

RESIDENTIAL TENANT REMEDIES IN THE WAKE OF IRMA

by Joseph S. Hughes

In the wake of Hurricane Irma, many of Florida's tenants returned to damaged and destroyed homes. This article discusses the tenant's options for compelling a landlord's performance under a lease and Florida Statutes, or modifying or terminating a lease.

If casualty damage to the premises substantially impairs the tenant's enjoyment of the premises through no fault of the tenant, under section 83.63, Florida Statutes, the tenant may terminate the lease and immediately vacate the part of the premises rendered unusable by the casualty. The tenant's rent is then reduced by the fair rental value of that part of the premises damaged or destroyed. If the entire premises is rendered unusable, the tenant may vacate the premises entirely, terminate the lease, and not be held responsible for any further rent.

If all parts of the premises are still usable and the tenant's enjoyment of the premises is not substantially impaired, but damage exists that necessitates repairs, the tenant should turn to sections 83.51 and 83.56. Under section 83.51, landlords in Florida are generally required to maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair. If the damage to the premises constitutes a violation of section 83.51 or a material breach of the lease by the landlord, the tenant may unilaterally vacate and terminate the lease early without incurring liability for further rent and damages if he or she strictly complies with section 83.56.



To comply with section 83.56, the tenant must deliver written notice to the landlord specifying the non-compliance, and indicating the intention of the tenant to terminate the rental agreement by reason thereof if the noncompliance is not corrected within seven days of the delivery. If the notice is sent by mail, five additional days should be added to the seven-day period. If the final day lands on a weekend or legal holiday, then the deadline becomes the next business day.

If the landlord's failure to comply is due to causes beyond his or her control and the landlord continues to make every reasonable effort to correct the failure to comply, the rent is reduced by an amount proportionate to the loss of rental value caused by the non-compliance for as long as the non-compliance continues.

Once the seven-day period expires, if the landlord has failed to comply with the tenant's notice, the tenant should cease remitting further rental payments to the landlord, or risks waiving the right to terminate the lease and bring a civil action for damages.

If the lease is a month-to-month tenancy, it may in some cases make more

sense for the tenant to terminate the lease by simply providing the landlord with a notice of termination at least fifteen days prior to the expiration of the rental period.

Even if the tenant strictly follows all of the proper statutory procedures, the tenant must be prepared to defend against an eviction action by the landlord. The tenant should save all rent that would have otherwise been paid to the landlord so that same can be remitted into the clerk's registry pending a court's determination of rent paid and owed. The tenant's timely remittance of unpaid rent together with properly raised affirmative defenses and a Motion to Determine Rent will be necessary for the tenant to defend against the landlord's action.

Florida's tenants would be well advised to strictly adhere to the above statutory guidelines if they wish to modify or terminate their lease while avoiding liability for rent and damages. **B**



Joseph Hughes is a sole practitioner and trial lawyer in Fort Lauderdale, practicing in South Florida and around the state. He can be contacted at Jhughes@Jhugheslegal.com or (954) 256-5125.