

# **Tenant's Guide to Forcing Landlords To Make Repairs in Florida**

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**If you are in doubt about your legal rights, there is no substitute for hiring a qualified attorney licensed to practice in Florida to answer your questions. At best, this material can serve only to educate you in a general sense, and cannot possibly address a particular factual situation like a Florida attorney could.**

## **Chapter 1: Contract Rights**

### **I. Lease As A Conveyance**

In Florida, leases are now construed as contracts with certain statutory protections for the tenants. But it wasn't always this way. Originally, a lease agreement was seen as a conveyance of property. The lease was looked upon as a conveyance of an estate in land for a term which was based upon the mutual promises between the parties. The view was that the tenant's promise to pay was exchanged only for the bare right of possession.

So long as the landlord owned the property at the time he signed the lease agreement and conveyed actual possession, this was all that was necessary to meet his duty to the tenant under the law. If the furnace went out in January, the landlord was under no duty to fix it, because by transferring possession to the tenant, he had met all of his obligations. If the tenant wanted heat, he either had to fix the furnace or walk around in blankets.

In fact, there was an old case (not from Florida) which best summed up the way that the law used to be on this subject. The judge in that case held that there is no prohibition at law against a landlord renting out a "tumbledown house" to a tenant.

In fact, the common law rule, long followed in Florida, was that in the absence of fraud or deceit, there was no implied warranty on the part of the landlord that premises leased for residential purposes are suitable for their intended use.

### **II. Lease As A Contract**

But as time went on, Florida courts began to see residential rental agreements more in the nature of a contract than in the nature of a conveyance of land. This meant that if there was a provision in the contract which required the landlord to put and keep the rented premises in a fit and habitable condition, then the tenant could sue the landlord if the furnace went out in January and the landlord refused to fix it.

When landlords got wind of the fact that they were going to have to live up to the promises that they made in their rental agreements, they quickly reworded their leases to indicate that they promised absolutely nothing. It didn't take courts too long to get wind of this either though, and the courts had a fix for this problem. Courts in Florida began to find that there was an "implied warranty of habitability" in every lease agreement.

When a Florida court finds an implied warranty of habitability in a lease, what this means is that the court will pretend that the landlord has a clause in his lease agreement which requires him to make whatever repairs are necessary to put and keep the rented premises in a fit and habitable condition so that the tenant can live there without a danger to his or her health.

### **III. Breach of Contract Law Suits**

At Common Law, a tenant can bring a lawsuit alleging breach of contract against the landlord if he provides the apartment to the tenant in a manner which is not in a habitable condition. The measure of the tenant's damages would likely be either the amount of rent paid for the place minus what it was actually worth to the tenant in the condition provided (if it was worth anything at all), or perhaps any damages that the tenant suffered in having to go out and find and pay for alternate living arrangements during the time that the apartment was not in the condition promised by the landlord.

It is important to note that not just any failure to repair on the part of the landlord will constitute a breach of the implied warranty of habitability.

### **IV. The Trouble With Common Law Remedies**

The trouble with a common law remedy like breach of contract is that Florida, like most other states in the U.S., follows the so-called "American Rule" of contract law, which states that in a contract case, each side pays its own attorneys fees, absent a statutory provision to the contrary. This means that if you sue your landlord, you will be paying your attorney \$150.00 per hour, and you will not be able to recover the money expended to vindicate your rights even if you win the case.

This can lead to a judgment in your favor for \$750.00 and an attorney bill from your attorney in the amount of \$1,500.00. Now you see why large companies sometimes settle silly lawsuits instead of fighting them.

## Chapter 2: Statutory Rights of Tenants

### I. Introduction to Statutory Duties of Landlord To Tenant

Fortunately for residential tenants in Florida, the Florida Legislature enacted Section 83.51. to summarize the statute (and then I will reprint it in its entirety below, it says that the landlord has to comply with all applicable building, housing, and safety codes, and where there are no such codes, maintain the structure in a good and habitable condition (mobile homes owned by the tenants being an exception here).

There is an exception to this rule if the rented premises is a single family home or duplex and the lease contains language contrary to the law. These type of landlords will be called “exempt landlords,” and every other landlord to whom the law fully applies will be called “non-exempt landlords.”

Further, you should keep in mind that this statute applies only to residential tenants, not to tenants of commercial property. City of St. Petersburg v. Competition Sails, Inc. (1984), 449 So.2d 852 at 853.

A non-exempt landlord also has to exterminate vermin, provide working locks and keys, maintain the common areas (if any) in a clean and safe condition, provide garbage removal and outside receptacles, and must provide running water, hot water, and heating in the winter. Please note that the law requires the landlord to provide access to water and utilities, but the landlord does not have to pay the monthly bills for the amount of water and utilities you use.

The non-exempt landlord also has to provide smoke detectors.

Lastly, it is important to note that if the conditions that the tenant complains of are or were caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent, then the law does not give the tenant any remedy for that condition.

Here is the statute:

#### **83.51. Landlord's obligation to maintain premises**

(1) The landlord at all times during the tenancy shall:

- (a) Comply with the requirements of applicable building, housing, and health codes; or
- (b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of

resisting normal forces and loads and the plumbing in reasonable working condition. However, the landlord shall not be required to maintain a mobile home or other structure owned by the tenant.

The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)

(a) 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 during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord shall not be liable for damages but shall abate the rent. The tenant shall be required to temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.
2. Locks and keys.
3. The clean and safe condition of common areas.
4. Garbage removal and outside receptacles therefor.
5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or

any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

## **II. Introduction to Statutory Duties of Tenant to Landlord**

A tenant should keep in mind that not every condition which annoys the tenant will be the responsibility of the landlord to remedy. There are certain duties put upon the tenant by the Florida Legislature as well. If the tenant complains to the landlord about a condition which the law says is the tenant's duty to fix, then the tenant isn't going to get anywhere.

Section 83.52 lays out the duties of the tenant in maintaining the dwelling unit. I will summarize the statute for you, and then reprint it so you can read the exact language below. The duties you will find imposed upon the tenants by law are largely what you would expect.

The tenant must comply with all applicable provisions of building, housing, and health codes which require tenants to do certain things, keep the apartment that he or she occupies clean and sanitary, dispose of the tenant's garbage in a clean and sanitary manner, keep all plumbing fixtures (like sinks, toilets, bathtubs etc. in clean condition and in good repair, use all of the facilities at the apartment in a reasonable manner, refrain from damaging the property or altering it without the landlord's permission, refrain from any conduct that would disturb others and not let any other person like guest disturb others.

Here is the statute:

### **83.52. Tenant's obligation to maintain dwelling unit**

The tenant at all times during the tenancy shall:

- (1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.
- (2) Keep that part of the premises which he or she occupies and uses clean and sanitary.
- (3) Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.
- (4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.
- (5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.
- (6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.
- (7) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

### **III. Landlord's Right of Access to the Rented Premises**

Once the landlord rents out the apartment, he still owns it, but he has given up one of the integral rights of ownership, that is, possession. He may no longer come and go into and out of the unit as he pleases. This should not come as a surprise to a landlord or a tenant, but with unsophisticated landlords and tenants, you would be surprised with what goes on and what gets argued.

Fortunately for Florida tenants, the Florida Legislature enacted Section 83.53 which lays out the rights of landlords and tenants where a landlord's entry into the rented premises is concerned. I will summarize the law, and then give you the raw text below.

The tenant can't unreasonably bar the landlord from entering the rented premises if the landlord needs to inspect it, make repairs, alterations or improvements, supply services, or show the place to people interested in it. So long as the landlord gives reasonable notice to the tenant of his desire to enter at a reasonable time, the landlord can come in.