

Navigating the Rising Tide of Class Actions in Florida's Residential Real Estate Sector

Daily Business Review
9.9.24

This [article](#) appeared in the Daily Business Review on September 9, 2024.

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In recent years, Florida's residential real estate sector has experienced a surge in class action lawsuits. These suits, often grounded in the Florida Residential Landlord Tenant Act (FRLTA) and the Florida Consumer Collection Practices Act (FCCPA), have raised significant concerns among owners and property managers.

This article will discuss the risks associated with statutory noncompliance, and provide some recommended practices on how to comply with these laws and minimize the risk of these lawsuits.

Types of Claims

At the core of most of these cases is an alleged violation of FRLTA, paired with a claim under FCCPA for improperly collecting a debt arising out of the FRLTA violation. Landlords who attempt to collect unpaid rent, liquidated damages, fees, security deposits, or other monies may find themselves subject to FRLTA and FCCPA class action claims. Similarly, owners or property managers who fail to properly handle notices relating to lease termination, return of security deposits, or other issues are also frequently sued.

These lawsuits typically focus on systematic practices by landlords that allegedly violate the rights of all tenants in a similar manner, potentially making the disputes appropriate for class action treatment, and potentially leading to significant damages against the landlord.

Security Deposit Disputes

One of the most prevalent types of class actions under FRLTA involves disputes over the handling of security deposits.

Fail to Return Security Deposits: Landlords may fail to return security deposits within the 15-day window required by FRLTA, prematurely take tenants' security deposits to pay for damages claims in the move-out statement, fail to provide all tenants in each unit with proper notice of intention to claim against the security deposit, or fail to provide an itemized list of deductions within 30 days if part of the deposit is retained. Damages claimed are often the entire security deposit with interest.

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Tenants also seek prevailing party attorney's fees under FRLTA and FCCPA.

Unlawful Deductions: Tenants often claim that landlords have made improper deductions from security deposits for ordinary wear and tear, cleaning fees, or other allegedly improper charges.

Improper Notices and Evictions

The FRLTA outlines specific requirements for how landlords must notify tenants of various actions, including lease terminations, rent increases, and evictions. Tenants allege that landlords did not provide adequate notice as required by law before terminating a lease or pursuing eviction. For example, failure to give a seven-day notice for a noncompliance issue, or a three-day notice for non-payment of rent, can lead to class action suits.

Unlawful Fees and Charges

Another area ripe for class action litigation involves the imposition of fees and charges that tenants argue are unlawful under FRLTA. Examples include:

Excessive Late Fees: Tenants may claim that late fees imposed by landlords are excessive and constitute an unlawful penalty rather than a reasonable estimate of damages.

Illegal Administrative Fees: Some landlords charge administrative fees, eviction fees, service fees, processing fees, or other charges that tenants argue are not authorized under the lease or by law.

Other Issues

Claims are also sometimes brought alleging various improprieties in billing related to shared utilities, inhabitability issues (asbestos, mold or lead paint), retaliatory eviction, and/or violation of health and safety standards (relating to pest control, issues relating to electrical or plumbing systems, or other dangerous conditions).

Case Law and Regulatory Trends

Neither the case law nor administrative regulations under these statutes are fully developed, leading to unpredictability in the outcome of these class action suits. We expect that cases currently in litigation will result in appellate opinions resolving some of these challenges. We expect that as these lawsuits make their way through the courts, regulators may begin to take action, such that it is important to regularly monitor administrative action in this sector.

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Best Practices for Minimizing the Risk of Class Action Litigation

Understanding the specific types of claims that are frequently brought under FRLTA, such as security deposit disputes, improper notices, maintenance failures, unlawful fees, and billing issues is critical to minimizing risk. In addition, taking the following proactive steps can further reduce the risk of litigation:

Compliance with Permitting Requirements: Ensure that all repairs and renovations are properly permitted. This not only avoids legal risks but also ensures that the work meets safety and building standards, providing a safer environment for tenants.

Transparent and Lawful Fee Structures: Review all fees charged to tenants to ensure they are lawful and clearly outlined in the lease agreement. Avoid imposing fees that could be construed as punitive, excessive, or unsupported, as these are often the basis for legal challenges. Consider including a liquidated damages provision in the lease establishing agreement to the reasonableness of the fee imposed.

Clear Communication and Documentation: Maintain open lines of communication with tenants and document all interactions related to lease terms, repairs and fees. Clear communication can prevent misunderstandings and disputes, while thorough documentation can provide crucial evidence if a lawsuit arises.

Regular Legal Audits: Perhaps most importantly, owners and property managers should periodically review your practices and mandatory disclosure forms with experienced legal counsel to ensure full compliance with the requirements of FRLTA, FCCPA, and other applicable laws, and to ensure adherence with strict deadlines. Proactive legal audits can identify potential issues before they lead to litigation.

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