The writ of possession can NOW be "served" or "executed" on a Saturday, Sunday or Legal Holiday, and if for example, a writ of possession is "served" at 4 p.m. on a Friday, technically, now the sheriff's deputy could legally "execute" the writ of possession on a Monday. The sheriff's deputy will still likely not be serving or executing a writ of possession on weekends or holidays; the significance is that these days are no longer excluded when calculating the 24 hours.

PROHIBITED PRACTICES

Prior Law – A number of prohibited practices applying to management are enumerated in the law. Examples include prohibitions on lock outs, cutting off utilities, discrimination against service members, and retaliating against a resident for organizing a resident group, among many others.

New Law – Two new items have been added regarding retaliation prohibitions against a resident. It is now illegal to retaliate against a resident if that resident is required to pay rent to a condominium or homeowners association after a legal rent demand, and it is now illegal to retaliate against a resident if that person exercised any rights under state, local or federal fair housing laws. Most responsible property managers would never have done this anyway, but it is now clearly stated in the law.

CONCLUSION

Carefully read and understand the changes to the Landlord-Tenant Act. Notify your owner or management company of the need to modify the lease agreement. The lease should be immediately modified to provide for reciprocity of notice to the resident prior to the end of the lease, and, by January 1, 2014, all leases must have the new security deposit disclosure.

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