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May 10, 2022

Dear Valued Clients:

Re: Miami Dade County Bill of Rights Legislation Ordinance

On May 3, 2002, the Miami Dade County Board of Commissioners passed the Tenant's Bill of Rights Ordinance which will go into effect on this coming Friday, May 13, 2022. There are significant changes to landlord/tenant law and several items that owners and management need to be aware of concerning management of residential properties in Miami Dade County.

The Office of Housing Advocacy, a department to be created under this ordinance, will develop a form Tenant's Bill of Rights Notice that must be given by the landlord to all tenants at move-in and with each renewal. The tenant must review, acknowledge and sign that they received the notice and return it to the landlord within 7 days. If the tenant does not return it in a timely fashion, the landlord will need to document all attempts made to acquire the signature. The landlord must keep the most recent copy of it on file for at least 60 days after the end of the tenant's residency. However, until the form is created, there is no requirement to provide a similar notice to the tenants. As soon as it becomes available, we will notify you.

The key additional tenant rights provided in this ordinance can be found starting on page 15 of the attached pdf, in Section 17-167 (2) entitled "Additional Tenant Rights". Subsection (a) addresses delivery of the notice is mentioned above. Subsection (b) requires landlords to inform residents within 14 days of notification from a government entity or a condo association that a building may be considered unsafe. Subsection (c) requires landlords to notify month-to-month tenants of an owner change at least 60 days prior to or simultaneously with the ownership change.

Subsection (d) under Additional Tenants Rights requires particular attention. It specifically states that it is unlawful for a landlord to: (d) inquire about or require disclosure from a prospective or reoccurring tenant regarding their eviction history when considering an application for admission to, or continuing occupancy of, a dwelling unit *until a prospective tenant or current tenant has been determined to qualify for admission* to, or continued occupancy of, a dwelling unit. In other words, you must first determine the eligibility of the tenant without considering the possibility of prior evictions. Therefore while a decline may be based partially on previous eviction(s) it should not be the main reason for the denial, especially if the eviction is for nonpayment of rent. It should mainly be based on other criteria concerning lack of current income, credit worthiness, or poor resident/occupant behavior at the prior community, etc. As a result, you should remove any questions regarding prior evictions from the application for residency. Failure to do so could expose you to legal challenges since attorney's fees and court costs are awardable for violations of this provision.

One of the most problematic portions of the new ordinance is found in subsection (e) which allows a tenant to make necessary repairs to the premises on their own and then deducts the costs from their rental payments. However, in order to do so, the tenant must follow the three listed requirements. First, the landlord has failed to maintain the premises in accordance with Miami Dade County Code and/or Florida Statutes and the tenant has evidence of the repairs including receipts, before and after photographs of the portion repaired and other evidence. Second, the tenant must have sent a 7-day notice of the landlord's failure to maintain the unit in accordance with Florida Statutes 83.56. Third, the landlord fails to make the repairs required under law despite the tenant's notice.

As we are aware, the repair and deduct provision is open to abuse by the tenant, but this also means that landlords cannot delay upon receiving a 7-day notice from a tenant. Waiting to find a vendor for three weeks is simply not an option. Should the tenant decide to deny you access to the premises, then you should note the file and immediately contact this office to decide what type of emergency access would be appropriate. This is drastic but may become necessary with a cunning tenant who wishes not to pay rent and have his brother in law or best friend fix the premises for thousands of dollars.

Remember that just like under F.S. 83.67, Prohibited Practices, threatening to take adverse or legal action is strictly prohibited under this ordinance. Section 17-170 on Page 19 even allows for enforcement by private persons for up to two years after the alleged violation. This section provides attorney's fees and court costs and possible punitive damages for violating this ordinance. As a result, it is imperative that detailed notes be kept in the tenant files to protect the ownership, management and employees.

There may be additional requirements and notices once the Office of Housing Advocacy completes the notice preparation. We will continue to keep you informed as matters develop. As always, if you have any questions please feel free to contact us.

Sincerely,

/s/Kenneth J. Lowenhaupt, Esq.
For the firm