

FLORIDA Consumer Action NETWORK

TO: Joan Zeldon, Chair
Drafting Committee on Revised Uniform Residential Landlord and Tenant Act

From: Alice Vickers (Observer), Housing & Consumer Policy Advocate
Florida Consumer Action Network

RE: Comments regarding the provisions of the Draft Revised Uniform Residential Landlord and Tenant Act (For October 12-13 Drafting Committee Meeting, Changes Shown in Strike and Score)

Date: October 10, 2012

The Draft Revised Uniform Residential Landlord and Tenant Act (RURLTA) and the accompanying documents evidence an impressive and thorough work product by the reporters and you should all be commended. These comments are intended to highlight issues found in the Draft RURLTA that would adversely impact tenants and omissions in protections for tenants. My comments are based on my experience as a former legal services attorney specializing in tenant protections for 28 years, mostly in Florida, and my current role in advocating for tenants before the Florida Legislature. I look forward to participating in the ongoing process. Thank you for your consideration.

Sec. 102. Definitions

- Page 1, Line 8

1) "Abandonment" means either the absence of the tenant from the dwelling unit without notice to the landlord for at least seven days if rent is unpaid for ten days and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the dwelling unit, or the absence of the tenant for at least five days if the rent for the dwelling unit is unpaid for five days and none of the tenant's personal property is in the dwelling unit.

The time period should be lengthened to at least one-half the time for periodic rental payments. The time periods in this definition are too short and do not take into account different periodic rental payments – week to week, month-to-month, etc. The time period should be seven days minimum to cover week-to-week rentals, but otherwise should be for at least a period of time equal to one-half the time for periodic rental payments.

- Page 1 Line 20

(6) "Attesting third party" means a law enforcement official, a licensed health care

professional, a victim's advocate, or a victim services provider who has had contact with the tenant or an immediate family member who has been the victim of domestic violence.

Licensed attorneys should be attesting third parties. There should be a specific provision to include attorneys as attesting third parties. Many legal aid programs provide hotline and follow-up assistance to domestic and sexual violence victims; failure to specifically include attorneys could lead to confusion and unnecessary litigation.

- Page 2, Line 2

(8) "Domestic violence" means the infliction of physical injury, sexual assault, or the stalking of a tenant or an immediate family member by a perpetrator regardless of whether the perpetrator is related to the tenant or an immediate family member.

The definition should include threats of violence and distinguish between domestic violence and sexual violence. I concur with all the comments of Sybil Hebb, Director of Policy Advocacy, Oregon Law Center, made in her excellent memo of October 10, 2012, but highlight this one in particular. Florida, like many states, distinguishes among domestic violence, dating violence, sexual violence and stalking and the RURLTA should recognize these distinctions.

- Page 3, Line 19

(20) "Perpetrator" means an individual who is inflicting or has inflicted domestic violence upon the tenant or an immediate family member.

The definition should be broadened to include threats of violence. This provision needs to be in accord with changes to "domestic violence." The goal is to protect victims before actual violence. Threats can be followed by lethal violence.

- Page 4, Line 7

(25) "Rent" means all payments to be made to or for the benefit of the landlord for the use and occupation of the dwelling unit.

The definition for rent is too broad. Nonpayment of rent can lead to threats of eviction; therefore, the definition for "rent" should be carefully drawn to address solely the periodic payments due to the landlord. Any other payments by the tenant to the landlord should not be defined as rent; the parties may make specific agreements about other amounts in the contract (lease).

SECTION 103. SCOPE

- Page 6, Line 1

(b) Unless created to avoid the application of this [act], the following arrangements are not governed by this [act]:

(1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, counseling, religious, or similar service;

The RURLTA should study the varying medical and geriatric housing to determine any inclusion in the Act. Since the drafting of the original Act, there has been huge growth in housing for the elderly and disabled. Generally, tenants of this housing are not afforded the protections of their state's landlord tenant laws when services are provided, for example with Adult Congregate Living Facilities. There may be some forms of this housing that would more closely resemble a landlord tenant relationship and the tenants should therefore be provided the protections of the RURLTA.

SECTION 111. KNOWLEDGE AND NOTICE

- Page 9, Line 22

(e) A person receives notification when the notification: (1) comes to the person's attention; (2) in the case of a landlord, is sent in a record by the tenant to the landlord [or another person designated by the landlord and] addressed to the post office address or electronic mail address the landlord designates, or, in the absence of such designation, is:

(A) delivered by the United States Postal Service or any commercially reasonable delivery service to the landlord at the landlord's place of business when the lease was made or at any other place held out by the landlord for receipt of a communication; or

(B) delivered by any other method reasonably calculated to provide notice to the landlord; and (3) in the case of a tenant, is sent in a record by the landlord to the tenant addressed to the post office address or electronic mail address the tenant designates, or, in the absence of such designation, is: (A) delivered by the United States Postal Service or any commercially reasonable delivery service to the tenant at the tenant's last known residential or business address; or (B) delivered by any other method reasonably calculated to provide notice to the tenant.

(f) A person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when an individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the individual had exercised reasonable diligence. For purposes of this subsection, a person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to an individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be substantially affected by the information.

Actual notice in the form of hand delivery, mail delivery or electronic mail, where the parties have agreed, should always be required. I do not understand the impact of the language in subsection (f) that "(a) person other than an *individual* knows, has notice, or receives a notification of fact...." Whatever its meaning, actual notice should be required.

SECTION 301. REQUIRED DISCLOSURES

- Page 13, Line 9

This section must carry with it repercussions for the landlord's failure to provide the required disclosures. Experience has shown that if the landlord does not suffer any consequences from the failure to disclose the required information, then the requirements are virtually meaningless.

SECTION 303. LANDLORD'S DUTY TO MAINTAIN

- Page 16, Line 10

(b) The landlord and the tenant may agree in a record signed by them that the tenant will perform specified repairs or maintenance to discharge the landlord's duties under subsection (a) if the agreement is entered into in good faith and does not diminish or affect the obligation of the landlord to other tenants in the premises.

The uneven bargaining power between the tenant and the landlord will often result in tenants waiving their protections provided by the landlord's duty to maintain. The subsection that allows the parties to agree in a record to essentially waive the duties of this section puts tenants at risk and makes no sense as applied to multi-family housing. It should either be deleted or applied only in the case of single-family homes. The "good faith" obligation does not save the provision. Use of boilerplate leases will include a variety of "waivers" and in many cases the tenant will be unaware of what is buried in their 12 page lease but will be bound by it.

SECTION 401. TENANT'S DUTY TO MAINTAIN

- Page 18, Line 5

(h) promptly notify the landlord of any conditions on the premises that require repair or remediation, including the existence of mold, radon, asbestos, rodents, bedbugs, or other conditions affecting health and safety of which the tenant has knowledge;

Requiring a tenant to notify the landlord of unusual and difficult to determine infestations places an unfair burden on tenants and will lead to unwanted litigation. Most tenants with knowledge of mold, asbestos and bedbugs would immediately notify a landlord since to live in such conditions is very uncomfortable and can be dangerous to one's health. However, "mold" is very broad and can mean both molds that are extremely detrimental to one's health as well as mold in the shower or other wet areas of the house that grows freely in some parts of the country. To place tenants at risk of eviction for failure to notify the landlord is too harsh a burden. Furthermore, many tenants may not understand the repercussions of radon and may not care about minimal rodent infestation. This requirement should be deleted.

SECTION 501. NONCOMPLIANCE BY LANDLORD-GENERAL

- Page 20, Line 5

(a) Except as otherwise provided in this [act], if there is a substantial noncompliance by the landlord with the lease or Section 303(a) that is not remedied by the landlord within [14] days after the tenant notifies the landlord in a record of the specific acts or omissions constituting the noncompliance,

Fourteen days is too long to allow for landlords to repair substantial and material noncompliance with the obligations to maintain the unit found in Section 303(a). This time period may be sufficient for minor repairs, but not major repairs such as lack of plumbing, heat, electricity or other major repair problems.

SECTION 505. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION FOR POSSESSION OR NONPAYMENT OF RENT

- Page 24, Line 18

(a) In an action for possession based upon nonpayment of rent or in an action for unpaid rent when the tenant is in possession,

(1) the tenant may defend on the basis that that no rent was due or [counterclaim] for any amount the tenant may recover under the lease or this [act]; and

(2) during the pendency of an action, the court may order the tenant to pay all or part of the unpaid rent and all additional rent as it accrues into an escrow account with the court [or with a financial institution or other entity authorized to hold funds in escrow]

There are few, if any, other actions where a plaintiff sues a defendant under contract and the *defendant* is required to pay disputed funds into a court registry in order to have access to the court. The unfairness of such a provision is heightened when one considers that this is the defendant's sole or primary home that he or she is protecting.

SECTION 701. TERMINATION OF PERIODIC TENANCY; DEATH OF A TENANT

- Page 36, Line 24

a) Either the landlord or the tenant may terminate a periodic tenancy for week-to-week by giving the other at least [5] days' notice of the intent to terminate on the date specified in the notice.

A week-to-week tenancy should allow for 7 days notice, counting weekends, for either party to terminate. Allowing 7 days to terminate a week-to-week tenancy is in keeping with giving a month to terminate a month-to-month tenancy. Five days is confusing for most tenants when it falls in the middle of the week.

SECTION 905. RIGHTS AND OBLIGATIONS OF LANDLORD'S SUCCESSOR

- Page 44, Line 16

(a) Within [30] days of the termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the personal representative of the landlord's estate shall do one of the following acts, either of which shall relieve the landlord or the landlord's estate from further liability with respect to the security deposits and prepaid rents held by the landlord:

Protecting the tenant's deposit after foreclosure should be clear in these provisions. The loss of the security deposit after foreclosure has been a huge problem in Florida. The tenant, in most cases an innocent bystander in the foreclosure process, should be protected from suffering this financial setback. Indeed, incorporating the provisions of the Protecting Tenants at Foreclosure Act in the RURLTA should be considered.

Again, thank you for the opportunity to comment. I look forward to working with the committee as it moves forward.