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Tampa, FL 33605**

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Who We Are

Bay Area Legal Services is a regional, nonprofit public interest law firm providing the highest quality legal counsel by:

- Assisting individuals and nonprofit groups with limited access to legal services;
- Resolving the legal problems of our clients; and
- Preserving the independence, hope, and dignity of those we serve.



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Vision

Bay Area Legal Services aims to eliminate barriers to justice through high quality legal services, education, and community partnerships.

Who is eligible for our free legal services?

- Low-income residents of Hillsborough, Manatee, Pasco, Pinellas, and Sarasota counties
- Domestic violence victims throughout our service area, regardless of income
- Seniors (age 60 and older) living in other Florida counties through the Florida Senior Legal Helpline
- Nonprofit and community groups that serve low-income individuals or distressed communities
- Other clients who qualify under special programs.

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INTRODUCTION



This booklet attempts to provide you with an overview of your rights and responsibilities as a tenant under Florida Law. This information will help you in taking the proper steps to protect these rights, but it is not intended to take the place of legal advice nor is it intended to be a complete summary of the Florida Residential Landlord and Tenant Act which is found in Chapter 83, Part II/ of the Florida Statutes. A copy of this law is available at the local law library, or online at <http://www.leg.state.fl.us/STATUTES/> and must be read in conjunction with your rental agreement, the local housing and building codes and the pertinent federal regulations, if applicable.

***Please note:** If you own a mobile home and rent lot space in a mobile home park, the information contained in this booklet may not apply. The law regarding mobile home evictions is found in Chapter 723 of the Florida Statutes, <http://www.leg.state.fl.us/STATUTES/>. On the other hand, when both the mobile home and lot are rented, the information contained in this booklet and Ch. 83, Part II of the Fl. Statutes does apply.

THE LEASE AGREEMENT

The lease is your contract with the landlord. Leases can freeze your rent for a definite term or can be for an indefinite term, such as week-to-week or month-to-month. In leases for a definite term guarantee the rent will not rise during that term but also limit your freedom to move before the term is up. In Florida, your landlord does not have to let you out of your lease if your employer transfers you, if you lose your job, or if your spouse or roommate dies or leaves, unless there is a clause in the lease that permits termination for these reasons.

Leases can be written or oral. Obviously an oral lease is often subject to mutual misunderstandings. Therefore, if possible, get your agreement in writing. If written, make sure that you read the agreement carefully and that you agree with it before signing it. If you do not agree, try to change it or walk away. Do not be rushed or forced into signing it and never leave language in the lease that does not really reflect your agreement. Leases should be changed or added to in writing before signing. Never sign a lease with sections such as the amount of the late fees left blank. Remember to always keep a copy of your agreement and any correspondence or receipt of anything that you give to your landlord or that the landlord gives you.



THE LEASE AGREEMENT



IMPORTANT: Be certain that before entering into the lease agreement that you understand the amount of rent you will pay and when it is due, the length of the lease, the security deposit provision, the rules and regulations, and who is responsible for paying the utilities. Also look to see if there is a penalty if you pay the rent late. The landlord cannot make the late penalty too high, he cannot include provisions that make you forfeit your personal property without going to court, nor can he throw you out without going to court for nonpayment of rent. These are illegal provisions and will not be recognized by the courts.

It is also a good idea before you move in or a short time thereafter, that you inspect your dwelling unit with your landlord and make a list of any damaged or missing items. Once you and your landlord have agreed upon the condition of items such as the carpet, the walls, appliances, etc. keep a copy of the list. Also, if possible, take pictures of any questionable conditions. If necessary include provisions in the lease for repairs or in a separate written agreement. This may serve to eliminate any disputes that may later arise .

THE LANDLORD'S OBLIGATIONS

The landlord and his employees by law must follow the local housing, building and health codes; or

1. Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.
2. Unless otherwise agreed in writing, in addition to the requirements of subsection 1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times, make reasonable provisions for:
 - A. The extermination of rodents and wood destroying organisms.
 - B. Locks and keys.
 - C. The clean and safe condition of common areas.
 - D. Garbage removal.
 - E. Functioning facilities for heat during winter, running water, and hot water.

Additionally, the landlord must do everything he has agreed to in the lease.

ACCESS TO THE PREMISES



Once you rent your dwelling unit, your right to possession is much the same as if you owned your home. However, your landlord can enter at reasonable times to inspect the unit, supply agreed services, make repairs to the premises, or show it to a possible buyer, etc. "Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry and "reasonable time" for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord can also enter at any time to protect or preserve the premises if there is an emergency, if you have given consent, if you withhold consent unreasonably, or if you are absent for an extended period of time equal to one-half the time for periodic rental payments.

PROBLEMS WITH THE LANDLORD

If you have problems with your apartment, first ask your landlord to repair the problems. If he refuses or fails to act, report the suspected violations to the city, or county if outside city, housing or building inspector. Get a copy of the inspector's report if available and also gather other evidence concerning the violation such as pictures, physical evidence, or statements from witnesses that have first-hand knowledge of the violation.

If the landlord still refuses or fails to make the repairs, and the violation is substantial and material, (like plumbing or major appliances), you may write a letter to the landlord using the following format:

FROM: _____

DATE: _____

TO: _____

Dear (landlord):

You are hereby notified that you are in non-compliance with the lease agreement/Florida Statutes/housing code, (choose as applicable). The problems/defects are: (outline all the problems and attach a copy of the inspectors report if available). If every reasonable effort is not made to correct the above violations/deficiencies within 7 days, I intend to: (select one) _____ withhold rent, _____ terminate the lease.

Please govern yourself accordingly.

Sincerely,

(your signature)

PROBLEMS WITH THE LANDLORD

You may deliver the above written notice either by mail or by hand delivery. If you choose to mail your notice, send it "certified mail, return receipt requested" so that you have proof that the landlord received it. The landlord must receive this written notification at least seven (7) days before the rent is due. Therefore, in order to avoid any confusion as to the timeliness of your notice, it is advisable that you personally deliver the notice or send it as early in the rental period (the month) as possible, so that your landlord has even more than the required maximum time within which to make the repairs before your next rental payment is due. Should you hand deliver the notice, you may want to bring a witness with you other than a resident of your household, in case the landlord disputes that the notice was delivered or the date of delivery. Make sure to keep a copy of this letter for your records. **PLEASE NOTE THAT YOUR RENT MUST BE CURRENT AT THE TIME OF DELIVERY.**

If the seven days have expired and the landlord still has not corrected the problems, you may withhold your rent. However, if you do withhold your rental payment, you should set that money aside because if the landlord sues you for nonpayment of rent, you will be required to deposit all rent that is due with the registry of the court until the matter is resolved. If the Court determines the defects were not material you may be subject to eviction, past due rent, court costs and attorney's fees. Use this legal tool only if necessary. If it is not done properly, it could result in an eviction (i.e. rent was not current when delivered, rent was not saved, violations were minor defects, etc.).

THE TENANT'S RESPONSIBILITIES

As a tenant, you also have certain responsibilities. If you fail to live up to these responsibilities, you may be subject to eviction. As a tenant, you must pay the rent and security deposit and follow all other legal requirements in the lease agreement.

Tenants must also:

1. Keep their part of the premises clean and sanitary.
2. Remove all garbage in a sanitary manner.
3. Keep all plumbing fixtures clean and sanitary.
4. Conduct themselves in a manner that does not disturb neighbors and breach the peace.
5. Not destroy or deface the property.
6. Comply with all housing codes.



NONPAYMENT OF RENT

If you do not pay the rent you can be evicted. But, you cannot be evicted without a court order. To get a court order, the landlord must first take several steps listed below.

THREE-DAY NOTICE

If you do not pay your rent on time, the landlord must give you a Three (3) Day Notice for nonpayment of rent if he wants to evict you. This notice must inform you that you have failed to pay the rent on the date it was due. It must inform you of the exact amount of rent due and that you have 3 days, excluding weekends and holidays and the date of service of the notice, to pay the rent due or vacate the premises. It is not necessary that this notice be delivered by a Sheriff. Usually the landlord will post the notice on your door. If mailed, however, the landlord must add five (5) days for mailing.

If you pay the full amount of rent due within the three day time period, your landlord cannot evict you for nonpayment of rent. However, if you do not pay the full amount of rent that is due or you do not voluntarily vacate the premises within the three day time specified, the landlord can file an eviction action against you in county court.

Please note that if you live in public housing and you do not pay your rent on time, then you must be given a Fourteen (14) Day Notice to pay rent or vacate instead of a Three (3) Day Notice. It must advise you that you have a right to a grievance hearing on the issue of rent owed, must inform you of your right to make such reply to the Notice as you wish, and must also inform you of your right to examine public housing documents directly relevant to the eviction. If you do request a grievance hearing within the proper time frame, your landlord cannot file an eviction action against you until the grievance process has concluded. If you live in Section 8 housing or other government subsidized housing, other than public housings if your lease does not state differently, then you will receive a Three (3) Day Notice if you are behind on your rent.

FIVE-DAY SUMMONS

If the landlord files the action for eviction, you will be served (usually by a Sheriff or process server) with a summons and complaint. You will then have five (5) days (not including the date of service, weekends or legal holidays) to respond to the complaint. For example, if you are served with suit papers on Wednesday, absent any holidays, you must file your answer with the clerk's office by the following Wednesday. Instructions on where and how to file your answer are on the summons.

If you fail to answer in writing within the five (5) day time period, a Default Judgment followed by a Writ of Possession can be entered against you at any time after the five (5) days are up. The Sheriff will post a copy of the Writ on your premises which states that you have 24 hours to vacate. If you do not vacate within this 24 hour period, the Sheriff will place the landlord in possession of the premises by removing you. After that, the landlord or his agent may remove any personal property found on the premises to or near the property line. If requested by the landlord to do so, the Sheriff shall stand by to keep the peace while the landlord changes the locks and removes your personal property from the premises. Neither the sheriff nor the landlord or his agent shall be liable to you or any other party for the loss, destruction, or damage to the property after it has been removed from the dwelling unit. Also, please note that you can be arrested for refusing to vacate the premises when requested to do so by a Sheriff who is acting pursuant to a Writ of Possession.

FIVE-DAY SUMMONS



If you choose to respond to the complaint, you must deposit all the delinquent rent with the clerk of the court as instructed on the summons. If you fail to deposit the rent money at the time that your answer is due or fail to continue to deposit your rental payments as they become due, you may not get a hearing and therefore the court will not hear your side of the dispute. A Judgment for Possession and Writ will then be entered against you in accordance with the previous paragraph. If you are on subsidized housing, you are only obligated to deposit that portion of the rent for which you are responsible pursuant to federal, state, or the local program in which you are participating.

Be careful, simply because you do answer and deposit the money with the Clerk of the Court as required, does not mean that you will win the lawsuit. You must still have a "legally sufficient" defense for failure to have paid the rent. The fact that you are having difficult financial times is not a defense to non-payment of rent. You may want to consult with an attorney regarding what is a "legally sufficient" defense to non-payment of rent.

ILLEGAL EVICTION

Even if you owe rent to the landlord or have violated your lease agreement, self-help evictions are prohibited in the state of Florida. A landlord may recover possession of a rental unit only as provided in Chapter 83, Part II, of the Florida Statutes. This means that your landlord cannot cause (by any means) the termination of any of your utility services, including electricity, gas, and water, even if the service is in his name or payment of these services are made by him. For example, if your electricity is in your landlord's name, it would be illegal for your landlord to call up the utility company and order that this service be discontinued. The landlord is also not allowed to change the locks, use any other device to lock you out of your home, nor remove the doors or windows in an effort to force you to leave the premises. Furthermore, it would be illegal for him to remove your personal property from your dwelling unit unless proper legal action has been taken. If the landlord does any of the above, you are entitled to an injunction forcing the landlord to restore the utility or allowing you to regain access to your dwelling unit. Also, if you are successful in proving the illegal eviction, the landlord shall be liable to you for three (3) months' rent or actual damages, whichever is higher, plus costs and attorney's fees. If the amount of damages that you are attempting to recover is less than \$8,000, you can easily file a pro se action (without a lawyer) against the landlord in Small Claims Court. If the amount of damages that you are attempting to recover is more than \$8,000 then you must file your action in County Court. However, be advised that if you do sue your landlord for illegal eviction, you may be counter-sued for any damages, such as unpaid rent, that may have arisen out of your tenancy. The prevailing party is entitled to court costs and attorney's fees.

KNOW YOUR ACCOMODATION RIGHTS



LIVING IN A HOTEL, MOTEL, OR ROOMING HOUSE If you live in a hotel, motel, or rooming house, and it is your only home, the owner cannot lock you out for violating a rule or not paying your rent on time (with some exceptions based upon the circumstances). In order to terminate your tenancy, the owner has to abide by the same notice provisions that are outlined in this booklet.

Many of these owners will claim that since they have a motel/hotel license, they do not have to abide by the Florida Landlord Tenant Act. This is simply not true. The statute that covers hotels, motels, and rooming housings states that it only applies to transient occupancy. Transient relates to a person that is only temporarily staying in the unit and has another home elsewhere.

Therefore, if you live in a hotel, motel, or rooming house and it is your only home, the owner should file an eviction action against you in order to have you legally evicted. However, if the tenancy is transient, the landlord would be able to lock you out for non-payment of rent or unreasonable disturbance, ultimately, it is for the Court to decide whether your occupancy is transient.

TERMINATION OF RENTAL AGREEMENT FOR CAUSE

The landlord can terminate your tenancy for breach of your rental agreement or for violation of the applicable reasonable rules or regulations, other than a failure to pay rent as follows:

MATERIAL NONCOMPLIANCE

A material noncompliance occurs when the tenant does not live up to some important part of the lease agreement or the requirements imposed by law. There are two types of noncompliance. The first type is curable, meaning that if you stop this action you will not be evicted. The second type is non-curable, meaning that what you did is too serious for you to continue living in the dwelling.

Some examples of curable noncompliance are violation of pet policy, playing music too loudly, parking in an unauthorized manner, having too many guests, and failing to keep your residence clean and sanitary.

Examples of non-curable noncompliance include, but are not limited to, intentional damage or destruction of property, assaulting other tenants, or a subsequent or continued unreasonable disturbance.

CURABLE NONCOMPLIANCE

If you, the tenant, do not comply with the lease agreement and this violation is curable, the landlord must give you the following notice:

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.

The purpose of this notice is so that you can cure what is being complained of. If the landlord fails to specify the noncompliance and give the proper time period to cure or inform you that if the same or similar conduct takes place within 12 months no further opportunity to cure will be given, the court may say that the notice is invalid. You should still try to cure the noncompliance, however, as litigation is an uncertain proposition.

If you live in public housing or Section 8 housing, look at your lease to see how much time you are entitled to cure.



NON-CURABLE NONCOMPLIANCE

When you commit a non-curable noncompliance or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by your landlord of a similar violation, you must be given the following notice:

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).

Because this is non-curable, you will be subject to eviction if the landlord can prove you did this and the violation is ruled serious.

NOTE: If you live in public housing you can be evicted for serious or repeated violations of the terms of the lease agreement or for other good cause. Either of the following types of criminal activity by you, any member of your household, a guest, or another person under your control shall be cause for termination.

Any criminal activity that threatens the healthy safety or right to peaceful enjoyment of the public housing premises by other residents.

Any drug-related criminal activity on or near such premises.

As a public housing tenant, you will be given a (30) day termination notice or a notice allowing for a reasonable time (at least 7 days) considering the seriousness of the situation (but not to exceed 30 days) when the health or safety of other residents or public housing authority's employees is threatened.

BREAKING YOUR LEASE

If you are leaving your rented premises before the end of a written lease, be aware that you may be liable to your landlord for unpaid rent due after you have vacated. In order to recover this rent, however, the landlord must file a County Court action against you. If you leave before the end of your written lease, it does not automatically mean that the landlord can keep your security deposit. There are leases that state that the landlord is entitled to keep your security deposit as "liquidated damages" if the tenant leaves the rental dwelling before the lease expires. This kind of lease allows you to break the lease and the landlord is entitled to your deposit, however, it limits your liability for breaking the lease to the amount of your security deposit. It might be a good idea, if you are going to break a lease, to speak with your landlord to see if the landlord will accept your security deposit as your total financial obligation to him or her. If the landlord agrees to this, be sure to obtain a signed agreement to this effect from your landlord.



TERMINATION OF THE LEASE WITHOUT CAUSE

Month-to-month or week-to-week tenancies automatically renew unless terminated by the landlord or the tenant. A month-to-month tenancy, whether written or not, is when you pay the rent monthly without agreement as to how long you will stay.

For month-to-month tenancies, the landlord or tenant must deliver a notice at least fifteen (15) days before the next time the rent is due informing the other party that the lease will be terminated. Any time period shorter is ineffective. Any attempt to terminate on a date other than the next time the rent is due is insufficient.

In order to terminate a week-to-week tenancy, a seven (7) day notice is needed. Thus, for example, if the rent is due Monday, the notice must be delivered and received, on or before the previous Monday.

When a lease agreement automatically renews, the terms of the lease agreement dictate how to terminate the lease.

Also, in Florida, provided there is no agreement to the contrary, if you are an employee of the landlord and are furnished with a dwelling unit as an incident of employment (rent free), the duration of your tenancy is determined by the periods for which your wages are paid. For example, if you are paid weekly or more often, your tenancy is from week to week; if your wages are paid monthly or you receive no wages, then you are regarded as a month to month tenant.

TERMINATION OF THE LEASE WITHOUT CAUSE



Note: In order for the landlord to increase your rent, he must follow the same procedure as stated above. Oral notice increasing the rent is not valid. Also, in Florida, if a Notice is served upon a party by mail, then 5 additional days, excluding weekends and legal holidays must be added to the time period required for compliance. Therefore, to avoid any confusion or liability, your best bet is to personally deliver any notice required under the Florida Landlord and Tenant Act to your landlord.

Remember that in Florida, if you live in a private dwelling, under an oral lease or a written lease without a specific duration, your landlord can terminate your tenancy for any reason, using the above required notices, as long as it is not discrimination or retaliatory eviction. Your landlord can evict you "just because" and you cannot defend such an eviction by saying that you have no other place to live or that you have no money to move, or you have young children, etc.

RETALIATORY EVICTION

Your landlord cannot discriminate or retaliate against you by increasing your rent, decreasing your services, or evict you solely because you have complained to a governmental agency about a housing or health code violation, or because you participated in a tenant's union or similar organization. You as a tenant may present evidence of this conduct as a defense if the landlord brings an action for possession of the dwelling unit without alleging a break of the lease or tenant obligations on your part.

HOLDING OVER

If you hold over and continue in possession of the dwelling unit or any part thereof after the expiration of your lease agreement without your landlord's permission, the landlord can recover possession of the dwelling unit by filing a Complaint in County Court. There is also the possibility that the landlord will be able to recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which you refused to surrender possession.



LANDLORD IN FORECLOSURE

- If you receive a summons that the property you live in is going into foreclosure you have specific rights under Florida Law. Under this law you have a legal right to remain on the property for 30 days after the service of a notice of termination from the new owner if you meet the 4 conditions listed below. In order to protect your rights you should notify the court as soon as you receive notice that:
- You live in the property
- You rent the property
- You are a bona fide tenant, paying fair market rent
- Attach a copy of your lease to your answer

If you used to own the home and are now renting the property with an option to repurchase it, you should write this in your answer. You should contact an attorney as soon as possible, because there may be other remedies available to you at that time.

You are still obligated to pay rent during this time, but you must pay the rent to the current owner. If you are not sure who the current owner is you should hold the rent in a separate account until you receive a notice from the court or the owner of the property.

You may also negotiate an early lease break from the current owner. If you do get such a lease break, you should get it in writing even if your lease is oral in nature. Make sure all parties sign the new contract and have a definite final date that you will live on the property.

GOING TO COURT

If the rental agreement has ended or the landlord terminates the tenancy for any of the reasons allowed under Florida law and you fail to move, the landlord must file a complaint for eviction (file a suit) against you. The complaint is served with a summons (a notice from the court that tells you what to do to respond) which gives you 5 days, excluding weekends and legal holidays to file an answer in writing with the court where the suit was filed. So, for example, if you are served with a summons and complaint on Monday, absent any holidays, you must file your answer the following Monday.

FILING YOUR ANSWER

When you answer the complaint, first write the case number and the names of the parties on the top of your Answer just as they appear on the summons and complaint. Next, respond to each of the numbered paragraphs in the landlord's complaint by writing that you either deny or admit what is in each paragraph.

For example:

ANSWER

The tenant answers the Complaint for Eviction as follows:

COMPLAINT	ANSWER
1. <i>This is a complaint for eviction of a tenant from real property in Pinellas County .</i>	1. <i>Admitted</i>
2. <i>The plaintiff owns the following property: 1818 Markie Street, Largo, Florida.</i>	2. <i>Admitted</i>
3. <i>Defendant failed to pay rent when due.</i>	3. <i>Denied</i>



FILING YOUR ANSWER

After you admit or deny all of the paragraphs, then you write your defenses. For example, if you are being sued for having an unauthorized pet, you could write as a defense (if true) that you never had a pet living with you or it may be that you had a separate agreement with your landlord allowing you to have the pet. Or, if you are being sued for not having paid your rent and you did in fact pay your rent, your defense would be payment. Be sure to attach any receipts or other proof that you may have of said payment to your answer. Also if the landlord did not serve you with a proper notice terminating your tenancy, you may defend on that ground. Another possible defense available if you are being sued for non-payment of rent might be the landlord's serious or substantial noncompliance with your lease agreement or the applicable building, housing, or health codes. **But, remember that the defense of a material noncompliance can only be raised if you provided your landlord with a proper written seven-day notice as discussed previously.** Other possible defenses that you may have are the landlord's retaliatory or discriminatory conduct. However, in order for you to raise these defenses, you must have acted in good faith. As outlined above, your answer must be filed with the clerk of the county court no later than the 5th day, excluding Saturdays, Sundays, and legal holidays, after the date of service of process. You must also mail or personally deliver a true copy of the answer to the landlord or the landlord's attorney. When you do so, put the following certificate on your answer:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have sent a copy of this Answer to the landlord (or attorney for the landlord) on the ____ day of _____, .20__.

(your name)

FILING YOUR ANSWER



Remember: If your defense is anything other than "payment," you are required to pay any rent currently owed, as alleged in the complaint, into the registry of the court at the same time that you file your answer, and to continue to deposit your rental payments as they become due as long as your case remains active. You must also pay the Court's administrative fees, which the Clerk can tell you (3% of the first \$500 deposited and 1½% of any amount over \$500). If you fail to pay into the registry of the court any such rental payments or file a Motion to Determine the Amount of Rent to be Filed then the Court is prohibited from listening to any of your defenses other than payment and the landlord is entitled to an immediate Default Judgment and an issuance of a Writ of Possession ejecting you from the premises without further notice. A Motion to Determine Rent should be filed if there is some dispute as to the amount of rent that is owed your landlord. If you do file a Motion to Determine Rent, documentation in support of the allegation, if available, that the rent as alleged in the complaint is in error is required. Also, note that many courts require you to set this motion for hearing to avoid a default. Once you are assigned a case number you can determine who the judge for the case is. To set a hearing, contact that judge's judicial assistant.

COUNTER-CLAIM

If you have any claims against your landlord that arise out of your tenancy you may also file them with your Answer. Your claims should be titled Counterclaim. You should state the facts by numbered paragraphs along with the reasons why you are entitled to damage money from your landlord. For example, if you have withheld rent properly because of a termite infestation and you are sued for not having paid your rent, you can counterclaim for damages that these termites may have done to your furniture. Other counterclaims to an eviction suit might be one seeking damages under the Florida Fair Housing Act or one seeking damages because of the landlord's breach of the lease agreement. If you do file a counterclaim, then at the trial, you will have to prove the counterclaim, just like the landlord has to prove his original claim.



THE HEARING

Be prepared. Think about what you are going to say. Testimony will center on what is in the complaint and your answer. If you need a witness, bring someone who has personal knowledge of the facts. For example, if you are accused of having a pet, bring a neighbor who visits your house often and can testify whether you have a pet or not. Bring your lease, your rent receipts, canceled rent checks, pictures of conditions in the house, etc.

Dress for court. Making a good impression is important, as is showing respect for the court — do not let inappropriate dress affect the outcome of your case.

At the hearing. If you have been sued, the landlord will go first and present his case to the Court. You will have an opportunity to cross-examine their witnesses. Then when they are through presenting their case, you present your case. The other side can also cross-examine you and your witnesses. The Court will then decide. If the Court rules in your favor, there is no eviction; however, sometimes the Court will put conditions on the ruling. Therefore, before you leave, make sure that you understand completely what the ruling is.

If you lose. The Court will tell you in person or by written order how long you have to move. If you do not move by that date, a "Writ of Possession" will be issued and posted on your door by the sheriff advising you that you must leave within a minimum of twenty-four (24) hours; the deadline to vacate will be posted on the notice—often only two nights. You must not ignore a Writ of Possession. It means exactly what it says, that not only you, but all of your personal property must be off the premises within 24 hours (read the deadline date and time on the notice).

SECURITY DEPOSIT

When you, the tenant, move out, at the end of the lease or on abandonment with proper notice, the landlord has fifteen (15) days to return the security deposit or must send a certified letter within thirty (30) days to you informing you of the landlord's intention to impose a claim on your security deposit. The following form should be used by the landlord:

This is a notice of my intention to impose a claim for damages in the amount of _____ upon your security deposit, due to (reason).

It is sent to you as required by Section 83,49(3)f 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 send this notice in writing within the 30 days, the landlord forfeits his right to claim the security deposit. If the landlord does follow the proper procedure, you must respond within 15 days in writing if you object to the claim. If you do not object to the claim, the landlord may then keep the amount stated in the notice and must send the rest of the deposit to you within thirty (30) days after the date of the notice.

At that point, if you do not get your deposit back, or if the landlord keeps your deposit money more than 30 days after you move out, without sending you the above notice, then you can file a complaint in Small Claims Court against the landlord.

SECURITY DEPOSIT

However, if you sue to recover your security deposit the landlord may counter-sue you to recover damages for unpaid rent. Here again, the prevailing party is entitled to costs and attorney's fees.



NOTE: If you vacate the premises prior to the end of your lease or if your rental agreement, whether written or oral, does not contain a provision as to the duration of your tenancy, you must give at least 7 days written notice by certified mail or hand delivery to your landlord stating the date you will be out and including an address where you may be reached. Failure to give this notice relieves the landlord of the 30-day notice requirement, but shall not waive any right that you may have to the security deposit.

CONCLUSION

Florida law requires your landlord to observe strict compliance with statutory eviction procedures in order to protect tenants from improper eviction or removal from their dwellings. The more you know about your legal rights, the better you will be able to use them.

ONE FINAL NOTE: In Hillsborough County although some exceptions apply, it is illegal to refuse someone the opportunity to rent a dwelling unit because of their race, color, national origin, religion, sex, sexual orientation, handicap, or familial status. If you feel that you have been discriminated against for one of these reasons, contact your local human relations of office and call Bay Area Legal Services, Inc. at (813) 232-1343.



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