

### LET'S START WITH THE BASICS...

When it comes to Chapter 83 and the residential Florida Landlord/Tenant law, we all would probably admit that we do not know nearly enough. The law changes everyday depending on the decisions of the Judges in Florida and the law amended slightly each legislative session depending on the lobbying efforts of interested parties. Yet there are fundamental principles on which everyone should have a firm grasp.

Let's start with the basics. What is a lease agreement? A lease agreement is a written *or oral* contract between the landlord and the tenant that identifies the terms under which the leasehold is created. This is a legally binding document, the terms of which must be carefully and *clearly* written. If you have prepared the document for your tenant to sign, any ambiguous or questionable terms in the agreement will be interpreted *against you*. So make sure that you carefully review your lease agreement. Also, keep in mind that generic lease agreements sold at office supply stores do not take in consideration the specific laws of Florida.

Next, what is a security deposit? This is a sum given to the landlord by the tenant to be applied to any damages to the unit at the end of the tenancy. This sum should never be used or credited toward rent during the term of the tenancy. Because security deposits are an extremely important subject, an area to which a large proportion of the written law and case law has been devoted, this is a subject we will discuss more in depth at a later date.

Finally, what is a Three day notice? A Three day notice is a statutory form required by Chapter 83 to be delivered prior to any legal action taken for non-payment of rent. This form is the most used form and the most abused form. It is not a difficult form to fill out, but incorrect notices are more common than we prefer. Section 83.56 (3), Florida Statutes, provides specific language for the notice as follows:

You are hereby notified that you are indebted to me in the sum of \_\_\_ dollars for the rent and use of the premises address of leased premises, including county, Florida, now occupied by you and I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of the delivery of this notice, to wit: on or before the \_\_\_ day of \_\_\_, \_\_\_.

Landlord's name, address and phone

Under this section, no other information is required on the form. But let's go through each part of the form and discuss the information that you must fill in.

First, you must include all responsible parties. Responsible parties means *everyone that signed the lease agreement* over the age of 18 years, regardless of the typed or printed information at the beginning of the lease. If you do not list all those that signed the lease agreement, they will not be listed in the lawsuit. This does not mean you will not get possession, but it does mean that one leaseholder may be evicted and the eviction may not show up on his or her credit record. Additionally, if your claim for possession includes a claim for money damages, then the unnamed leaseholder or leaseholders will not be a defendant in the suit.

Second, you must include the tenant's full mailing address. In order to execute on the Writ of Possession (the final stage of the eviction when the sheriff turns over possession of the premise to you), the sheriff must have the full address of the tenant,

including the city. If the address of the tenant on the Three Day Notice does not match the address on the building, the sheriff will not execute on the Writ. For example, if you have five buildings in your complex, and each building has a building number designation but different mailing addresses (i.e. apartment under eviction 8900 SW 1<sup>st</sup> Street, #405, but you simply identify it internally as #3-405), then do not include the building number designation on the Three Day Notice, unless the actual premises has #3-405 on it.

Third, *carefully* count a full three days to discover the expiration date and write the expiration date in the form. This is probably the most difficult part of the form! The three-day time period does not include the date the notice is posted, Saturdays, Sundays or legal holidays. Legal holidays not to be included in the Three Day Notice are not necessarily those listed in the Statutes, but rather these are *court-recognized* holidays. Essentially, the judicial branch does not like the legislative branch telling them when they may take a vacation! As a result, Good Friday might be a court-observed holiday in Broward County, but not in Dade County. Before doing your three-day notices, be sure to check the legal calendar included in this newsletter.

Fourth, the amount owed should be for RENT *only*. Obviously, the monthly amount designated as rent in the lease agreement is rent. Late fees and insufficient check fees may be considered rent if your lease agreement refers to them as “additional rent”. Other types of regular monthly fees may be considered rent if it is clearly designated in the lease. For example, Joe’s base rent is \$500.00 per month. He also pays a parking fee of \$25.00 per month and a washer/dryer fee of \$40.00 per month. This should be listed in the lease as follows:

Total rent of \$565.00 per month. This is a sum of the following: Base rent: \$500.00, Parking: \$25.00, Washer/dryer: \$40.00.

If fees for certain items change on a monthly basis (i.e. based on usage), then these amounts *cannot* be included in the Three Day Notice. Finally, the security deposit can never be demanded in a Three Day Notice.

At this point you may be wondering about those per diem late fees (that is, \$50.00 on the 6<sup>th</sup> and \$2.00 per day until paid in full). This presents a problem. For the most part, the Judges do not like per diem late charges and consider them a penalty under the contract. In order to avoid having a confused and delinquent tenant and to avoid possibly having your case dismissed by a Judge that does not like your high late fee, count the late charges up to the day you post the Three Day Notice. If the tenant pays under the notice, you cannot charge additional daily late charges and you must accept the amount if it is payment in full as required under the Three Day Notice.

There should be no other amounts, numbers, or otherwise anywhere on the Three Day Notice. The Courts want no confusion here. The amount the tenant owes is \$X and there is no question about it.

Fifth, the landlord’s name, address and phone number must be on the Three Day Notice as required by statute.

Sixth, include a certificate of service on the notice which shows the means of delivery and date of the delivery.

Finally, *do not change the language of the notice at all!* Do not make it harsher or nicer. The legislators have shown you how they want the notice to read and the Judges support the laws.

In conclusion, keep in mind that a tenant can dispute the validity of your Three Day Notice without depositing any of the rent money in the court registry. If your notice is incorrect, the case will be dismissed. Additionally, if the tenant hired an attorney and your case is dismissed due to a defective notice, you must pay the tenant's attorney's fees! Please remember to prepare your notices carefully.