HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 577 Tenant Safety
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 898

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Wright	Anstead

SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act" (the Act) governs the relationship between landlords and tenants under a residential rental agreement. The Act provides landlords with certain rights of entry to the dwelling unit. For example, the landlord may enter a dwelling unit for purposes of repair to the premises, but the landlord must first give "reasonable notice" of **12** hours to a tenant beforehand.

The PCS increases the time period that a landlord must give to a tenant prior to entering the dwelling unit to **24** hours, from 12 hours.

The PCS provides an effective date of July 1, 2022.

The PCS does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Residential Landlord and Tenant Act

Part II of ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act" (Act), governs the relationship between landlords and tenants under a residential rental agreement.[1]

The act does not apply to:[2]

- Residency or detention in a facility when it is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.
- Occupancy under a contract of sale of a dwelling unit or property of which it is a part.
- Transient occupancy in a public lodging establishment or a mobile home park.
- Occupancy by a holder of a proprietary lease in a cooperative apartment.
- Occupancy by an owner of a condominium unit.

Any right or duty declared in the Act is enforceable by civil action. A right or duty enforced by civil action under the Act does not preclude prosecution for a criminal offense related to the lease or leased property. If either the landlord or the tenant fails to comply with the requirements of the rental agreement or the Act, the aggrieved party may recover the damages caused by the noncompliance.[3] Under certain circumstances, either party may take action to terminate the lease.[4]

Covenant of Quiet Enjoyment

Generally, a tenant is entitled to the right of private, peaceful possession of the dwelling, which includes limited access to the dwelling unit by the landlord.[5] In the absence of inconsistent express covenants, an ordinary lease includes an implied covenant of quiet enjoyment under Florida law,[6] and use of the words "lease" or "demise" in a lease imports a covenant of quiet enjoyment.[7] Thus, a valid ordinary lease of real estate raises an implied covenant of quiet and peaceful enjoyment of the leased premises exercisable against the landlord, unless there is an express covenant of a more limited character inconsistent with the judicially implied covenant of quiet enjoyment.[8]

Landlord's Obligation to Maintain Premises

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes. Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.[9]

Landlord's Access to the Dwelling Unit

[1] S. 83.41, F.S., provides that part II, ch. 83, F.S., applies to the rental of a dwelling unit.
[2] S. 83.42, F.S.
[3] S. 83.55, F.S.
[4] S. 83.56, F.S.
[5] The Florida Bar, *Consumer Pamphlet: Rights and Duties of Tenants and Landlords*, https://www.floridabar.org/public/consumer/tip014/ (last visited Jan. 25, 2022).
[6] Fla. Jur. 2d Landlord and Tenant § 90. *Stinson, Lyons, Gerlin & Bustamante, P.A. v. Brickell Bldg. 1 Holding Co., Inc.*, 923 F.2d 810 (11th Cir. 1991); *Coral Wood Page, Inc. v. GRE Coral Wood, LP*, 71 So. 3d 251 (Fla. 2d DCA 2011); *Hankins v. Smith*, 103 Fla. 892, 138 So. 494 (1931).
[7] Fla. Jur. 2d Landlord and Tenant § 90. *Hankins*, 138 So. 494.
[8] Fla. Jur. 2d Landlord and Tenant § 90. *McClosky v. Martin*, 56 So. 2d 916 (Fla. 1951); *Hankins*, 138 So. 494.
[9] S. 83.51(1), F.S.

Generally, the landlord is restricted to accessing the dwelling unit under certain scenarios. The landlord may enter the dwelling unit at any time for the protection or preservation of the premises.[10]

The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "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.[11]

The tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.[12] The landlord may enter the dwelling unit when necessary for these purposes under any of the following circumstances:[13]

- With the consent of the tenant;
- In case of emergency;
- When the tenant unreasonably withholds consent; or
- If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

The landlord may not abuse the right of access or use it to harass the tenant.[14]

Miya Marcano

On September 24, 2021, Miya Marcano, a student at Valencia College, went missing from her apartment in Orlando, Florida, where she also worked at the front office. She was later found dead miles from her apartment.[15]

Investigators for the Orange County Sheriff's Office said Marcano was taken from her apartment by Armando Caballero, who was a maintenance worker at the same apartment complex. It is alleged that he used a master key fob for the apartment complex to enter her apartment. Caballero was found dead by apparent suicide a few days after Marcano went missing.[16]

Effect of the Bill

The sponsor has entitled the act "Miya's Law," in memory of Miya Marcano.

The PCS increases the "reasonable notice" time period that a landlord must give to a tenant prior to entering the dwelling unit for purposes of repair of the premises, to **24** hours, from 12 hours.

The PCS provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Provides a short title.
Section 2: Amends s. 83.53, F.S., revising landlord notice requirements for entering a dwelling.

[10] S. 83.53(2), F.S.
[11] *Id*.
[12] S. 83.53(1), F.S.
[13] S. 83.53(2), F.S.
[14] S. 83.53(3), F.S.
[15] Cristobal Reyes, *Miya Marcano's family again blasts Orange sheriff after autopsy released: 'Precious moments' lost*, Orlando Sentinel, Orlando Sentinel (Dec. 28, 2021), https://www.orlandosentinel.com/news/crime/os-ne-miya-marcano-autopsy-response-20211228-svqnw6bdozaghnoijjevdgkgoi-story.html (last visited Jan. 16, 2022); Vanessa Etienne, *Miya Marcano Cause of Death Ruled a 'Homicide by Undetermined Means': Medical Examiner*, People (Dec. 29, 2021) https://people.com/crime/texas-girls-abduction-inspired-amber-alert-26-years-later-case-remains-unsolved/ (last visited Jan. 16, 2022).
[16] Cristobal Reyes, *supra* note 15.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This PCS does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES