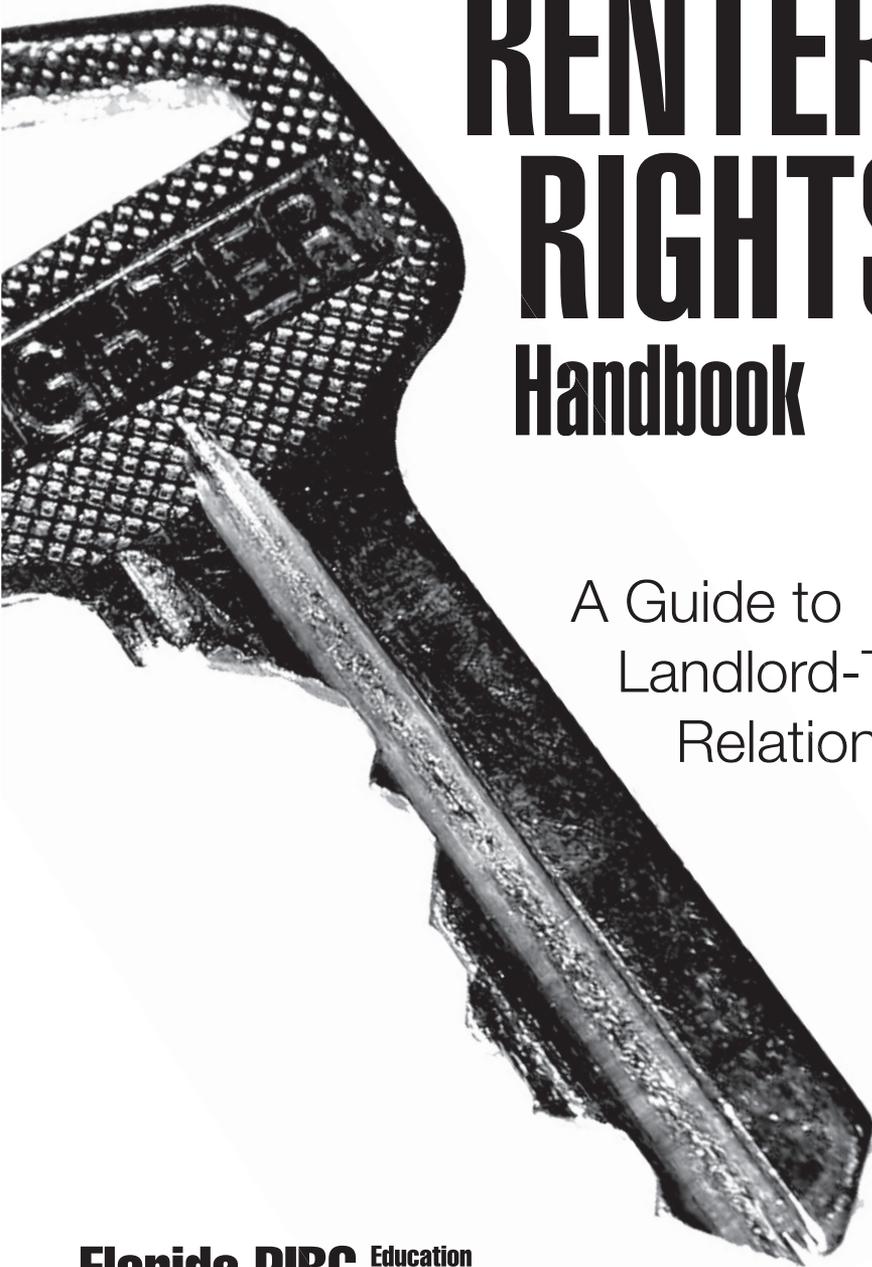


The Florida PIRG Education Fund's

RENTERS' RIGHTS Handbook

A Guide to
Landlord-Tenant
Relations

Florida PIRG Education
Fund



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Handbook

A Guide to Landlord-Tenant Relations

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The Florida PIRG Education Fund

The Florida Public Interest Research Group (Florida PIRG) Education Fund is a statewide non-profit, non-partisan organization working for strong protections for consumers, and a government accountable to the people. Since 1981, the Florida PIRG Education Fund has been an advocate for the public interest, taking on formidable opponents and often winning against great odds.

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TABLE OF CONTENTS

Introduction 1

Chapter 1: Finding A Place To Live2

Chapter 2: The Rental Agreement or Lease6

Chapter 3: The Security Deposit 10

Chapter 4: Moving In and Paying Rent..... 14

Chapter 5: Ending the Lease20

Chapter 6: Moving Out Prematurely and Subletting22

Chapter 7: Eviction24

Chapter 8: Other Problems.....28

Appendix A: Renter's Resource List30

Appendix B: Landlord/Tenant Responsibilities & Rights.....34

Appendix C: Inventory & Condition Report.....36

Appendix D: Sublet Agreement (Sample)39

Appendix E: Lease Termination Agreement (Sample)40

Appendix F: Lease Addendum (Sample)41

INTRODUCTION

This handbook is a guide for people who are renting or seeking to rent housing in Florida.

Although this handbook is entitled *Renters' Rights*, the reader should always remember the tenants' legal responsibilities as well. After all, you may unknowingly jeopardize your rights by not fulfilling your legal responsibilities.

This handbook should be read in its entirety—many of the chapters and ideas are interrelated. The handbook is not intended to be an all-inclusive overview, or the best advice in every situation. This handbook is not meant to be a substitute for the advice of an attorney. This handbook primarily deals with the Florida Residential Landlord and Tenant Act (Fla. Stat. § 83.40) which applies to the rental of a dwelling unit (Fla. Stat. § 83.41). Florida's Landlord/Tenant Act does not apply to transient occupancy in a hotel, motel, condominium, or similar public lodging, or transient occupancy in a mobile home park (Fla. Stat. § 83.42(3)). The handbook includes amendments to the law through May 2005.

Places to contact for additional help are listed in an appendix at the end of the handbook.

CHAPTER 1:

FINDING A PLACE TO LIVE

When searching for a place to live, it is usually a good idea to look at a few places before you choose one-- even if you really like the first place you see. This will give you a feel for the market, so you can judge whether the place you like is reasonably priced.

Where to Look

Newspapers

Look in several different newspapers, particularly college papers.

The classifieds list many different types of housing:

1. Hotels and Motels

These rent by the night or week and are more expensive than long-term housing. But if you do have to stay in a motel initially, check the prices at several, because prices widely vary.

2. Boarding Houses/Dormitories

Here you will probably share a bathroom and a kitchen with other tenants. These places usually have the advantages of coming furnished, and using month-to-month leases, which can be nice if you do not want to pay for the summer.

A very important difference between boarding houses and apartments is that when you rent an apartment, you may choose with whom you share your apartment. While in a boarding house, you probably will not have any input

as to who rents the room next to yours. However, this also means that your landlord, and not you, will be responsible to find new tenants if a tenant is evicted or leaves before the end of the lease. Even though it is less likely you will get to know your housemates as well in a boarding house, meeting them before you move in is still a good idea.

3. Rooms in Private Homes

Renting a room in someone else's home usually includes furniture, and often utilities and amenities such as telephone and cable TV. But, be cautious. Living in close contact with someone else's family can be either fun or difficult. Before you move in, be sure that you know what the ground rules are: Can you have overnight guests? How neat must you be? How late can you play music?

4. Apartments, Furnished and Unfurnished

Unfurnished apartments are usually cheaper, but remember that you will also have to move everything *out again* when you leave. Usually, an unfurnished place only includes a stove, a refrigerator and draperies.

5. Shared Rentals

Here you will be moving into a house or apartment that other people are already renting. This can be nice, because your roommates will often have items such as phones and couches for you to use, but moving into a shared house may also be a lot like joining a family. Be sure that you and your housemates have the same expectations about noise levels and cleanliness.

6. Houses

A house provides more privacy, and more responsibilities. The tenant will probably have to pay for his own utilities and garbage service, and do maintenance, like mowing the lawn.

Rental Services

A tenant usually has to pay a fee to use these services, only to discover that many of the references are already taken. But rental services can be very useful. You can look through a listing of rooms or apartments in your price range and learn a lot more about them than you could from newspaper classifieds.

Bulletin Boards

You cannot lose with bulletin boards, except that, once again, many of the places will be taken already. But bulletin boards are free, and the location of the board roughly indicates the sort of people you might move in with. You can find bulletin boards in community centers, laundromats, and college housing offices. Usually, non-students can use college housing office bulletin boards.

Off-Campus Housing Offices

Many universities and colleges have offices of Off-Campus Housing that maintain lists of houses, apartments, mobile homes, mobile home parks, and rooms offered for rent to students. These offices often have roommate referral services to help find potential roommates.

On-Line

The sources listed above often have web pages that will help you find the information you are looking for, which makes the internet a great way to start searching for a rental. The internet may also allow you to see pictures and search listings by price, location, number of rooms, or available amenities. However, keep in mind that the properties listed on the web are only a portion of the properties available for rent in a particular location.

Discrimination

Florida and federal law prohibit discrimination on the basis of race, color, national origin, sex, handicap, familial status, and religion. Various local laws add prohibitions against discrimination on the basis of age, pregnancy, marital status, sexual orientation and other factors. Check your local codes for details.

How Do You Recognize Housing Discrimination?

Based upon the above-listed factors (also known as “protected classes”), it is against the law to:

- Refuse to rent to you or sell you housing
- Tell you housing is unavailable when in fact it is available
- Show you apartments or homes in certain neighborhoods only
- Advertise housing only to preferred groups of people
- Refuse to provide you with information regarding mortgage loans, deny you a mortgage loan, or impose different terms or conditions on a mortgage loan
- Deny you property insurance
- Conduct property appraisals in a discriminatory manner
- Refuse to make certain modifications or accommodations for persons with a mental or physical disability, including persons recovering from alcohol and substance abuse, and HIV/AIDS-related illnesses
- Fail to design and construct housing in an accessible manner
- Harass, coerce, intimidate, or interfere with anyone exercising or assisting someone else with their fair housing rights

Florida Housing Discrimination:

1-800-342-8170

<http://fchr.state.fl.us/fchr/complaint.htm>

Federal Housing Discrimination “Hotline”:

1-800-669-9777

<http://www.hud.gov/complaints/housediscrim.cfm>

CHAPTER 2:

THE RENTAL AGREEMENT OR LEASE

A rental agreement provides for the rental of a specified place for a specific amount of time. An agreement for a year or longer must be in writing or else it is invalid, but a shorter agreement can be either written or oral. If the agreement does not specify the rental period's length or how the lease will end, then the payment schedule sets it. (see page 16) The landlord should specify all rules and fees that he plans to impose.

Oral Leases and Periodic Tenancies

An oral agreement means that you do not write anything down. Oral leases have the advantages of being uncomplicated and usually do not commit the tenant for the summer, when most college students leave town.

But, be careful. Holding your landlord to any promises that were not written down is often hard to do. Therefore, using a written agreement is ideal if there are specific details that need to be addressed. Furthermore, a landlord can terminate an oral lease with proper notice.

Unless you and your landlord agree otherwise, the schedule of rental payments will set the duration of the lease. Thus, if you pay monthly, then your existing lease runs through the end of the month. (Fla. Stat. § 83.46(2)). Also, keep in mind that many apartments may charge you a higher rate to rent on a monthly basis instead of an annual basis.

Written Leases

A written lease contains obligations for both the landlord and the tenant. Unless the lease says differently, the landlord cannot raise the rent during the term of the lease. But, unlike most oral leases, written leases usually commit a tenant to rent payments for a fixed amount of time, whether or not the tenant lives in the apartment. In Florida, a landlord does not have to make any special efforts to re-rent your place if you breach the lease by moving out early. (Fla. Stat. § 83.595 (1)(c)).

A written lease also minimizes disputes by recording both parties' responsibilities in writing. Therefore, it is important to read the lease carefully before signing and if any modifications are made both you and the landlord need to initial them.

When disputes do arise, check the lease agreement and then refer to the Florida Residential Landlord and Tenant Act, at Chapter 83, Part II of the Florida Statutes.

Lease Provisions

Florida law requires both the landlord and tenant to exercise "good faith" and honesty in their dealings (Fla.Stat. §§ 83.43(8) and 83.44). An unconscionable clause in a lease is one that is far beyond what is considered reasonable to an ordinary person. Naturally, the law prohibits unconscionable lease clauses, and the court may invalidate the clause or the entire lease agreement. (Fla.Stat. § 83.45)

Additionally, if a lease clause excludes any rights specified in the Landlord/Tenant Act, or limits any other legal liability of the landlord or tenant, the clause is unenforceable. (Fla. Stat. § 83.47) (*See*, Fla. Stat. §§ 83.51 and 83.52 for a list of required landlord/tenant obligations.)

Illegal Lease Provisions

The following clauses are not valid in a lease agreement:

1. Exculpatory Clause: This type of clause relieves a landlord from any liability resulting from a negligent or wrongful act committed by the landlord. The landlord may only free himself from liability from situations under the exclusive control of the tenant.

2. Time for Notice of Termination Shortened: For leases of no specific duration (also called periodic leases) parties can set a **longer** notice requirement, but they may not reduce the notice requirement to a time period shorter than what is required by Fla. Stat. § 83.57. (see page 16)

3. Automatic Forfeiture of Deposit: This states that the tenant will lose the whole deposit no matter what. If you move out early, then you will be liable for the uncompleted part of the lease, so your landlord may take what you owe out of your advance payment.

Your landlord may not charge you more than damages incurred, but these may include trouble in finding another tenant and in cleaning your apartment.

Some phrases to watch out for are “liquidated damages” and “forfeiture to the landlord in the event of a breach of the lease.”

4. Preadmission of Guilt: This type of clause states that in any dispute between the landlord and the tenant, the tenant admits wrongdoing in advance. This type of provision is not allowed under Fla. Stat. § 83.47 (1)(a).

5. No Water Beds: A landlord may not prohibit water beds, unless the local building code bans them. However, Florida Statute § 83.535 does require water bed users to carry a “reasonable amount” of liability insurance on the bed. The insurance policy must be made payable to the building owner.

6. Tenant must pay all of landlord's attorney fees: This means that if the landlord sues you for violating the lease, you must pay for the landlord's attorney's fees. However, under Florida law, the prevailing party may recover reasonable court costs and attorney's fees from the losing party in a dispute over a rental agreement. (Fla. Stat. § 83.48)

Undesirable Lease Provisions

Some lease provisions are legal and enforceable, but the tenant should look for and avoid them whenever possible. If any of the provisions below appear in your lease, you should negotiate with your landlord to delete them or make them reasonable. Any legal clause will bind you once you sign the lease.

1. Automatic renewal: This means that if neither party cancels before the lease expires, then the lease automatically renews itself for another period and you are liable for rent.

- 2. Tenant agrees to obey all future rules of landlord:** This is a very dangerous clause, because the landlord may impose very restrictive rules in the future.
- 3. No one but tenant and immediate family may live in apartment:** This may prohibit subleasing, pets, and extended visits by friends or relatives.
- 4. Rent may increase:** Typically, these provisions state that the rent will increase when taxes, utilities, and operating costs increase.
- 5. Unannounced or unlimited entry:** Florida law specifies when your landlord may enter your apartment. (Fla. Stat. § 83.53) (See page 21)
- 6. Utilities are held in landlord's name and then billed to you:** Try to have the utilities switched to your name, so that you will be certain of the utility amounts.

Precautions Before Signing

The lawyers who write leases get paid by landlords, not tenants. Before you sign a lease:

1. Be sure that you understand everything in the lease. If you want something changed, you can do so right on the lease, by crossing that part out, writing in the changes, and having both parties initial the new wording. Do this on both your copy of the lease and on your landlord's copy. (ex. "both parties agree that the pet fee is refundable.") If you and your landlord agree on a particular meaning for an ambiguous term, then you may write in the clearer term and initial the newly agreed upon meaning. Be sure to get a copy of the lease for yourself, **before** you pay the deposit.
2. Make sure that all blanks on the lease are either filled in or crossed out. **Never** let your landlord fill in details later.
3. Every roommate should sign the lease. This will ensure that one tenant does not move out and leave the other roommates stuck owing that portion of the rent. If the lease is in your name only, then the landlord can hold you liable for the whole rent. So, if you are the leaseholder, and the lease allows subleasing, you may want to have the other tenants sign subleases from you.

CHAPTER 3:

THE SECURITY DEPOSIT

The security deposit consists of any money that the landlord holds as security to protect the landlord from unpaid rent or damage to the apartment. The tenant may not defeat the purpose of the deposit by using the deposit as the last month's rent.

The term "deposit money" includes damage deposits, security deposits, advanced rent, pet deposits, and any other contractual deposits agreed to by the landlord and tenant. (Fla. Stat. § 83.43(11)).

Always get a receipt for the deposit, although you can simply write this into the lease.

The landlord cannot automatically keep the deposit because the tenant breaches the lease. The landlord can only take compensation for damages caused by the tenant. If the lease contains a provision allowing the landlord to keep the deposit upon the tenant's breach, whether that is a valid provision will have to be determined by the court.

Florida law specifies how your landlord may hold your deposit money. The landlord may place the deposit money in a separate non-interest-bearing account, but if the landlord puts the deposit in an interest-bearing account, then the landlord must pay you either 5% interest, or 75% of the account's interest rate. (Fla. Stat. § 83.49(1)). Within 30 days of receiving your security deposit or advance rent, the landlord must notify the tenant in writing, the manner in

which the funds are being held. (Fla. Stat. § 83.49(2)). This provision can also be found in the lease.

Return of Your Security Deposit

1. Notice by landlord: When your lease has ended and you have moved out, your landlord has 15 days to return your deposit, if the landlord does not intend to make a claim against your security deposit. If a claim against your deposit is made, then the landlord has 30 days to give you written notice (by certified mail, to your last known mailing address) that a claim has been made and what the claim is for. If your landlord fails to send you this notice within the 30 days, then the landlord forfeits the right to take any deductions at all. (Fla. Stat. § 83.49(3)(a)).

The security deposit can go towards damages beyond normal wear and tear. Purposes for which a security deposit often applies include: cleaning and trash removal, painting and plaster repair, roof repairs, plumbing repairs, and failure to pay rent after vacating the premises.

2. Return of deposit money: Unless you object to the landlord's claim against your security deposit, the landlord then has 30 days following the initial notice to impose a claim and to return the balance of your deposit following any deductions. (Fla. Stat. § 83.49(3)(b)).

3. Objections: If you have objections to your landlord's calculation of damages, you must make them within **15 days** of receiving notice of the landlord's claim, or you forfeit your right to object. (Fla. Stat. § 83.49(3)(b)).

4. Court Costs: If the landlord neither returns your deposit, nor sends you a notice of claim against the deposit, then you may want to take your landlord to court. In court, the losing side will have to pay the winner's court costs. (Fla. Stat. § 83.49(3)(c)).

5. Moving out early: If you move out before your lease ends, or if you have an oral lease, then you have to give your landlord special notice in order to enforce the 15 and 30 day time limits concerning your deposit. You must give written notification by either **certified** mail or personal delivery to the landlord at least 7 days before you move out. If you do not give the landlord notice, the 15 and 30 day requirements for returning your deposit balance will not apply. However, the landlord will still owe you the balance of the deposit. (Fla. Stat. § 83.49(5)).

Making Sure You Get Back All You Can

Upon your moving in and when you move out, ask to accompany your landlord while the apartment's condition is inspected. When you move out, clean the whole apartment thoroughly, including the bathroom and kitchen walls, appliances (including the range, oven and refrigerator), floors and furniture. Give your landlord a forwarding address.

The most common problem in recovering a security deposit is proving the condition upon moving out in comparison with moving in. You should take photos and have witnesses who are not tenants examine the apartment and sign statements about the apartment's condition. When you move in fill out a damage sheet and list all the damages. Be sure to keep a copy for your records.

Subleasing From A Housemate

Be careful when you pay your deposit money to another tenant who then provides the deposit to your landlord. The landlord is only obligated to return the deposit to the actual lease-signer. Therefore, if you are in this situation, or you sublease from someone else, you should play it safe by getting a signed receipt for your deposit.

Small Claims Court

If you go to small claims court over your deposit, try to bring these documents:

1. The receipt showing that you paid your deposit.
2. A copy of your rental agreement.
3. The damage report which you made upon moving in, including any photographs.
4. Any signed statement by your landlord and/or a witness concerning the condition of the property upon moving out.
5. Your landlord's notice explaining how the security deposit is being held.
6. Your notice to quit, your notice of lease termination, and notice of your forwarding address.

7. The landlord's notice of intent to claim the deposit.
8. Your objection to the landlord's claims, and your request for a detailed response to your objections.
9. A copy of the check for any refund which you did receive.
10. A copy of any authorization by a co-tenant for you to receive his or her share of the deposit.
11. Any certified mail receipts.

Proving Your Case

The key to winning any dispute, especially one in court, is having substantial proof of the facts in dispute. This is best done by putting all complaints in writing, making a copy for yourself, and if possible, sending all correspondence by certified mail. This is what is known as creating a paper trail, which is very important because this way when a dispute arises, you will have all the information you need right in front of you for the other party to see. In the unfortunate case of a dispute going to court, physical evidence is the key, and a judge or mediator is much more likely to believe that a party made a timely complaint (for example: if there is proof of the complaint in writing), rather than if the complaint was done orally.

CHAPTER 4:

MOVING IN AND PAYING RENT

Your Rights if the Apartment is Occupied or Unlivable

If the place is unlivable or occupied upon moving in, then your landlord has breached the contract and you are entitled to relief from your obligation. (See Fla. Stat § 83.56).

If you still want to move in, then notify your landlord of the place's condition by **certified** mail. However, you may not want to move in because this may be a good indication that you may have future problems with the property and/or landlord.

Paying Rent

Rent is the main thing your landlord wants from you. If you know that you will not be able to make a rent payment, let your landlord know that as soon as possible. The two of you may be able to work something out to avoid eviction.

Late penalties are allowed when written into the lease. These provisions are usually not "unconscionable" (which means shocking). (Fla. Stat. § 83.45).

Those who signed the lease are primarily liable for any unpaid rent. However, sometimes a tenant, who occupies an apartment, even without signing a lease, can also be held liable for rent.

Rent Increases

With a written lease, the landlord may not raise the rent unless specified in the lease. Your landlord **may** raise the rent under an oral lease, unless the landlord specifically agreed not to. Your landlord must give you the same notice for a rent increase that is required for a termination (see page 16), in order to give you an opportunity to move out if you do not wish to pay the new rate. (*See*, Fla. Stat. § 83.57).

Making Repairs and Housing Codes

Tenant's Duties

The tenant must:

1. Follow all applicable building, housing, and health codes.
2. Keep their part of the building clean and sanitary.
3. Dispose of garbage properly
4. Keep all plumbing fixtures clean and in repair.
5. Use equipment and appliances reasonably and carefully.
6. Not damage, deface, destroy or remove any part of the premises, and
7. Act and require guests to act so as not to disturb the neighbors or breach the peace. (Fla. Stat. § 83.52)

Landlord's Duties

Florida law divides your landlord's obligations into 2 categories. You are allowed to withhold rent if the landlord breaches the obligations in the first category, but not if the landlord breaches the obligations in the second category: (However, withholding rent is not a good idea if you do not know what you are doing. If it comes to the point where withholding rent seems necessary, you should contact a lawyer for advice. Withholding rent could lead to additional costs and possibly eviction.)

1) Obligations that justify withholding rent for breach:

The landlord must keep your housing in conformity with all building, housing and health codes. If no codes apply, the landlord must maintain the structural components and plumbing in good repair. (Fla. Stat. § 83.51(1)(a),(b)).

Exceptions: The above requirements do not apply to mobile homes or other structures owned by the tenant, and the requirements may be modified in writing for duplexes and single-family homes.

2) Obligations that do not justify withholding rent:

The following duties do not apply to single-family homes or duplexes or to mobile homes owned by the tenant. The landlord is responsible for:

- Exterminating insects and rodents: Your landlord is required to give you seven days notice when you have to move out for pest extermination, and the landlord cannot require you to leave for more than four days. The landlord has to reduce your rent for the days that you were required to leave your place, but does not have to pay your costs for alternative housing.
- Providing locks and keys.
- Keeping common areas clean and safe.
- Providing outside garbage receptacles, and arranging for them to be emptied.
- Maintaining the heat, and **hot and cold** running water during winter.
- Installing smoke detectors. (This is required for single-family homes and duplexes as well, unless the parties agree otherwise). (Fla. Stat. § 83.51(2)).

The code used by most municipalities in Florida is the Southern Standard Building Code. Most of the provisions in category (2) are listed in the housing code.

Although the landlord must arrange these services, the lease can require the tenant to pay for garbage removal, water, fuel, or utilities. (Fla. Stat. § 83.51(2)(e)).

Getting Your Landlord to Make Repairs

1. Write a Letter:

If you can still live in your place despite the problem, then you should first write your landlord explaining the situation, and informing the landlord of any housing, building or health code violations. Sending a letter like this is the best way to get repairs done and still stay on good terms with your landlord. You should keep a copy of this letter. If appropriate, you may want to suggest that your landlord reduce the rent until he repairs the problem.

You may also want to warn him that you may withhold rent if the problem is not resolved in a timely manner. But remember, only do this if the landlord is violating category “1” as discussed above. Give your landlord reasonable time to take action.

However, remember that a tenant does not have a right to be reimbursed for repairs that the tenant makes.

2. File a Housing Code Complaint:

Landlords are legally bound to follow codes. Housing inspectors pay particular attention to structural problems like leaking roofs, loose floorboards, and broken doors.

Here are some hints for making the inspector's visit as productive as possible:

- Clean your apartment before the inspector arrives.
- Arrange for the inspector to look at as many apartments as possible during the visit. This will show that your landlord has been negligent and that you are not just a griping tenant.
- Collect as much evidence as you can beforehand. (If, for example, the roaches only come out at night, have some dead roaches on display for the inspector.)
- Have a list of all of your landlord's violations.
- Get the inspector's name, and accompany her around. This may make her more careful, and will help guarantee she doesn't overlook anything.

3. Withhold Rent:

This is the most extreme step, and we **strongly recommend** getting an attorney's advice before acting! Before you withhold rent, be sure of two things:

1. Your landlord has satisfied one of the legal justifications for withholding rent.

You may withhold rent if your landlord has failed to fulfill a requirement in category "1" of "landlord's duties." (Fla. Stat. § 83.51(1)). The duties in section "2" do not legally justify non-payment of rent, even though they may seem as though they should. Or...

2. If the landlord sues you for possession of the dwelling unit, and you use a defense other than payment, you will have to pay all the rent that is due. You need to set aside the rent money and have it available, because if the landlord files an eviction, the court will require you to pay the money over to the court registry. If you cannot pay the court your rent money, then you will lose your case automatically. (Fla. Stat. § 83.60(2)).

How to Withhold Rent

- Give your landlord written notice explaining that you **intend to withhold rent if the landlord does not begin making repairs within 7 days**, and **specify the material noncompliance** (example: for a category '1' violation) for which the landlord is at fault. Notify your landlord, apartment manager, or rent collector, in person or by **registered mail** and keep a copy for yourself. The defense of non-compliance with FL S. 83.51 can be raised by the tenant if seven days have elapsed **after** the delivery of written notice by the tenant to the landlord, specifying the non-compliance by the landlord, and indicating that the tenant will withhold rent for that reason. (Fla. Stat. §83.60(2))
- Be ready to pay withheld and accrued rent to the court. After a court has determined that the tenant must pay withheld rent, the tenant has five days to pay the rent due or else the landlord can remove the tenant. (Fla. Stat. § 83.60(2))
- If you win, the court will decrease your rent according to the loss of value to the domicile caused by the landlord's noncompliance. (Fla. Stat. §83.60(1))
- The winning side can collect court costs and attorney's fees from the loser. (Fla. Stat. § 83.48)
- If you withhold rent for two months in a row, it is a good idea to notify your landlord of your intent to withhold the rent (and the reason why) before **each** rent payment is due.

4. Repair it Yourself:

Florida law does not give tenants a right to make repairs and deduct the cost from the rent. Nor does a tenant have the right to be reimbursed later by the landlord for any repairs he or she made. If you do want to make the repair yourself, be sure to arrange this with your landlord, and get the agreement in writing, before you spend your own money.

5. Move out:

If the problem is serious, you have the right to leave if you have given your landlord a seven-day notice. For example, if the landlord fails to comply with the material provisions contained in the lease or in category "1" as described above (maintaining building, housing, and health codes), the tenant may terminate the rental agreement. If the landlord's failure to comply makes the dwelling unlivable, the tenant will not be liable for rent (Fla. Stat. §83.56(1)(a)).

But if you move out and your landlord then sues you for unpaid rent, you will have to pay the rent to the court until your case is decided. In fact, it is critical to pay the court **not** the landlord, because payment constitutes legal acknowledgment that you accept the apartment's condition, thereby

waiving your right to terminate the rental agreement or bring a civil action for noncompliance. (Fla. Stat. § 83.56(5)).

However, the advantage for the tenant in moving out is that this will make the court more likely to eliminate the rent completely for the time during which the tenant vacated. Also, if you have a strong case because the problem is serious, then the landlord might not sue you for the rent at all.

If your landlord does repair the problem, then you will have to move back in for the rest of your lease. However, the court will probably require him to abate your rent and pay your moving expenses. You should get legal advice before you move out.

6. Organize other tenants:

If many tenants bring the same complaints together, your landlord will pay more attention. Check and see whether your neighbors have the same problems that you do. Make a list of the problems, and give the list to your landlord and request a meeting. If the landlord does not make the repairs in a reasonable time, then take your list to the housing inspector. Also, see Appendix A of this handbook for a list of organizations that could help you.

CHAPTER 5:

ENDING THE LEASE

There are two different kinds of tenancies, tenancies of specific and of nonspecific duration. A tenancy is a temporary possession of something that belongs to another. In this case a tenancy is referring to the temporary possession of a dwelling unit that belongs to the landlord.

1. Tenancy of Nonspecific Duration:

A tenancy of nonspecific duration may be either written or oral. Either you or your landlord can terminate such an arrangement upon the following notices:

Rent pay period..... Necessary Notice

week to week seven days notice
 month to month fifteen days notice
 quarter to quarter..... thirty days notice
 year to year..... sixty days notice
 (Fla. Stat. § 83.57).

Either party must provide notice at least this far **in advance of the next rent payment date** in order to terminate the lease. This means that with a month to month lease, if either party wants to end the lease October 1st, they must notify the other party on or before September 15th. If one party gives notice on September 17th, that party cannot end the lease, without the other party's agreement, before November 1st.

If you give this notice by personal delivery or certified mail, then the notice requirement for getting your security deposit back will also be satisfied. (see page 11) Be sure to include your forwarding address.

Housing as an Employment Benefit

If you receive your housing as a benefit of your job, and you do not pay rent, then the rental period is the same as your pay period. However, if you get fired or quit part way through the pay period, then you will owe your landlord the pro-rated rent for the rest of that period. (Fla. Stat. § 83.46(3)).

2. Tenancy of Specific Duration:

An oral or written lease containing a specific duration may specify the terms for ending the lease. (Remember that any lease for more than one year must be in writing to be binding.) The lease could also end automatically at the end of the lease period and not require either party to notify the other. Be careful of any automatic renewal clauses that renew the lease for a certain period.

If your lease is oral and there is a discrepancy as to the duration of the lease, it most likely will be treated as one without a specific duration.

If you remain in your apartment after your lease ends, you become a holdover tenant. Your landlord may evict you and **collect double the usual amount of rent for the period during which you held over.** (Fla. Stat. § 83.58).

CHAPTER 6:

MOVING OUT PREMATURELY AND SUBLETTING

If you breach your written lease by moving out before the lease expires, your landlord can hold you liable for any damages and for the remainder of the rent.

However, if the landlord retakes possession of the dwelling unit, the landlord has an obligation to make a good faith effort to find another tenant. This means making the ordinary effort to rent which the landlord would make for any apartment. (Fla. Stat. § 83.595(2)). But the landlord does not have to give special priority to your apartment. If the landlord does re-rent, then you are liable for the rent that you would have paid during the months when the place was vacant and for any fees incurred to rent to a new tenant, such as advertising costs and the costs of changing the locks. If you are in the military, you may be entitled to terminate your lease early if certain conditions apply 83.682.

Finding a Replacement Tenant

Unless your written lease prohibits it, you may find another tenant if you move out early to take over your lease after you move out. There are two kinds of such arrangements “subleases” and “novations.”

1. Novation:

This is the best arrangement for the tenant. A novation replaces your lease with a new one between your landlord and the new tenant, eliminating all of your obligations. Your landlord returns your security deposit to you and collects another one from the new tenant.

For a novation, you must get your landlord and the new tenant to sign a lease agreement for at least the remaining part of the term of your own lease. You should also have the landlord sign a release, releasing you from all rental obligations.

2. Subleases:

This is the most common type of subletting. If there are no restrictions in the lease regarding subletting, a tenant under a lease for a definite period may sublet the premises. A sublease is a contract between the tenant moving out and a new one moving in for a portion (usually the remaining portion) of the primary lease. The subtenant takes over and agrees to pay rent to either the primary tenant, or directly to the landlord.

In this case, you, the primary tenant, are acting like a landlord to the subleasing tenant. It might be a good idea to collect a security deposit from the subtenant, and to document the condition of the place at the time you move out.

Remember that your landlord can still hold **YOU**, the person who signed the primary lease, responsible for any damage that your subtenant commits. You would then have to sue your subtenant for the money.

Note: If you are a subtenant and pay a security deposit to the primary tenant, you may want to get a statement authorizing you to collect the tenant's deposit from the landlord when you move out. You probably will also want to document the apartment's condition when you move in.

CHAPTER 7:

EVICITION!!

Reasons for Eviction

1. Non-Payment of Rent

After you miss a rent payment, your landlord must give you notice and wait three days, not counting Saturday, Sunday or court observed legal holidays, before the landlord can evict you. The landlord must give notice by mail, directly to you, or leave the notice at your residence. The notice must specify the amount due and the deadline for payment.

If you pay rent within the 3-day limit, then your landlord must stop the eviction proceedings. If you do not think the landlord will accept the rent within 3 days if you do attempt to pay it, it is a good idea to bring someone with you. If your landlord accepts rent from you even after the 3 days, then the landlord gives up the right to evict or end the agreement during that rent period. (Fla. Stat. § 83.56(3),(4)). If you do not pay within the 3-day period and you do not vacate within the 3 days the landlord can then proceed to have you evicted.

2. Violating the Rules

This means violating either your lease agreement or the Landlord-Tenant Act. The Act divides tenant breaches into two categories, curable and non-curable. (Curable means that the tenant gets a chance to solve the problem.)

Noncurable noncompliances include, but are not limited to: intentional damage, destruction, or misuse of the landlord's or other tenants' property, or continued or subsequent unreasonable disturbances. In this instance, your

landlord only has to leave you a note stating the noncompliance and that the lease is terminated and you have seven-days to vacate the premises. (Fla. Stat. § 83.56(2)(a)). If you do not vacate within 7 days the landlord can then proceed to have you evicted.

Curable noncompliance includes, but is not limited to: unauthorized pets, unauthorized guests, not keeping the dwelling sanitary, and parking in an unauthorized manner.

In the case of a curable condition, your landlord must leave you a notice specifying the noncompliance and explaining that unless you take care of the noncompliance within seven days, the lease will end. However, if you commit the same noncompliance again within twelve months, your landlord may then evict you without another chance to cure.

(Fla. Stat. § 83.56(2)(b)).

3. Abandonment

A third legal justification for eviction occurs when the tenant leaves the dwelling for more than one half of a rental period without paying rent or giving the landlord written notice that the tenant would be gone during that time.

Tenant's Defenses

If these apply, you can use them to defend yourself against an eviction:

1. Improper notice: If your landlord did not give you three days notice before evicting you for not paying rent. (Fla. Stat. § 83.56(3)).

2. Acceptance of rent payment: If your landlord accepted rent from you while knowing that you were in noncompliance with the lease agreement. By doing this, the landlord gave up the right to evict you during that rent period. The same is true if a tenant pays rent with actual knowledge of a landlord's non-compliance. (Fla. Stat. § 83.56(5))

3. Retaliation: Your landlord may not evict you in retaliation for organizing tenants or filing legitimate complaints. However, just because you filed complaints does not mean that the landlord cannot evict you. **You have to prove that the landlord evicted you for complaining.** (Your landlord also cannot retaliate by raising your rent, making unreasonable requests to inspect your place, or in any other way that treats you differently from other tenants.) (Fla. Stat. § 83.64).

4. No noncompliance: If you go to court and prove that you did not commit the alleged noncompliance, then your landlord cannot evict you.

Eviction Proceedings

Florida law prohibits landlords from removing tenants without going through the court system (self-help evictions). Your landlord cannot evict you without a judge's order. And if the sheriff shows up to evict you, he also must have a court order. The only exception to this is if you have legally abandoned (the tenant is absent from the premises for a period of time equal to one half the time of periodic rental payments) your dwelling unit. (Fla. Stat. § 83.59).

This is what happens during an eviction:

1. Tenant's notice of problem: In order to be able to defend yourself, you must already have given your landlord a notice saying you intended to withhold rent unless he fixes material problems.

2. Landlord's notice of nonpayment: Your landlord must give you notice specifying the complaint, such as nonpayment of rent or breach of the lease, and telling you that you will be evicted if you do not take care of the problem.

3. Landlord files complaint: After your landlord has waited the required number of days and you have not left the premises or paid the due rent, the landlord will file a complaint with the county court. You will receive a copy of the complaint and a summons to appear in court.

4. Tenant's answer: To contest the eviction you must file an answer with the court within five business days. The answer need not be elaborate. **In order to be allowed to present your case in court, you will also need to deposit any outstanding rent with the clerk of the court.**

5. Notice of hearing: If you do not answer, the court will issue your landlord a final judgment that allows the sheriff to evict you. If you do answer, then you will receive a "Notice of Hearing" setting a hearing date.

6. The hearing: If you win at the hearing, great! If you lose, then you will owe double the rent for the time that you stayed over, your landlord's legal expenses, and possibly court costs. If you do not appear at the hearing, then you lose automatically.

7. Writ of Possession: If the landlord does win the case, the clerk of the court will issue a writ of possession to the sheriff commanding the sheriff to put the landlord back in possession of the dwelling after 24 hours' notice conspicuously posted on the premises. The landlord or his agent may then remove the tenant's personal property from the premises. (Fla. Stat. §83.62).

At any rate, if you lose at any stage, your landlord will begin eviction. He may either change the locks on your apartment and assert a lien on your possessions for the money which you owe him, or remove all your belongings and leave them on the property line, where he will not be responsible for what happens to them—check your local laws.

CHAPTER 8:

OTHER PROBLEMS

Landlord's Right of Entry

The tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit periodically to make repairs, decorate, or show the place. (Fla. Stat. § 83.53(1)).

Your landlord may enter at any time to take care of emergencies. An **emergency** should be something serious that requires immediate attention, like leaking gas, or a broken water pipe. Your landlord may enter for non-emergencies after giving you reasonable notice (at least 12 hours in advance), and at a reasonable time (between 7:30 AM and 8:00 PM) the landlord may enter the dwelling to make repairs. (Fla. Stat. § 83.53(2)).

It would also be reasonable for you to require your landlord to enter only in your presence. If there were an emergency and you were absent, you could also reasonably require the landlord to leave a written explanation.

The landlord may also enter if you leave your place for more than one-half of a rental payment period without giving notice or keeping the rent current. (Fla. Stat. §83.53(2)(d)).

The landlord may not abuse the right to enter the premises or harass the tenant. (Fla. Stat. § 83.53(3)).

Major Changes to Rental Unit

Do not make any major structural changes that your landlord will have to undo, unless you first get permission in writing. The landlord may charge you for any work required to return the unit to its previous condition.

Liability

Landlord's Liability

The landlord has a duty to exercise reasonable care to inform the tenant of any hidden dangers and to repair dangerous defective conditions when the tenant gives notice of their existence.

In common areas of the property, such as hallways shared by several tenants, the landlord must inspect the areas and make necessary repairs. However, the landlord is only liable for injuries that occurred while the property was being used in the manner for which it was intended.

Your landlord is also liable for any negligence committed while doing repair work in your apartment.

Finally, your landlord may even be liable for crimes committed against tenants by strangers, when they were reasonably foreseeable, and the landlord's negligence allowed the crime to happen.

Tenant's Liability

The tenant generally has responsibility for the areas under their own control, except for hazards caused by structural defects, dangers that the landlord knew about but did not reveal when he rented the apartment, violations of the law, and dangers caused by the landlord's negligence.

However, you, the tenant, are responsible for the safety of visitors to your apartment.

Fire, Flooding and Other Unavoidable Disasters

If damage occurs (not due to your fault) which "substantially impairs" your use of your place, then you may end the lease agreement and move out. You also have the option of using only the undamaged portion of your unit, and having the rent reduced proportionately. (Fla. Stat. § 83.63).

APPENDIX A:

RENTER'S RESOURCE LIST

Boca Raton

Code Enforcement
201 W. Palmetto Park Rd.
Boca Raton, FL 33428
(561) 393-7934 or
(561) 393-7941

Brevard County

Brevard County Legal Aid
1017 S. Florida Ave.
Rockledge, FL 32955
(321) 631-2500

Central Florida

Central Florida Legal Services
128 Orange Ave., Suite 100
Daytona Beach, FL 32114-4310
(386) 255 6573

Florida Rural Legal Services
963 E. Memorial Blvd.
Lakeland, FL 33802
(800) 277-7680

Heart of Florida Legal Aid Society
510 S. Broadway, Suite 2
Bartow, FL 33830
(863) 519-5663

Community Legal Services
of Central FL
222 SW Broadway Street
Ocala, FL 34474
(352) 629-0105

Seminole County Bar Assoc. Legal
Aid Society
101 W. Palmetto Ave.
Longwood, FL 32750
(407) 834-1660

Ft. Lauderdale

Legal Aid Services of Broward
County
491 N SR7 441
Plantation, FL
(954) 765-8950

Gainesville

Code Enforcement
306 Northeast 6th Avenue
#10A
Gainesville, FL 32601
(352) 334-5030

Discrimination
Gainesville Equal Opportunity
Department
PO Box 490, Station 52
Gainesville, FL 32602
(352) 334-5051

Southern Legal Counsel
1229 NW 12th Ave.
Gainesville, FL 32601
(352) 271-8890

Three Rivers Legal Services
901 NW 8th Avenue D5
Gainesville, FL 32601
(352) 372-0519

Jacksonville

Consumer Affairs (Great Renter's
Rights Hotline)

Jacksonville, FL 32202
(904) 630-1212 ext 4090

Code Enforcement
220 East Bay Street
Jacksonville, FL 32202
(904) 630-2489

Duval County Health Department:
Sanitation
900 University Blvd. N #300
Jacksonville, FL 32211
(904) 630-3260

Legal Aid
126 W Adams Street
Jacksonville, FL 32202-3849
(904) 356-8371

Key West

Legal Services of the Florida Keys
600 White St.
Key West, FL 33040
(305) 292-3566

Miami

Code Enforcement
111 NW 1st Street
Miami, FL 33177
(305) 375-2333

Discrimination
Equal Opportunity Board
Martin Luther King Jr. Office Plaza
2525 NW 62nd Street, 4th Floor
Miami, FL 33147
(305) 514-6193

Miami Legal Aid Society
123 NW 1st Avenue
Miami, FL 33128
(305) 579-5733

Legal Services of Greater Miami
3000 Biscayne Blvd., Suite 500
PO Box 371189
Miami, FL 33137
(305) 576-0080

Miami Beach

Code Enforcement
Code Enforcement Department
505 17th Street
Miami Beach, FL 33139
(305) 673-7555

Orlando

Code Enforcement
400 South Orange Ave. First Floor
Orlando, FL 32801
(407) 246-2686

Discrimination
Human Relations
400 S. Orange Ave.
Orlando, FL 32801
(407) 246-2122

Legal Aid Society of the Orange
County Bar Association
100 E. Robinson Street
Orlando, FL 32801-1602
(407) 841-8310

Community Legal Services of Mid-
Florida
1036 W. Amelia Street
Orlando, FL 32805
(407) 841-7777

Orange County Bar Association
880 N. Orange Ave.
Orlando, FL 32801
(407) 423-5732

Palm Beach County

Legal Aid Society
(Handle only evictions)
423 Fern Street Suite #200
West Palm Beach, FL 33401
(561) 655-8944

Florida Rural Legal Services
3111 Dixie Hwy, Suite 140
West Palm Beach, FL 33401
(561) 820-8902

Panhandle

Northwest Florida Legal Services
701 South J Street
Pensacola, FL 32501
(850) 432-2336

Legal Services of North Florida
133 Staff Drive
Ft. Walton Beach, FL
(850) 862-3279

Legal Services of North Florida
211 East 11th Street
Panama City, FL 32401
(850) 769-3581

Southeast Florida

Florida Rural Legal Services
1500 NW Avenue L Suite A
Belle Glade, FL 33430
(561) 993-0003

Southwest Florida

Florida Rural Legal Services
3210 Cleveland Ave.
Ft. Myers, FL 33902
(239) 334-4554

Lee County Legal Aid Society
2211 Peck Street and Broadway
Ft. Myers, FL 33902
(239) 334-6118

Tallahassee

Code Enforcement and
Discrimination
435 N. Macomb Street 3rd Floor
Tallahassee, FL 32301
(850) 891-6500

Legal Services of North Florida
2119 Delta Blvd.
Tallahassee, FL 32303
(850) 385-9007

Tampa Bay

Discrimination
Department of Human Rights
102 E 7th Ave.
Tampa, FL 33602
(813) 274-5853

Code Enforcement
102 E 7th Avenue
Tampa, FL 33602
(813) 274-5545

Bay Area Legal Services
Riverbrook Professional Center
829 W. Martin Luther King Jr. Blvd.
2nd floor
Tampa, FL 33603-3331
(813) 232-1343

Gulfcoast Legal Services
641 First St. South
St. Petersburg, FL 33701
(727) 821-0726

Treasure Coast

Florida Rural Legal Services
200 S. Indian River Dr., Suite 101
Ft. Pierce, FL 34948
(772) 466-4766

Statewide/Federal Resources

Florida Legal Services
2119 Delta Blvd.
Tallahassee, FL 32303
(850) 385-9007

Statewide Housing Discrimination
Florida Commission on Human
Relations
1-800-342-8170

Federal Discrimination Number
1-800-669-9777

APPENDIX B:

LANDLORD/TENANT RESPONSIBILITIES & RIGHTS

The following is a list of both the landlord's and tenant's responsibilities and rights according to Florida Statutes 83.51, 83.52 and 83.53.

Landlord Responsibilities and Rights

ACCESS: 7:30 AM to 8:00 PM for repairs, improvements and inspections

APPLY WITH APPLICABLE HOUSING AND HEALTH CODES

COMMON AREAS: Keep clean and safe

EXTERMINATE: Rats, mice, roaches, ants, termites, bedbugs

GARBAGE REMOVAL

HEAT DURING WINTER

RUNNING WATER

HOT WATER

LOCKS AND KEYS

SMOKE DETECTORS: Single family home and duplexes

Tenant Responsibilities

ACCESS: Shall not unreasonably withhold consent

APPLIANCES: Use and operate in a reasonable manner

COMMON AREAS: Keep clean and safe

COMPLY WITH APPLICABLE HOUSING AND HEALTH CODES

CONDUCT: Do not disturb the neighbors or allow your guests to do so

DESTRUCTION: Do not destroy, deface, damage, impair, or remove any part of the premises or property of the landlord. Do not allow others to do so.

GARBAGE: Remove in a clean and sanitary manner

PLUMBING: Keep fixtures clean and in repair

PREMISES: Keep premises which you occupy and use clean

APPENDIX C:

INVENTORY & CONDITION REPORT

Use the below form to record the contents and condition of the unit when you move in and before you move out. Inspect with a witness, if possible. Cross out the items that are not present. Put a check or number before those items that are present. FULLY DESCRIBE any damage on an additional piece of paper. Make a copy for the landlord and ask him to sign your copy.

Room:

Condition:

LIVING ROOM

_____ Couch	_____
_____ Chair	_____
_____ End table	_____
_____ Easy chair	_____
_____ Floor lamp	_____
_____ Table lamp	_____
_____ Coffee table	_____
_____ Light fixture	_____
_____ Rug/Carpet	_____
_____ Floor	_____
_____ Walls	_____
_____ Ceiling	_____

BEDROOMS

_____	Bed frames	_____
_____	Headboards	_____
_____	Mattress	_____
_____	Mattress cover	_____
_____	Bed springs	_____
_____	Dresser	_____
_____	Night stand	_____
_____	Drapes/curtains	_____
_____	Mirror	_____
_____	Light fixture	_____
_____	Rug/Carpet	_____
_____	Floors	_____
_____	Walls	_____
	Ceiling	

KITCHEN

_____	Working stove	_____
_____	Working oven	_____
_____	Oven racks	_____
_____	Broiler pan	_____
_____	Refrigerator	_____
_____	Ice trays	_____
_____	Sink	_____
_____	Garbage Disposal	_____
_____	Counter tops	_____
_____	Range hood/fan	_____
_____	Dishwasher	_____
_____	Hot/Cold Water	_____
_____	Drawers	_____
_____	Dinette table	_____
_____	Light fixture	_____
_____	Floors	_____
_____	Walls	_____
_____	Ceiling	_____

BATHROOM

- _____ Towel racks _____
- _____ Tissue holder _____
- _____ Mirror _____
- _____ Medicine Cabinet _____
- _____ Counter top _____
- _____ Sink _____
- _____ Tub _____
- _____ Toilet _____
- _____ Shower _____
- _____ Cabinets _____
- _____ Light fixture _____
- _____ Hot/cold water _____
- _____ Floor _____
- _____ Walls _____
- _____ Ceiling _____

MISCELLANEOUS

- _____ Door key _____
- _____ Windows _____
- _____ Window screens _____
- _____ Mailbox _____
- _____ Mailbox key _____
- _____ Thermostat _____
- _____ Other _____
- _____ Smoke Detector _____
- _____ _____
- _____ _____
- _____ _____

Do all the windows work? _____

Does the heat work properly? _____

TENANT SIGNATURE

LANDLORD SIGNATURE

WITNESS SIGNATURE

DATE

DATE

APPENDIX D:

SUBLET AGREEMENT

*This is an example of a possible Sublet Agreement that can be used. Definitions:
Sublettor = Original Tenant; Sublessee = New Tenant.*

It is mutually agreed on this _____ day of _____, 20____, by and between _____ (landlord or agent), _____ (sublettor), and _____ (sublessee), that the lease described below shall be assigned to _____ (sublessee). Sublessee hereby acknowledges a copy of the lease and agrees to be bound to the terms of said lease effective _____ (month/day/year).

Scratch out clause A or B. (Note: A and C usually go together and B and D usually go together.)

- A. The sublettor is not liable for the terms of the lease and is relieved of any further responsibilities to the lease, effective _____ (month/day/year). (Note: This modification clause will not be effective unless signed by the landlord below.)
 - B. The sublettor remains liable for the terms of the lease.
- Scratch out clause C or D.*
- C. Sublessee agrees to pay sublettor \$_____ security deposit. Landlord acknowledges the transferal of the security deposit and agrees to return the security deposit to the sublessee upon expiration of the lease if there are no damages to the rental unit.
 - D. The security deposit of the sublettor will remain in the landlord's possession until the expiration of the lease.

Description of the Premises

Address of the rental unit _____

	Street Address	Apt#	City	State
Term of the lease being assigned _____	(Date)			
to _____	(Date)			

Date the lease was signed _____

Signature of Sublettor(s) _____

Signature of Sublessee(s) _____

Signature of landlord or agent _____

APPENDIX F:

LEASE ADDENDUM

This is an example of a Lease Addendum that can be used.

Agreement made this ____ day of _____, 20____, by and between _____ hereinafter referred to as Landlord and _____ hereinafter referred to as Tenant.

The parties hereto further agree to the terms of this addendum to the residential lease entered into between Landlord and Tenant dated _____, 20____, by which Landlord agreed to rent and Tenant agreed to take the premises located at _____ (Street Address, Apt#, City, County) Florida, for a term of _____ (# months, weeks, etc.) beginning _____ (Date).

WHEREAS the Landlord and Tenant desire to enter into a new agreement modifying or supplementing the provisions of said lease in consideration of the mutual covenants contained herein, Landlord and Tenant agree as follows:

1. The terms of this residential lease addendum are agreed to control over any residential lease agreement to which this addendum specifically refers or to which it may be physically attached.
2. All provisions of said lease are incorporated herein and are hereby modified or supplemented to conform herewith but in all other respects are to be and shall continue in full force. *(cont'd)*

Insert modifications or additions to the original lease here:

3. _____

4. _____

5. _____

IN WITNESS WHEREOF, the parties to said lease have executed this lease addendum by affixing their signatures on the day and year first above written.

Landlord _____

Tenant _____

Florida PIRG Education
Fund

926 East Park Avenue
Tallahassee, FL 32301

(850) 224-3321 voice
(850) 224-1310 fax

floridapirg@pirg.org
www.floridapirg.org