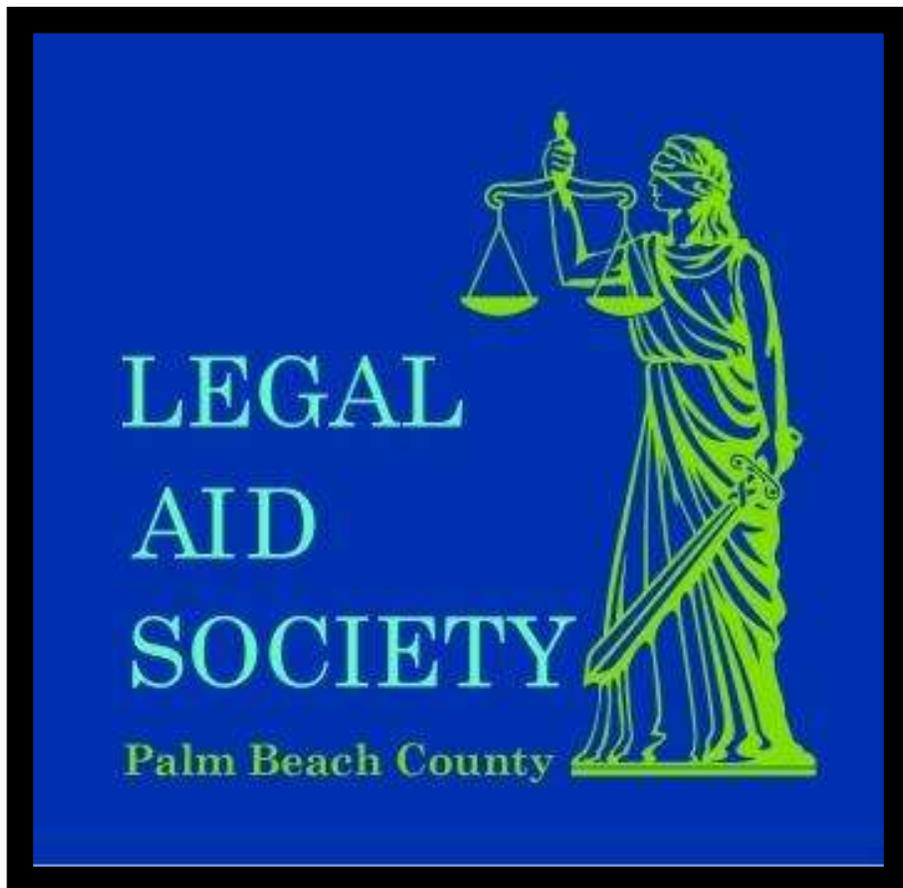


# KNOW YOUR RIGHTS: LANDLORD TENANT RESOURCE GUIDE



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## RIGHTS AND DUTIES OF TENANTS

In Florida, residential tenancies are governed by Chapter 83 of the Florida Statutes under what is commonly known as “Florida Residential Landlord and Tenant Act.” This state law sets forth certain responsibilities and rights that may not be waived in a rental agreement. It’s important to know that you have rights as a renter, and that your landlord has certain obligations to make sure that your home is safe and livable.

### **LIVING CONDITIONS**

First and foremost, the landlord is required to rent a dwelling that is fit to be lived in. Namely, there is a statutory duty to maintain the premises and to comply with the applicable building, housing, and health codes. Where there are no applicable building codes, the landlord is required to maintain the structural components and plumbing in good repair. There is also an obligation for the landlord to install working smoke detectors and screens.

The above requirements don’t apply to mobile homes owned by the tenant, and they may be modified in writing for duplexes and single family homes. As for apartments, the landlord will also make reasonable provisions for:

- Extermination of rats, mice, ants, wood-destroying organisms and bed bugs,
- Locks and keys,
- Clean and safe conditions of common areas,
- Garbage disposal facilities and outside receptacles, and
- Functioning facilities for running water, hot water and heat during winter.

However, it should be noted that although the landlord must arrange these services, he can require you to pay for them.

Generally, a tenant can enforce these obligations and there is a right under certain very aggravated circumstances caused by the landlord’s neglect, to withhold rent.

However, if you can still live in the rental unit despite the problem, then you should first write your landlord and explain the situation, advising him or her of any housing codes being violated. Sending a letter like this is the best way to get repairs done.

### **ACCESS TO PREMISES**

A tenant has a basic right of privacy and peaceful possession in their rental homes. However, there are circumstances under which a landlord must be allowed access.

Under Florida state law (Fla. Stat. Ann. § 83.53), landlords can enter rented premise in the following circumstances:

- In case of emergency, such as a fire or serious water leak
- To make needed inspections and repairs

- Pursuant to a court order
- If the landlord has reasonable cause to believe the tenant has abandoned the premises
- When reasonably necessary during a tenant's extended absence, defined as one-half the time for periodic rental payments, given that that the tenant did not notify the landlord of the absence, or
- To show the property to prospective new tenants, purchasers or contractors.

In these circumstances, a tenant cannot unreasonably withhold consent to the landlord to enter the rental unit. That said, unless there is an emergency, (i.e., something serious and requiring immediate attention, like leaking gas, or a broken water pipe), the landlord must enter the rental unit on *reasonable notice* to the tenant and at a *reasonable time* to make repairs to the premises.

- "Reasonable Notice" is defined as 12 hours prior to entry;
- "Reasonable Time" is defined as between the hours of 7:30 a.m. and 8 p.m.

## **TENANT'S OBLIGATIONS**

Florida Statutes, Section 83.52, requires you as a tenant to comply with the following:

1. Keep the home or apartment in a clean and sanitary manner.
2. Remove all garbage from the home or apartment in a clean and sanitary manner (for example, use garbage cans).
3. Keep all plumbing fixtures in the home or apartment used by you in a clean and sanitary manner and in good repair.
4. Properly use and operate all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, which are in the home or apartment.
5. Not destroy, damage or in any way misuse the property itself. This includes not permitting any of your guests to do so either.
6. Not remove anything from the house or apartment which does not belong to you (for example, cannot remove light fixture which was in the property when you moved in).
7. Conduct yourself, and require other persons on the premises with your consent to conduct themselves, in a manner that does not unreasonably disturb your neighbors or constitute a breach of the peace.

The landlord must notify you in writing of any perceived noncompliance with the above obligations or any obligations set forth in the rental agreement.

- If the issue can be corrected, the tenant will have seven days in which make the correction. If the tenant still has not complied after seven days, the landlord can begin the eviction process based on noncompliance.
- If the issue is one in which the tenant should not be given an opportunity to correct it (i.e., destruction, damage, intentional misuse or continued unreasonable disturbance), the tenant will have seven days to surrender the premises.

### **PROHIBITED PRACTICES**

Florida Law does not allow a landlord to force a tenant out by:

- Shutting off the utilities or interrupting service, even if that service is under the control of the landlord or the landlord makes the payment;
- Changing the locks or using a device that denies the tenant access;
- Removing the outside doors, locks, roof, walls or windows (except for purposes of maintenance, repair or replacement); and/or
- Removing the tenant's personal property from the dwelling unless the action is taken after the surrender, abandonment, or recovery of possession of the rental unit due to the death of the last remaining tenant or after lawful eviction.

If any of these occur, you should call the police or a lawyer, and you may sue for actual and consequential damages or three months' rent, whichever is greater, plus court costs and attorneys' fees.

Finally, the Florida Residential Landlord and Tenant Act also protects its tenants from retaliation by their landlord. Retaliation is an attempt to get back at someone for an action that was committed against you. A Florida landlord has a legal right to take certain actions, such as increasing rent. However, if these actions are done with the purpose of seeking revenge against a tenant, because for example the tenant complained to a government authority for code violations or pursued her legal rights under the Fair Housing Act, the action will be considered an act of retaliation. The landlord could face legal consequences for actions such as the following:

- Increasing a tenant's rent.
- Decreasing services to the tenant
- Filing to evict the tenant
- Refusing to make needed repairs

- Attempting to harass or intimidate the tenant to get the tenant to leave. Actions could include changing the locks on the tenants' doors or actually removing the tenant's possessions from their unit.

If you believe that a landlord has retaliated against you, you can file legal action against the landlord.

## RENTAL AGREEMENTS

Generally, the rental agreement spells out the terms of the tenancy including the amount of rent and the period of the rental. An agreement for a year or longer must be in writing, but a shorter agreement can be either written or oral.

If the agreement doesn't specify the rental period's length or how the lease will end, then the terms are set by the pattern of payment: If rent is paid week to week, then 7 days notice is required for termination; if rent is paid month to month, than 15 days notice is required, for a year to year lease there must be 60 days notice for termination

Although there is no standard lease form in Florida, written leases should include the following terms:

- the address and apartment number
- the amount of rent (there are no limits to how much a landlord can charge in Florida since there are no communities with rent control in the state)
- where rent is due (such as by mail to the landlord's business address)
- when rent is due (including what happens if the rent due date falls on a weekend date or holiday)
- how rent should be paid (usually check, money order, cash, and/or credit card)
- the amount of any extra fee if your rent check bounces, and
- the consequences of paying rent late, including late fees and termination of the tenancy.
- the amount of a security deposit and/or pet deposit, if applicable
- the amount of advanced last month's rent, if applicable

Before signing a lease, always ensure that the rent you agreed to is actually reflected in the lease, with the date commencing and ending stated properly. Double check the address and apartment number. Check the date each month the rent is due. Make sure the correct security deposit is stated. Finally, make sure that any modifications or side agreements are put in writing and initialed by both parties!

## OVERVIEW OF EVICTIONS

A landlord in Florida can evict a tenant for a number of different reasons, including not paying rent, violating the lease or rental agreement, or committing an illegal act.

Landlords must carefully follow all the rules and procedures required by Florida law when evicting a tenant. A landlord cannot force a tenant to move without going through the specific requirements of an eviction action:

- STEP ONE:** The first step in a legal eviction is for the landlord to send a written notice. Different types of notices and procedures are needed for different situations.
- STEP TWO:** The tenant is served with a summons and complaint. The complaint and a summons are served upon the tenant by the sheriff or authorized process server.
- STEP THREE:** The tenant has 5 days to submit a written response, called an answer, to the complaint. The 5 day period begins on the date after the tenant was served and does not include weekends and legal holidays. The tenant must also deposit with the court the amount of rent alleged in the complaint to be owed unless the defense is that the tenant has paid the landlord.
- STEP FOUR:** If the tenant files an answer, the court will schedule a hearing to decide whether an order for eviction should be issued. A notice of the hearing date will be mailed to all parties.
- STEP FIVE:** If the landlord wins, the landlord will obtain a Judgment for Possession. If the tenant prevails in the hearing, the tenant will continue to pay rent under the current lease and remain in possession of the rental unit.
- STEP SIX:** If a Judgment for Possession is entered, the court will issue a Writ of Possession to the sheriff. The sheriff then posts the writ on the tenant's premises and the tenant has 24 hours to vacate, after which the sheriff may forcibly evict the tenant.

## **EVICTON FOR FAILURE TO PAY RENT**

After you miss a rent payment, your landlord must give you written notice and wait three days, not counting Saturday, Sunday or legal holidays, before proceeding in court with an action for eviction. If you pay rent within the three day limit, then your landlord must accept the rent and drop the eviction proceedings. Note, however, that the landlord need not accept less than the full amount owed. If your landlord accepts the full rent from you even after the three days, then he gives up his right to evict or end the agreement during that rent period, but he can always issue a new Three Day Notice if you are ever late again.

If you fail to pay rent or vacate within the 3 Day Period then your landlord is entitled to pursue an Eviction for Nonpayment of Rent, in which case you may be served with a Summons and Complaint for Eviction. You will have five business days (excluding Saturdays, Sundays, and legal holidays) to respond to the Complaint. Please note that your five days begin the day after you were served.

## **THINGS TO KNOW ABOUT THE THREE DAY NOTICE**

- The Three Day Notice will give you three days to pay the rent owed or move out.
- The Three Day Notice must be delivered to you, in writing, and include the following information:
  - A statement that you did not pay rent when it was due.
  - The exact amount of rent due.
  - The landlord's name, address, and telephone number.
  - The date the payment is due.
- The three day period may not include Saturdays, Sundays, or legal holidays.
- Your landlord may hand deliver, post the notice on your door, or mail the notice to you.
- If you receive the Three Day Notice by mail, the landlord must give you an additional 5 days to comply with the notice due to mailing time.

## **EVICTON FOR CAUSE: VIOLATION OF THE RENTAL AGREEMENT OR LANDLORD TENANT ACT**

In addition to non-payment of rent, an eviction can be based on a violation of a provision of the lease, rules incorporated into the lease, or an applicable statute. Expiration of the lease or failure to vacate upon notice to terminate a periodic tenancy may also give rise to an eviction.

The Landlord Tenant Act divides tenant breaches into two categories: (1) curable violations and (2) noncurable violations.

- Curable means that the tenant gets a chance to solve the problem. Curable noncompliances include: unauthorized pets, unauthorized guests, and not keeping the dwelling sanitary. In the case of a curable condition, your landlord must give you seven days in which to fix it. However, if you commit the same noncompliance again within twelve months, your landlord may then evict you without another chance to cure.
- Noncurable means that the tenant does not get a chance to solve the problem. Noncurable noncompliances include: Destruction, damage, or intentional misuse of the landlord's or other tenants' property, or receipt of a prior Seven Day Notice for the same conduct within a 12 month period.

If you commit a serious act endangering the property or a crime, or if you fail to correct a problem after written notice from the landlord, your landlord still must go to court to pursue an eviction. Again, it is important to understand that a landlord CANNOT EVICT YOU OUT WITHOUT A COURT ORDER. In the instance of an Eviction for Cause, you will be served with a Summons and Complaint for Eviction and you will have five business days (excluding Saturdays, Sundays, and legal holidays) to respond to the Complaint.

### RENT WITHHOLDING FOR REPAIRS

Florida law requires your landlord to comply with the building, housing, and health codes of the city or county where you live. Your landlord must keep your home in good repair. This includes the roof, windows, screens, doors, floors, steps, porches, exterior walls, and the foundation. Except for a single-family home or a duplex, the landlord also must keep the building free from rodents (mice and rats) and insects (such as roaches, termites, or ants). In addition, the landlord is required to provide garbage removal, plumbing, hot water, and heat. The areas around your building should be kept clean and safe. Your landlord is not required to provide you with A/C. \*\*\*\*Please note that the landlord may transfer all or some of these responsibilities to you in the lease. Therefore, it is important that you read your lease.

If the landlord does not follow the law and fails to make needed repairs or provide the things you are entitled to, you have the right to stop paying your rent—if you follow the correct procedures—until the landlord makes a reasonable effort to correct the problems. But first, you must give the landlord a seven-day written notice. This notice should be either delivered to the landlord in person with a witness present or sent by certified mail. The notice cannot be given to the landlord when you are already behind in your rent. You must be current with your rent in order to withhold rent after delivering a seven-day notice. Be sure to keep a copy of your notice. The notice should be delivered 7 days before the rent is due. If mailing, you must add 5 days for mailing, meaning you must mail it 12 days before the rent is due. If you intend to provide the landlord with a seven-day notice to make repairs, you should first consider calling your city or

county housing code enforcement office and request a housing code inspection. There is no charge for this inspection. The inspector will issue a written report detailing any housing code violations. You can attach this report to your seven-day notice. (The landlord may be inclined to fix things quicker if the inspector issues a report.) The landlord might become angry that you reported these problems to an inspector, and he or she may try to evict you. This can be considered a retaliatory eviction by the court; if so, the eviction would be denied. If you follow these procedures, the law says you have the right to stop paying all future rent until the repairs are made or the services are supplied. You may follow the sample fill-in-the-blank form in this brochure to give notice. Remember: Keep a copy of your notice for your records.

**SAMPLE LETTER TO LANDLORD**

\_\_\_\_\_, 20\_\_

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

Notice of intention to withhold rent under the Florida Residential Landlord and Tenant Act  
Chapter 83.56

Dear :

This letter is to advise you that you are in material noncompliance with the requirements of the Florida Residential Landlord and Tenant Act and our rental agreement. The following are defects in the condition of the apartment (house) I rent from you:

- 1.
- 2.
- 3.
- 4.

If every reasonable effort is not made to correct the above deficiencies, I will exercise my legal right to withhold further payment of rent beginning seven (7) days from the date this letter is delivered to you.

\_\_\_\_\_  
(Tenant Name & address)

You must not spend your rent money. You must have it and be ready to pay the landlord once the repairs are substantially completed or if the landlord decides to evict you for not paying rent. If the landlord does try to evict you, the court will ask for the money to hold until the court makes a decision about the eviction. If you follow the rules stated above and the landlord tries to evict you, the written notice you gave your landlord will be your defense in court. The court will decide whether you keep the rent money or whether

the landlord gets the money. This decision will depend on what the problem was and what the landlord did to fix the problem(s).

## NOTICE TO TERMINATE A LEASE

If there is a written lease, you should read the lease closely to see if it requires up to 60 days notice that to terminate before the lease term ends. If there is no written lease, you may move out for no reason by giving written notice of the intent to leave no fewer than seven days before the next rent payment is due, if the rent is paid weekly, or 15 days, if the rent is paid monthly. Namely, the notice to terminate requirements are set forth below:

<u>Rent Pay Period</u>	<u>Necessary Notice</u>
Week to week	7 days notice
Month to month	15 days notice
Quarter to Quarter	30 days notice
Year to Year	60 days notice

Florida statutes provide that any member of the armed services may terminate his or her rental agreement upon 30 days notice if the tenant is:

- 1) ordered to move 35 miles or more from the location of the rental premises, provided such orders are for a period of at least 60 days,
- 2) prematurely or involuntarily discharged from active duty;
- 3) required to move into government quarters.

## SECURITY DEPOSITS

The security deposit consists of any money which the landlord holds on behalf of the tenant to protect himself from unpaid rent or damage to the apartment/home. In Florida, there's no statutory limit on how much a landlord can charge a tenant for a security deposit, however, the amount should be reasonable and it is typically no more than two months rent. Before signing a rental agreement, examine the premises and make note of any damaged items (e.g., broken fixtures) and, if possible, take a picture and include a date stamp. Give a copy to the landlord and keep a copy for your files. This may help eliminate or minimize disputes later.

Landlords in Florida must, within 30 days of receiving a security deposit, disclose in writing

- Whether the funds will be held in an interest- or non-interest bearing account
- The name of the account depository, and
- The rate and time of interest payments.

Interest payments, if any (account need not be interest-bearing) must be made annually and at the termination of tenancy. However, no interest is due a tenant who wrongfully terminates the tenancy before the end of the rental term.

Tenants must vacate the rental premises in the same way they found it when they moved in. Otherwise, the landlord has a right to make deductions to the tenant's security deposit. Instances where a landlord may make deductions from the renter's security deposit include unauthorized repairs made by the renter, such as painting, or property damage in excess of wear and tear.

If the landlord intends to impose a claim on the deposit, the landlord has 30 days to give the tenant a written notice specifying the reasons. The notice, using exact language found in Florida Statute, must list the damages as well as the charges. The deductions are automatically forfeited if the landlord fails to do this. If the tenant doesn't object to the deductions within 15 days, the landlord must send the remaining deposit within 30 days after initial notice.

However, if the landlord doesn't intend to impose a claim on the security deposit, he or she has 15 days to return the deposit back to the tenant. Before moving out, you must provide the landlord with an address for receipt of the security deposit, or else you may lose the right to object if the landlord claims the right to keep the deposit money.

Remember that the landlord cannot automatically take the deposit because you breach the lease, including failure to pay rent. A landlord can only take compensation for damages.

**Sample Demand Letter For Return Of A Security Deposit:**

Certified Mail #\_ . . . . .

Date:\_ . . . . .

\_\_\_\_\_  
Landlord' s name

\_\_\_\_\_  
Landlord' s Address

**DEMAND LETTER PURSUANT TO FLORIDA STATUTE SECTION 83.49**

Dear Landlord:

As you know, I was a tenant of yours at \_ \_ \_ \_ \_ (address of the rental unit). I moved out of the apartment on \_\_\_\_\_ (date). I am writing this letter pursuant to Florida Statute Section 83.49, requesting that you return my security deposit.

It has been over 30 days since my tenancy was terminated. However, you have not returned the security deposit. Therefore, if you do not return my security deposit to me immediately, you will be in violation of Florida Statute Section 83.49, which states, "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..."

Please consider this a demand letter pursuant to Florida Statute Section 83.49, and I request that you return my security deposit on or before \_\_\_\_\_ (give deadline). If you fail to return my security deposit then I will have to seek legal remedies. Thank you for your cooperation.

Sincerely,

Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

## **FREQUENTLY ASKED QUESTIONS**

### **Q: How do I respond to the Complaint for Eviction?**

A: Your response to the Complaint is called an Answer. In the Answer, you will have the opportunity to admit or deny the allegations contained in the Complaint and to raise any proper defenses. The original Answer must be filed with the Court and a copy must be furnished to the Landlord.

### **Q: What do I do with my rent money after my landlord sues me for Eviction?**

A: Florida law requires that you deposit the amount of rent money alleged to be owed, along with any monthly rent that becomes due during the eviction proceeding with the Court while your case is pending review by the Judge. Please note that if you disagree with the amount that the landlord is demanding, you may file a Motion to Determine Rent.

### **Q: What happens if I file a Motion to Determine Rent?**

A: In your Motion to Determine Rent, you must explain to the Judge why you disagree with the amount owed and provide proof to the Court that you owe the landlord a different amount. The Judge will review your Motion to Determine Rent and the landlord's Complaint and Notices. The Judge will then issue an Order stating how much you should deposit into the Court Registry or the judge may schedule a hearing to determine the correct amount.

### **Q: What will happen to me if I deposit my money into the Court Registry?**

A: Once the money is deposited into the Court Registry, the Judge will set a hearing to give both parties the opportunity to tell their side of the story. The prevailing party is entitled to attorney fees and costs under Florida Law. If you prevail in the hearing, you will continue to pay rent under your current lease and remain in possession of the rental unit.

### **Q: What will happen to me if I do not file an Answer or respond to the Court?**

A: If you fail to file an Answer with the Court, the Judge will enter a Default Judgment against you. Once the Default Judgment is entered against you, the landlord can request a Writ of Possession.

### **Q: What is a Writ of Possession?**

A: A Writ of Possession will be posted by the sheriff and gives you 24 hours to remove all of your belongings from the rental unit. If you fail to remove all of your belongings from the rental unit, they will be removed for you and may be damaged.

**Q: When do I send a demand letter for return of my security deposit?**

A: According to Florida Statute Section 83.49, your landlord has 15 days to return your security deposit after you move out of your unit and 30 days after you move out, to notify you in writing if he/she intends to impose a claim on your security deposit. If 30 days have passed since your move-out date, and you have not received your security deposit back, you should send the attached Letter Demanding the Return of Security Deposit to your landlord via regular mail and certified mail, return receipt requested, so that you have proof of when the landlord received your letter.

**Q: What if I have received a letter from my landlord imposing a claim on my security deposit?**

A: To properly impose a claim on your security deposit, your landlord must have provided you with a letter specifying the amount and the reason for the claim within 30 days of you moving out. If you dispute this claim, you should respond to your landlord in writing within 15 days of receiving the claim via regular and certified mail.

**Q: What happens after I send the attached letter demanding the Security Deposit?**

A: After you have sent the letter demanding your security deposit, you should wait for the deadline that you have given in your letter. Once the deadline has passed, then you can file an action in Small Claims Court for the return of your security deposit. For more information and for Self-Help materials regarding Small Claims go to the Clerk of Court for Palm Beach County: <http://www.mypalmbeachclerk.com/smallclaims.aspx>.

**This booklet was made possible with the support Palm Beach County Community Services, United Way of Palm Beach County, and Town of Palm Beach United Way.**



**United Way of Palm Beach County**



**Town of Palm Beach United Way**