**LANDLORDS MAKE MISTAKES**

**BY: WILLIAM G. MORRIS, ESQ.**

Being a landlord is not as easy as it sounds. A lot of people think all you have to do is buy a property, advertise for rent and collect rent to be successful in the rental business. There are a lot of laws landlords must follow, most of which are intended to protect tenants from abuse. Many landlords do not know the law, which means many violate the law without even knowing it.

Florida’s Residential Landlord and Tenant Act attempts to balance the rights and obligations of both landlords and tenants. The Act requires landlords to follow numerous technical requirements. The requirements are not particularly difficult, but can be easily overlooked. One of the most frequently violated provisions has to do with deposit money or advance rent.

When a landlord receives a security deposit or advance rent, the landlord must either hold the money in a separate account in a Florida banking institution or post a surety bond. If the deposit is held in a separate account, the money cannot be co-mingled with any other funds of the landlord and the landlord cannot use the money until it is actually due the landlord. If the funds are held in an interest-bearing account, the tenant must receive at least 75% of the annualized average interest rate payable on the account or interest at 5% per year, whichever the landlord elects.

If the landlord rents 5 or more individual dwelling units, the landlord is also required to give the tenant written notice of the name and address of the depository, whether the tenant is entitled to interest on the deposit and disclosure of the statutory requirements. The notice must be in the lease or provided to the tenant within 30 days after receipt of advance rent or a security deposit.

Landlords are also tasked with deposit duties after end of the lease. If the landlord does not intend to impose a claim, the landlord must send back the deposit within 15 days after the tenant vacates. If the landlord intends to impose a claim against the deposit, the landlord must provide written notice by certified mail to the tenant’s last known mailing address of intention to impose a claim within 30 days after the tenant vacates. Tenant has 15 days to object.

If a landlord fails to comply with the statutory requirements for advance rent and security deposit, the landlord waives any claim to those funds. That means the tenant can get those funds back even if the tenant fails to pay rent or damages the property, although the landlord may get a judgment against the tenant for unpaid rent or damages. A landlord failing to comply with the statute may find that the tenant gets a judgment under which the landlord must give the tenant back the deposit even though the landlord gets a judgment for damages against the tenant.

All landlords must comply with the requirements of applicable building, housing and health codes or, absent such requirements, must maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components and plumbing in a reasonable condition. Other maintenance and repair obligations can be placed on the tenant by terms of the lease.

If the landlord does not make it the tenant’s responsibility in the lease, landlord of a dwelling other than a single-family home or duplex is responsible for extermination of rats, mice, roaches, ants with destroying organisms and bedbugs, locks and keys, clean and safe condition of common area, garbage removal, and functioning facilities for during the winter, running water and hot water. Most otherwise agreed in writing, the landlord of a single-family home or duplex must install working smoke detection devices.

If the landlord fails to meet the landlord’s maintenance and repair obligations, the tenant can hold back rent. But, the tenant must first give the landlord 14-days notice of repair requirement and the tenant’s intention to withhold rent.

When a tenant fails to pay rent, some landlords try to push the tenant out by turning off the lights. A landlord is prohibited from locking the tenant out. A landlord is also prohibited from removing the outside doors, locks, roof, walls or windows of the unit and may not remove the tenant’s personal property unless the tenant has surrendered or abandoned the premises for the landlord has recovered possession by court action. Landlords are prohibited from turning off utilities, elevators, air-conditioning or garbage collection. If the landlord violates these provisions of Florida law, the landlord is liable to the tenant for actual and consequential damages or 3 months’ rent, whichever is greater, plus attorney’s fees.

Statutes try to accommodate the desire of the landlord to quickly get rid of a non-paying tenant and the need of some tenants for due process. The statutes do that by requiring a landlord provide the tenant with 3 days’ notice that the tenant must pay the rent or move out. Content of the notice is prescribed by statute and landlords often fail to meet the requirements.

The 3-day notice must include the amount of the unpaid rent (only unpaid rent and not late charges or other items) demand for payment and calculation of the 3-day deadline. The notice must be mailed or personally delivered or if the tenant is absent, by leaving a copy at the residence. If mailed, 5 additional days must be added to the tenant deadline. Landlords often include late fees and other charges in the 3-day notice and some even miscalculate the end of the 3 days since weekends and holidays are not included. Others accept partial payment during the 3 days. Defective notice or partial payment means the 3-day notice fails and the landlord has to start over. A similar process must be followed for tenant defaults other than non-payment, but the tenant gets 7 days to cure most of those.

Landlords sometimes trip over other statutes. Both Florida and Federal Fair Housing Acts prohibit discrimination based upon a number of categories, including families with children. It also requires landlords provide reasonable accommodations for tenants with disabilities. The Federal Fair Housing Act has been expanded by rule to include harassment The statutes do not apply to single-family homes rented without brokers. First violation can result in a civil penalty to the government of $16,000 plus attorney’s fees and the tenant has a cause of action as well.

There are many other statutes applicable to the landlord-tenant relationship. Each statute is not particularly difficult to understand or follow. But in totality, they impose a rather complex set of rules that landlords must follow. It is that totality which increases the potential for landlord non-compliance.

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