5-1-1968

Reform of Landlord-Tenant Statutes to Eliminate Self-Help in Evicting Tenants

Ralph E. Boyer

Daniel S. Grable

REFORM OF LANDLORD—TENANT STATUTES TO ELIMINATE SELF-HELP IN EVICTING TENANTS*

RALPH E. BOYER** AND DANIEL S. GRABLE***

I. INTRODUCTION

Advising a client as to his rights in regaining possession of property held by another can pose many subtle problems. As the Florida Statutes presently stand, it may be difficult for an attorney to intelligently advise his client on his right to enter and retake possession of property that the client feels he is entitled to possess. When a problem such as this arises, many questions will have to be answered. For example, can the landlord, either forcibly or peaceably, evict a tenant who is holding over after the expiration of his term? If there is a suit for forcible entry and detainer, what issues will be presented to the court? Can the parties, by contract, provide for non-liability if the landlord should regain possession by self-help?

There are patent inconsistencies in the Florida Statutes which make it difficult to answer the above questions. This article is an attempt to point out the inconsistencies and to resolve the questions related to the rights and liabilities of landlords and tenants in their attempts to regain and maintain possession of real property.

The problems of statutory interpretation in this area of the law were most recently discussed by Professor Barnett.[1] It is his feeling that the statutes concerning forcible entry and detainer in Florida and most other jurisdictions are so anachronistic and ambiguous that few attorneys have a sufficient understanding of the law in this area to advise their clients on their potential civil and criminal liabilities. While Professor Barnett's

* Acknowledgment is gratefully accorded the Lawyers' Title Guaranty Fund, Orlando, Florida, for its annual grant to the University of Miami School of Law. This contribution is used at the University of Miami to encourage student research in property law and to aid professors in the research and preparation of articles. The preparation of this article was aided by the Fund's contribution.

** Professor of Law, University of Miami.

***Member, Editorial Board, *University of Miami Law Review.*

1. Barnett, *When the Landlord Resorts to Self-Help: A Plea For Clarification of the Law in Florida,* 19 FLA. L. REV. 238-251 (1966).

analysis of the situation may be slightly exaggerated, it does appear from a reading of the cases concerning this problem that statutory revision is advisable.

II. LANDLORD'S RIGHT TO EVICT BY SELF-HELP

In order to understand forcible entry and detainer statutes, it is necessary to discuss briefly the history of these statutes. The first statute governing forcible entries was enacted during the reign of King Richard II of England. This statute declared it to be a criminal offense to enter forcibly upon land peaceably held by another. It was felt that such a statute was necessary in order to maintain public peace and tranquility adequately. While the statute of King Richard II did provide for criminal sanctions in the case of a forcible entry, it did not provide the dispossessed party with any civil remedy. Most American statutes were based primarily upon this early English statute, but the forcible entry statutes in this country generally provided the ousted party with a civil remedy.[2]

The American jurisdictions recognized that it was not only necessary to maintain public peace, but it was also desirable to respect the rights of a party peaceably in possession of real property. It must be remembered, however, that most early American cases permitted a landlord to enter and eject a tenant who was holding over, as long as the force used to eject such a person was reasonable under the circumstances.[3] The courts in those cases reasoned that if the tenant were holding wrongfully, the landlord would have an absolute right to use reasonable force because the tenant would be no more than a trespasser. During this same period, however, other courts realized that if the landlord were permitted to pre-judge his own case and forcibly enter and retake possession, the public peace would be threatened. These jurisdictions held that the landlord could regain possession only through the use of legal remedies unless he could eject the tenant peaceably.[4] Although the latter cases developed into the weight of authority, they constantly brought up the still-present problem of whether or not an entry was peaceable.

Forcible entry and unlawful detainer statutes, although of general applicability and not limited to landlord-tenant cases, are a logical starting point in the consideration of the rights of a landlord to use self-help in evicting a tenant. The Florida statutes[5] which define a forcible entry

2. *Id. See* 5 Rich. II, Stat. 1, c.7. (1381).

3. Howe v. Frith, 43 Colo. 75, 95 P. 603 (1908) (lease provision permitting forcible entry upon non-payment of rent); Stearns v. Sampson, 59 Me. 568, 8 Am. R. 442 (1871) (premises made untenable by the landlord); Whitney v. Sweet, 22 N.H. 10, 53 Am. Dec. 228 (1850) (tenant ejected after being given the required seven days notice to vacate); Allen v. Keily, 17 R.I. 731, 24 A. 776 (1892) (tenant forcibly ejected even though he held under a reasonable claim of right to possession).

4. Mason v. Hawes, 52 Conn. 12, 52 Am. R. 552 (1884); Whitney v. Brown, 75 Kan. 678, 90 P. 277 (1907); Mosseller v. Deaver, 106 N.C. 494, 11 S.E. 529 (1890).

5. FLA. STAT. § 82.01 (1967): "No person shall enter into any lands or tenements

and unlawful detainer are similar in content to the statute of King Richard II.[6] Since the Florida statute clearly disapproves of a forcible entry,[7] the first problem is to determine whether an entry, actual or proposed, is in fact forcible. The statute also gives a remedy for an unlawful entry. Hence, another problem is to determine what constitutes an unlawful, although non-forcible entry.

In determining whether or not an entry is forcible it is almost universally agreed that entries obtained by methods that endanger the public peace are forcible.[8] This criterion, if considered alone, however, is too nebulous to be of much value. Many courts, even in their very early decisions, stated that threats of force, although without actual force, were sufficient to constitute a forcible entry.[9] An exception to the endangering of the public peace requirement has been developed when possession of the property was obtained through a ruse or stratagem.[10] As can be seen from these latter cases, it appears that the maintenance of the public peace is no longer the sole purpose behind the forcible entry and unlawful detainer statutes.

Some of the more interesting cases involving unlawful, although not forcible, entries come from the State of Florida. The early cases faced with the question of forcible entries generally indicated that if there were no threat to the public peace, the entry was not forcible.[11] These cases, however, are little more than history. The more modern cases show the courts' propensity to distinguish between forcible and unlawful entries, although indicating that both are actionable. Thus, in the 1930's, two Florida decisions involved cases in which the landlord procured keys to the premises and entered while the tenant was temporarily absent. While these cases do not directly decide the question, the courts in both cases indicated that the procurement of keys and entry by the landlord in the absence of the tenant, while not forcible, is still unlawful.[12] Another case held that entering during the night and changing the lock on the

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except when entry is given by law, nor shall any person, when entry is given by law, enter with strong hand or with multitude of people, but only in a peaceable, easy and open manner." FLA. STAT. § 82.02 (1967): "No person who enters without consent in a peaceable, easy and open manner into any lands or tenements shall hold them afterwards against the consent of the party entitled to possession."

6. 5 Rich. II, Stat. 1, c. 7 (1381).

7. FLA. STAT. §§ 82.01-02 (1967). *See* quotation note 5 *supra*.

8. Simhiser v. Farber, 270 Wis. 420, 71 N.W.2d 412 (1955).

9. Lewis v. State, 99 Ga. 692, 26 S.E. 496 (1896); Fort Dearborn Lodge, I.O.O.F., v. Klein, 115 Ill. 177, 3 N.E. 272 (1885); McIntyre v. Murphy, 153 Mich. 342, 116 N.W. 1003 (1908); Crossen v. Campbell, 102 Ore. 666, 202 P. 745 (1921).

10. Pelavin v. Misner, 241 Mich. 209, 217 N.W. 36 (1928); Simhiser v. Farber, 270 Wis. 420, 71 N.W.2d 412 (1955).

11. Goffin v. McCall, 91 Fla. 514, 108 So. 556 (1926): Liddon v. Hodnett, 22 Fla. 271 (1886).

12. Adelhelm v. Dougherty, 129 Fla. 680, 176 So. 775 (1937); Hewitt v. State, *ex rel.* Palmer, 108 Fla. 335, 146 So. 578 (1933).

door is an unlawful entry.[13] Frequent visits to the wife of an insane tenant to impress upon her the hoplessness of her situation may also be wrongful.[14] Therefore, the entry need not be forcible to be actionable. It is difficult to see how the actions of the landlords in either of the latter two cases could be a threat to the public peace. However, while these cases seem to show a departure from the traditional thinking on the subject, the case of *Florida Athletic and Health Club v. Royce*,[15] seems to present the most logical analysis of the Florida statutes. In this case, the court divided the remedy of a dispossessed tenant into two parts: (1) forcible entry when the entry is obtained by any means of force; (2) an unlawful entry when the entry is made peaceably but without the use of judicial process. A careful reading of section 82.01 of the Florida Statutes indicates legislative approval of the *Florida Athletic and Health Club* rationale. The title and wording of the section seem to indicate that a dispossessed party has an action for forcible entry or unlawful entry, whichever is appropriate under the facts of the case.

After considering the decisions above, it is the opinion of the writers that it is no longer permissible for a party to enter peaceably upon the possession of another. Any entry made without the consent of the party in possession will be called an unlawful entry by the courts. Thus, under the present law in Florida, it would appear that the party out of possession must resort to legal remedies in order to regain possession of the premises. A literal reading of the statutes does not, however, make this point clear. In order to clarify this position, we propose that the statutes in chapter 82, Florida Statutes, be revised so that it is clear that any entry upon the possession of another, without the consent of the party in possession, is unlawful and, therefore, actionable.[16]

If self-help, both forcible and peaceable, is to be abolished in Florida, section 83.05 of the Florida Statutes[17] must also be considered. Professor Barnett feels that this section does not permit a forcible entry,[18] but he does feel that if the section is to have any effect at all, it must be construed to permit a peaceable entry if the other conditions stated in the section are met.[19] Since we propose to prohibit non-consensual peaceable entries as well as forcible entries, section 83.05 must be repealed to achieve this goal. The party out of possession is provided with an adequate, speedy, summary remedy to regain possession,[20] and

13. Ardell v. Milner, 166 So.2d 714 (Fla. 3d Dist. 1964).

14. Walls v. Endel, 17 Fla. 478 (1880).

15. 160 Fla. 22, 33 So.2d 222 (1948).

16. *See* proposed statutes §§ 82.01, 82.011, 82.02, p. 808, *infra*.

17. FLA. STAT. § 83.05 (1967): "If any person leasing or rerenting any land or house fails to pay the rent at the time it becomes due, the lessor may immediately thereafter enter and take possession of the property so leased or rented."

18. Barnett, *supra* note 2, at 252.

19. *Id* at 259.

20. *See* proposed statutes, §§ 82.03-82.091, p. 809, *infra*.

should be required to resort to this remedy even if the tenant has defaulted in the payment of rent. If there is some dispute between the parties to a lease agreement, a tenant who feels that he has a valid reason to withhold the rent[21] would be able to do so without the fear of being summarily ejected without legal process.

III. MODIFYING RIGHT TO ENTER BY CONTRACT

Assuming that it is made clear that the party out of possession must utilize his judicial remedies to regain possession, we are still faced with the problem that the parties may alter these rights by contract or by their lease agreement. The normal lease agreement between an individual landlord and tenant is drafted by the landlord or his attorney and usually takes the form of a standard form contract. If the landlord is permitted to include a provision that allows an entry upon the happening of a condition, the statutes requiring the party out of possession to resort to his legal remedies will probably become meaningless. Provisions permitting the entry without consent by the party in possession would become an integral part of the standard form lease contract. Even though it has been held that such a provision will not be declared to be sufficient to allow a forcible entry,[22] it should be declared against the public policy of this state to allow any entry without the tenant's consent, even if such entry is pursuant to a provision in the lease agreement.[23] By declaring all such provisions to be void, the rights of a party in possession of real property will be fully protected, and many potential injustices such as have occurred in the past[24] will be avoided.

IV. EXCEPTION TO FORCIBLE ENTRY STATUTE

One section[25] of the Florida Statutes carves out a limited exception to the forcible entry statutes by permitting a forcible entry upon guests and tenants in hotels, apartment houses, rooming houses and boarding houses. The statute's application is, however, limited to situations where the guest or tenant is in default in the payment of rent.[26] The problem involved with this section developed when the legislature added the words "apartment houses" and "tenants." The inclusion of these words gave rise to speculation that there was an intent to apply this section to parties

21. *See* Ardell v. Milner, 166 So.2d 714 (Fla. 3d Dist. 1964), where a dispute as to the air conditioning in a leased office caused the tenant to withhold the rent.

22. *Id.* The court held that a provision permitting the landlord to evict the tenant upon a default in the payment of rent, did not give the landlord the right to enter with force.

23. *See* proposed statute, § 82.011, p. 809, *infra.*

24. Howe v. Frith, 43 Colo. 75, 95 P. 603 (1908). The court held that when the landlord intentionally made the premises untenable, he committed in effect, a forcible entry, but since there was a lease provision granting consent to an entry, the tenant could not object to the acts of the landlord.

25. FLA. STAT. § 713.67 (1967).

26. FLA. STAT. §§ 82.01-.101 (1967).

in the relationship of landlord and tenant. To rectify this potential confusion in the application of the statute, the proposed legislation in this article,[27] has deleted the words "apartment houses" and "tenants." The exception to the unlawful entry statutes would then be limited to cases involving hotels, rooming houses, and boarding houses. This exception is deemed necessary because the establishments just mentioned generally rent only for a short period to transient guests. The keepers of such establishments generally make their living by renting to these transients, and it is felt that if the keepers are not permitted to evict guests who fail to pay according to the rules of the establishment, the businesses may suffer irreparable damage. To these keepers the necessity of using the legal remedy supplied in chapter 83, Florida Statutes, would cripple their business of renting for short periods.

The section proposed in this article does, however, impose two limitations upon the keeper of the establishment. First, he must give the guest one day's notice that the rent is due before evicting him. Secondly, it is specified that the method used to evict the guest must be reasonable. The notice requirement is an effort to protect a guest against his own forgetfulness. It is felt that the best interest of all parties will be served by a short notice requirement. The requirement that the method used to evict a guest is to be reasonable is no more than a codification of the present law in Florida as stated in an opinion of the Attorney General of Florida[28] and a decision of the Supreme Court of Florida.[29]

V. Status of a Holdover Tenant

The status of a holdover tenant has presented unique problems in various jurisdictions. Many early decisions followed the rule that when a tenant holds over after the expiration of the stated term and no action is taken by the landlord, the term stated in the lease is renewed.[30] In many instances, this theory obviously ran contrary to the intent of the parties. Other jurisdictions adopted a more flexible rule by requiring some affirmative act before raising a presumption that the term was renewed.[31] In these states, if a landlord did an act such as accepting rent from the tenant, it was presumed that the term stated in the agree-

27. *See* proposed statute § 713.67, p. 812, *infra*.

28. 1953-1954 Fla. Op. Att'y Gen. 55. The method of eviction under Fla. Stat. § 713.67 (1967) is discretionary as long as it is reasonable. Locking the guest out of the room is reasonable.

29. Kloeppel v. Bradford, 133 Fla. 695, 182 So. 839 (1938). The court held that locking the guest out of the room and refusing to allow him to remove his personalty until the bill was paid was not improper conduct by a hotel manager.

30. *See, e.g.*, Ambrose v. Hyde, 145 Cal. 555, 79 P. 64 (1904); Unger v. Bamberger, 85 Ky. 11, 2 S.W. 498 (1887); Ashton Realty Co. v. Prowell, 165 La. 328, 115 So. 579 (1928); American State Bank v. Sullivan, 134 Wash. 300, 235 P. 815 (1925).

31. *See, e.g.*, Johnson v. Kurn, 95 F.2d 629 (8th Cir. 1938); Lepper v. Home Ranch Co., 90 Mont. 558, 4 P.2d 722 (1931); Banbury v. Sherin, 4 S.D. 88, 55 N.W. 723 (1893); Emerick v. Tavener, 9 Gratt. 220, 58 Am. Dec. 217 (Va. 1852).

ment between the parties was renewed. These decisions apparently consider the acceptance of rent by the landlord as evidence of the landlord's intent to renew the entire term stated in the agreement.[32] Presumably, the payment of the rent by the tenant demonstrated his intent to renew.

The courts in other states held that if a tenant holds over after the term has expired, and the landlord does nothing, the tenant becomes a tenant at sufferance.[33] As a tenant at sufferance, he is subject to eviction at any time without notice. If, however, the landlord accepts any rent,[34] gives overt permission for the tenant to remain in possession,[35] or allows the tenant to hold over for an extended period of time,[36] the court will imply consent by both parties and convert the tenancy into a statutory tenancy at will. In this context, the important difference between the tenancy at sufferance and the statutory tenancy at will is the necessity for the landlord to give notice to a tenant at will,[37] while no notice is required to a tenant at sufferance. Some of these states have statutes calling a holdover tenant a tenant at sufferance, but they circumvent the problem by requiring that adequate notice be given to this so-called tenant at sufferance.[38] The United States Supreme Court, in an early adverse possession case, considered the status of a holdover tenant. The Court stated that at the end of the lease term the landlord could treat the tenant as a trespasser and summarily eject him without notice, but if the tenant were allowed to remain in possession, he would become a tenant at will, or from year to year, and be entitled to notice to quit before the tenancy could be terminated.[39] The Court recognized the unfairness of allowing a landlord to permit a tenant to stay on the premises and still maintain the right, at his own discretion, to evict the tenant without notice. The Court did not, however, explain what it meant by "allowing" the tenant to remain.

Florida provides by statute[40] that a tenant who holds over after the expiration of the term stated in the lease agreement is a tenant at sufferance. But this statute goes further and states that the payment

32. Emerick v. Tavener, 9 Gratt. 220, 58 Am. Dec. 217 (Va. 1852).

33. Sutton v. Hiram Lodge No. 51, 83 Ga. 770, 10 S.E. 585 (1889); Hall v. Henninger, 145 Iowa 230, 121 N.W. 6 (1909); Leavitt v. Maykell, 203 Mass. 506, 89 N.E. 1056 (1909); Thompson v. Baxter, 107 Minn. 122, 119 N.W. 797 (1909).

34. Leavitt v. Maykell, 203 Mass. 506, 89 N.E. 1056 (1909).

35. Bettilini v. H. W. Metcalf Co., 77 Fla. 589, 81 So. 777 (1919); O'Brien v. Troxel, 76 Iowa 760, 40 N.W. 704 (1888); Kendall v. Moore, 30 Me. 327 (1849); Thompson v. Baxter, 107 Minn. 122, 119 N.W. 797 (1909); Continental Oil Co. v. Logan, 177 Okla. 273, 58 P.2d 554 (1936).

36. Hall v. Henninger, 145 Iowa 230, 121 N.W. 6 (1909) (tenant allowed to remain for 30 days).

37. FLA. STAT. § 83.03 (1967) is representative of the notice statutes regarding tenancies at will.

38. Weaver v. Koester, 294 F. 1011 (D.C. Cir. 1924); Hitshew v. Rosson, 41 Wyo. 509, 287 P. 316 (1930); Hampton v. Mott Motors, 32 A.2d 247 (D.C. Mun. Ct. App. 1943).

39. Willison v. Watkins, 28 U.S. (3 Pet.) 42 (1830).

40. FLA. STAT. § 83.04 (1967).

and acceptance of rent shall not be construed as the necessary consent to constitute a renewal of the term. If, however, the holding over is with the written consent of the lessor, then the tenancy shall become a statutory tenancy at will. The Supreme Court of Florida, in an early decision,[41] interpreted the statute and stated that a holdover tenant would be either a tenant at sufferance or a tenant at will. A recent case decided by the District Court of Appeal, Third District,[42] literally applied the tenancy at sufferance classification to a holdover tenant when there was payment and acceptance of rent for an additional month's occupancy. The court concluded that the permission to remain for a period not to exceed thirty days was granted for the convenience of the tenant without any intention to create a new lease, and that this fact was communicated to the tenant.[43]

Flexibility in the rule that a holdover tenant is a tenant at sufferance may be achieved, of course, if the facts remove the case from the application of the statute. In *Painter v. Town of Groveland*,[44] the tenant held over after the expiration of the term stated in the lease. In dicta, the court stated that "[A]t most, the Painters [tenants] were tenants at will . . . ." But it was recognized that to achieve this status, the terms of the statute as to holding over with the written consent of the lessor would have to be satisfied. The possibility of an estoppel was also mentioned but not pursued since it had not been pleaded. Specific performance is another possibility. It has been held that the acceptance of rent after the expiration of the term, coupled with evidence of an oral agreement to execute a new lease, constitutes sufficient evidence for a court of equity to enforce the oral agreement.[45] The acceptance of the rent along with the continued possession of the tenant, was held to be sufficient partial performance to take the oral agreement out of the Statute of Frauds.

A statutory declaration that a tenant, holding over after the expiration of the term without the consent of the landlord, is a tenant at sufferance, appears to be a logical conclusion. It must be noted, however, that the landlord will have to resort to his judicial remedies to regain possession of the property. It is the writers' opinion that the acceptance of the tenant's tender of rent should be construed as consent on the part of the landlord. This consent should only be implied after the term has expired and the landlord accepts rent covering a period for future occupancy. The landlord should not be forced to forego the payment and acceptance of past due rent. Thus, the only real change proposed in

41. Bettilini v. H. W. Metcalf Co., 77 Fla. 589, 81 So. 777 (1919).

42. Leaders Int'l Jewelry, Inc. v. Board of County Comm'rs, 183 So.2d 242 (Fla. 3d Dist. 1966).

43. Bettilini v. H. W. Metcalf, 77 Fla. 589, 81 So. 777 (1919).

44. 79 So.2d 765 (Fla. 1955).

45. S. Lemel, Inc., v. 27th Ave. Farmers Market, Inc., 126 So.2d 167 (Fla. 3d Dist. 1961).

the statute is that when the landlord accepts rent for a future period after the expiration of the stated term, he impliedly consents, in the absence of a clearly expressed contrary intent,[46] to a statutory tenancy at will with the term being determined by the period covered by the rent. So if the rent is paid for a month, the tenancy is from month to month; if paid for a weekly term, the tenancy is from week to week; and so on.[47]

A look at other jurisdictions shows that a statute converting the tenancy to a tenancy at will after the acceptance of rent, is not novel. In these jurisdictions the determination of the length of the tenancy may be based upon the period covered by the rental payment.[48] In other jurisdictions it is declared that such a tenancy is from month to month,[49] regardless of the period covered by the payment or the term in the expired lease. Under either theory the statutes and case law attempt to balance the necessities and burdens of each party. As stated above, the writers believe that the best way to balance these interests is to convert the tenancy at sufferance into a statutory tenancy at will upon the acceptance of rent for future occupancy. After this conversion, the landlord must give notice to the tenant before terminating the tenancy pursuant to the notice statutes.[50]

VI. PROPOSED LEGISLATIVE REFORM

The following statutes are proposed in order to remedy the construction problems of the Florida Statutes concerning self-help and holdover tenants. Where necessary, comments are made to explain the changes in these statutes in comparison with the 1967 Florida Statutes.

A. *Chapter 82*[51]

82.01 UNLAWFUL ENTRY DEFINED

No person shall enter upon land or tenements peaceably possessed by another, without the consent of the party in possession. Unless such entry is with the consent of the party in possession at the time the entry is made, it is unlawful whether such entry is by force, threat of force, or peaceably, except as provided in section 713.67, Florida Statutes. When entry is made with the consent of the party in possession, it shall not be made with force, but only in a peaceable, easy and open manner. Any entry made with force is also an unlawful entry.

46. *See* note 38 *supra*. A statutory tenancy at will should not be implied contrary to the expressed intent of the lessor.

47. *See* proposed statute § 83.04, p. 810, *infra*.

48. Donahoo v. Kress Hous Moving Corp., 25 Cal. 2d 237, 147 P.2d 637 (2d Dist. 1944); Barlum v. Berger, 125 Mich. 504, 84 N.W. 1070 (1901).

49. Garcia v. Sumrall, 58 Ariz. 526, 141 P.2d 640 (1942); Weaks Supply Co. v. Werdin, 147 So. 838 (La. 2d Cir. 1933); Toner v. Bruhns, 22 N.J. Misc. 7, 34 A.2d 743 (1943).

50. *See* proposed statutes, §§ 83.03, 83.04, p. 809 *infra*.

51. No changes are proposed for FLA. STAT. §§ 82.061, 82.091, 82.101 (1967).

COMMENT: This section prohibits all entries upon lands or tenements peaceably possessed by another unless with the consent of the possessor at the time. In order for a landlord to regain possession of leased premises, he must resort to his legal remedies as hereinafter provided. The exception stated in section 713.67, Florida Statutes, concerns hotels, rooming houses and boarding houses. Even in those cases where consent is given, the entry, to be lawful, must be without force.

82.011 LEASE PROVISIONS PERMITTING ENTRY

Any provision in a lease or other contract purporting to grant consent to an entry in any manner other than as provided by this Chapter shall be deemed to be against the public policy of this state and void.

COMMENT: In order to attain the objective of this chapter, which is to abolish the use of self-help to regain possession of property, it is necessary to forbid contractual provisions permitting self-help. Such a provision shall be considered void from its inception and shall be given no effect if an issue of non-consent at the time of entry should arise.

82.02 UNLAWFUL DETAINER DEFINED

No person who enters without consent in a peaceable, easy and open manner into any lands or tenements shall hold them afterwards against the consent of the party entitled to possession; and no person who has lawfully entered into possession of lands or tenements shall hold them after the expiration of his right without the consent of the party entitled to possession.

COMMENT: The first part of this statute to the semicolon is the same as section 82.02. The second part was added to encompass the situation where a party enters lawfully, as in the case of a tenant, but holds over after the expiration of his right. Such action is also defined as an unlawful detainer.

82.03 REMEDY FOR UNLAWFUL ENTRY

If any person shall unlawfully enter into any lands or tenements in contravention of section 82.01, Florida Statutes, the party so entered upon shall be entitled to the summary remedy provided in section 51.011, Florida Statutes. This action may be commenced at any time within one year from the date of the unlawful entry.

COMMENT: The Statute of Limitations was reduced from three years to one year. These statutes provide summary remedies and there does not seem to be any valid reason for a long statute of limitations.

82.04 REMEDY FOR UNLAWFUL DETAINER

If any person shall hold possession to any lands or tenements in contravention of section 82.02, Florida Statutes, the party entitled to possession shall be permitted to use the summary remedy provided in section 51.011, Florida Statutes. This action may be commenced at any time within one year after such withholding of possession against the plaintiff's consent.

COMMENT: The Statute of Limitations was shortened to one year for the same reason as in section 82.03.

82.05 QUESTIONS INVOLVED IN THE PROCEEDINGS

The question of title shall not be involved in a proceeding under this Chapter, and the only questions to be considered are as follows:

(1) In an action for unlawful entry. In an action for unlawful entry, the only questions to be decided are whether the plaintiff was in peaceable possession at the time of the entry; whether the defendant entered with force or without the consent of the plaintiff within one year from the date of the filing of the complaint; and the amount of damages proximately caused by the unlawful entry.

(2) In an action for unlawful detainer. In an action for unlawful detainer, the only questions to be decided are whether the plaintiff has a right to possession of the premises mentioned in the complaint; whether the defendant has withheld the possession of the premises without the consent of the plaintiff; whether the defendant withheld possession within one year from the date of the filing of the complaint; and the amount of damages proximately caused by the unlawful detention.

COMMENT: The right to possession mentioned in subsection 2 is not an attempt to try the title of the parties. The plaintiff is entitled to compensation for all damages proximately caused by the wrongdoer's actions.

82.071 DAMAGES

A successful plaintiff in an action for unlawful entry or unlawful detainer shall be returned to the possession of the real estate and shall recover all damages proximately caused by the unlawful entry or unlawful detainer, including court costs and attorney fees.

COMMENT: This section allows the plaintiff to recover all damages proximately caused by the unlawful entry or unlawful detainer. It differs in style from the present section 82.071, and it differs in substance by eliminating recovery of double rental in the case of willful detention and in permitting recovery of attorney's fees.

82.081 FORM OF THE VERDICT

*(1) **In Cases of Unlawful Entry.** The form of the verdict in cases of unlawful entry shall be substantially as follows: We, the jury, find that the defendant did (or did not), within one year since the filing of the complaint in this cause, unlawfully enter upon the real estate mentioned in the complaint, and we assess the damages of the plaintiff at ———— dollars, plus ———— dollars costs and attorney fees.*

*(2) **In Cases of Unlawful Detainer.** The form of the verdict in cases of unlawful detainer shall be substantially as follows: We, the jury, find that the defendant did (or did not), within one year since the filing of the complaint in this cause, unlawfully withhold possession of the real estate mentioned in the complaint against the consent of the plaintiff; that the plaintiff has (or has not) the right to possession in the real estate; and we assess the damages of the plaintiff at ———— dollars, plus ———— dollars court costs and attorney fees.*

COMMENT: This section is substantially the same as the present section 82.081, Florida Statutes, but it does reflect the shortened statute of limitations of one year instead of three.

B. *Chapter 83*[52]

83.02 CERTAIN WRITTEN LEASES—TENANCIES AT WILL: DURATION

Where any tenancy has been created by an intsrument in writing from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which rent is payable, and the term of the tenancy is unlimited; the tenancy shall be construed as a tenancy at will with the term being determined according to the rental payments as in section 83.01, Florida Statutes.

COMMENT: This section is substantially the same as section 83.02, Florida Statutes, but it is shortened somewhat by incorporating by reference the rental provisions of section 83.01.

83.04 HOLDING OVER AFTER THE TERM

When any tenancy has been created by a written instrument and the tenant holds over after the expiration of the term stated in the instrument, without renewing the term by a written instrument, the tenant so holding over shall be construed as a tenant at sufferance. Payment and acceptance of rent shall not be construed as the necessary consent to renew the term, but payment and acceptance of rent for future occupancy shall, in the absence of a clearly expressed contrary intent on behalf

52. No changes are proposed for FLA. STAT. §§ 83.01, 83.03, 83.07, 83.08-.10, 83.12-.15, 83.17-.22, 83.231, 83.241, 83.251 (1967).

of the landlord, convert the tenancy into a tenancy at will, thus subjecting both parties to the notice requirements of section 83.03, Florida Statutes. The term of the tenancy at will shall be determined in accordance with section 83.01, Florida Statutes.

COMMENT: The latter part of this section presents the biggest change in Chapter 83. Pursuant to this section, if a landlord accepts rent for future occupancy after the expiration of the term, the tenancy, in the absence of a clearly expressed contrary intent, becomes a tenancy at will with the term of said tenancy being determined by intervals at which the rent is payable. Thus, if the rental payment is for one month, the tenancy is from month to month and at least fifteen (15) days notice is required to terminate the tenancy.

83.05 RIGHT OF ENTRY UPON DEFAULT IN RENT [REPEALED]

COMMENT: This statute should be repealed to effectuate the policy of this paper.[53]

83.06 RIGHT TO DEMAND DOUBLE RENT

When any tenant willfully and knowingly refuses to give up possession of leased premises upon the termination of the lease period, or willfully and knowingly refuses to pay the rent that is due after being given three (3) days notice in writing, or willfully and knowingly fails to perform conditions or covenants in the lease after being given seven (7) days written notice to so comply; the landlord, his agent, attorney or legal representative may demand double the monthly rent and may recover this amount at the end of every payment period in the manner prescribed in section 51.011, Florida Statutes.

COMMENT: This statute is revised to provide that in order for a tenant to be liable for double the monthly value under this section, the landlord must prove the willfulness of the tenant's violations. This revised section is a codification of *Central Florida Oil Co. v. Blue Flame, Inc.*[54]

C. *Chapter 713*

713.67 LIENS FOR BOARD, LODGING, ETC., AT HOTELS, ETC.

A lien in favor of keepers of hotels, rooming houses, and boarding houses shall attach to the goods and chattels found in the hotels, rooming houses, and boarding houses belonging to any guest therein who fails to pay for board, lodging and money advanced in accordance with the rules laid down by the

53. *See* note 17 *supra* and accompanying text.
54. 87 So.2d 812 (Fla. 1956).

hotel, rooming house or boarding house. Provided that such guest has been given at least one (1) day's notice that such sums are due, upon non-payment after receipt of such notice, the keeper may use reasonable means to immediately eject the guest.

COMMENT: Since this section provides an exception to the unlawful entry and detainer statutes, it should be construed strictly. The reference to apartment houses and tenants has been deleted from the old section in this proposed amendment. The means used to eject the tenant must be reasonable under the circumstances, but in no case should physical force be used. This section does not apply to the normal landlord-tenant relationship.