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## Tenant-Victims, Abusers, and No Way to Escape: The Need for an Amendment to the Florida Residential Landlord and Tenant Act

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TENANT-VICTIMS, ABUSERS, AND NO WAY TO ESCAPE:  
THE NEED FOR AN AMENDMENT TO THE FLORIDA  
RESIDENTIAL LANDLORD AND TENANT ACT

ADAM BENT\*

ABSTRACT

Under the Florida Residential Landlord and Tenant Act, there is no right to early lease termination for tenants who must move to escape domestic, stalking, sexual, or dating violence. Florida's failure to grant a right to early lease termination compounds the physical and psychological harm that victims face; abusers often live with the victim or know where the victim lives. In turn, abusers can return to the victim's home and harm the victim; often, this results in serious physical harm or death. This Article explains why existing criminal and civil law does not adequately protect victims from their abusers. The Article also suggests a solution to the problem; it argues that the Florida Residential Landlord and Tenant Act should be amended to authorize early lease termination rights for victims. This Article, based on an analysis of other states' early lease termination statutes, proposes a model amendment to the Florida Residential Landlord and Tenant Act. The amendment grants victims early lease termination rights. Finally, the Article then explains how the proposed amendment works in tandem with existing law to limit the harm against victims of domestic, stalking, sexual, and dating violence.

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## INTRODUCTION

Victims of domestic,<sup>1</sup> stalking,<sup>2</sup> sexual,<sup>3</sup> and dating<sup>4</sup> violence, collectively referred to as “personal violence,”<sup>5</sup> desperately need

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1. “Domestic violence” is defined as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.” FLA. STAT. ANN. § 741.28(2) (West 2003).

2. “Stalking” violence can occur when “[a] person . . . willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.” FLA. STAT. ANN. § 784.048(2) (West 2012).

3. “Sexual violence [is] any one incident of . . . [s]exual battery . . . lewd or lascivious act . . . [or] [a]ny other forcible felony wherein a sexual act is committed or attempted . . .” FLA. STAT. ANN. § 784.046(1)(c) (West 2017).

4. “‘Dating violence’ means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.” § 784.046(1)(d) (West 2017).

5. This Article refers to “personal violence” as including domestic, stalking, sexual, or dating violence, since these categories represent the general threat that victims face. See Joan H. Krause, *Of Merciful Justice and Justified Mercy: Commuting the Sentences of Battered Women Who Kill*, 46 FLA. L. REV. 699, 702 (1994) (stating that domestic violence is an extremely common form of violence against women); *Understanding and Addressing Violence Against Women*, WORLD HEALTH ORG. 1, 1 (2012), [https://apps.who.int/iris/bitstream/10665/77432/1/WHO\\_RHR\\_12.36\\_eng.pdf](https://apps.who.int/iris/bitstream/10665/77432/1/WHO_RHR_12.36_eng.pdf) (stating that acts of physical violence,

society's help. "The number of American troops killed in Afghanistan and Iraq between 2001 and 2012 was 6,488. The number of American[s] . . . who were murdered by current or ex . . . partners during that time was 11,766. That's nearly *double* the amount of casualties lost during *war*."<sup>6</sup> Personal violence victims are being severely injured and dying.<sup>7</sup>

A major factor that facilitates victim harm is that abusers<sup>8</sup> are often co-tenants or know where the victim lives.<sup>9</sup> Abusers can access or approach the victim's home and harm the victim; often, this results in the victim's serious physical harm or death.<sup>10</sup> "[Abusers] are master manipulators who find creative ways to abuse their victims, even after the relationship ends."<sup>11</sup> Consequently, personal violence victims who fail to move are at risk of being severely injured or killed.<sup>12</sup>

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sexual abuse, and emotional abuse constitute some of the most common forms of violence against victims). This Article uses the phrase "personal violence" rather than "intimate partner violence" because not all victims are, or were, in relationships with their abusers; some victims neither know their abusers nor are dating their abusers. See David P. Bryden & Sonja Lengnick, *Rape in the Criminal Justice System*, 87 J. CRIM. L. & CRIMINOLOGY 1194, 1201 (1997) (describing the fact that some rape victims did not know their rapist); see also Paul E. Mullen & Michele Pathé, *Stalking*, 29 CRIME & JUST. 273, 289 (2002) (stating that some stalkers are strangers).

6. Alanna Vagianos, *30 Shocking Domestic Violence Statistics that Remind Us It's an Epidemic*, HUFFINGTONPOST (Oct. 23, 2014, 9:25 AM) (citations omitted), [https://www.huffingtonpost.com/2014/10/23/domestic-violencestatistics\\_n\\_5959776.html](https://www.huffingtonpost.com/2014/10/23/domestic-violencestatistics_n_5959776.html) [<https://perma.cc/49TK-KM6K>].

7. See NATIONAL VIOLENT DEATH REPORTING SYSTEM, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/injury/wisqars/nvdrs.html> [<https://perma.cc/T76D-MLQ2>] (last updated Nov. 27, 2018) (follow "Violent Deaths 2003–2016" hyperlink; then select "Violent Death Counts and Percentages by KNOWN CIRCUMSTANCES of DEATH" under "Victims of Violence"; then unselect "All" and select "Known CIRCUMSTANCES of Death" under "Death Counts and Percentages by"; then press "Submit Request" button); *Domestic Violence*, NAT'L COALITION AGAINST DOMESTIC VIOLENCE 1 (2015), [https://ncadv.org/assets/2497/domestic\\_violence.pdf](https://ncadv.org/assets/2497/domestic_violence.pdf) (stating that "[i]n the United States, an average of 20 people are physically abused by intimate partners every minute. This equates to more than 10 million abuse victims annually." (footnote omitted)).

8. This Article refers to an "abuser" as a person who uses domestic, stalking, sexual, or dating violence against a tenant-victim. See Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545, 1584 (1991) (noting that some abusers are spouses); Aya Gruber et al., *Penal Welfare and the New Human Trafficking Intervention Courts*, 68 FLA. L. REV. 1333, 1355 (2016) (describing some domestic violence abusers in regard to prostitution); Andrea Mazingo, *The Intersection of Dominance Feminism and Stalking Laws*, 9 NW. J. L. & SOC. POL'Y 335, 342 (2014) (describing some types of abusers as stalkers).

9. See Emmaline Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It*, 24 UCLA WOMEN'S L.J. 41, 41 (2017); Orly Rachmilovitz, *Bringing Down the Bedroom Walls: Emphasizing Substance over Form in Personalized Abuse*, 14 WM. & MARY J. WOMEN & L. 495, 497, 499 (2008) (describing how abusers may live with the victim).

10. See discussion *infra* Section II.A.1.

11. Campbell, *supra* note 9, at 41.

12. See discussion *infra* Section II.A.1.

In Florida, tenants who are also victims of personal violence (tenant-victims<sup>13</sup>) can be held liable<sup>14</sup> by their landlord<sup>15</sup> for moving prior to the lease end date, even if the move is necessary to immediately evade an abuser. In turn, landlords can deny victims their security deposits, depriving tenant-victims of the money needed to move.<sup>16</sup> Tragically, this scenario frequently means that tenant-victims must simply wait until they are revictimized.<sup>17</sup>

Unfortunately, under the Florida Residential Landlord and Tenant Act<sup>18</sup> (the Act), Florida housing renters (renters<sup>19</sup>) have no right to end their leases early to evade abusers; the Act does not allow early lease termination in this situation unless the landlord consents.<sup>20</sup> Florida is in the minority of states that have failed to protect tenant-victims<sup>21</sup> by not granting tenant-victims “early lease termination rights.”<sup>22</sup> A right to early lease termination would allow

13. This Article refers to “tenant-victims” as persons who are tenants, but are also victims of domestic, stalking, sexual, or dating violence. *See* FLA. STAT. ANN. § 83.43(4) (West 2008) (“‘Tenant’ means any person entitled to occupy a dwelling unit under a rental agreement.”); *Understanding and Addressing Violence Against Women*, *supra* note 5 (stating that acts of physical violence, sexual abuse, and emotional abuse are among the most common forms of violence against victims).

14. This Article uses the terms “liability” and “liable” to refer to legal responsibility for violating a lease under the Florida Residential Landlord and Tenant Act. *See* FLA. STAT. ANN. § 83.40 (West 2017).

15. A “landlord” is the “owner or lessor of a dwelling unit.” FLA. STAT. ANN. § 83.43(3) (West 2008).

16. Under the Act, a landlord can make a claim on the security deposit for fees or liability associated with the rental. *See* FLA. STAT. ANN. § 83.49(3)(a) (West 2013). A tenant’s liability can include past-due rent if a tenant-victim moved, without paying rent, in an attempt to evade an abuser. *See infra* Part I.

17. *See infra* Parts I, II.

18. FLA. STAT. ANN. § 83.40 (West 2017).

19. This Article refers to “renters” as persons who pay rent to landlords to lawfully occupy a home. *See* FLA. STAT. ANN. §§ 83.43(4), (6) (West 2008).

20. *See infra* Part I.

21. HAW. REV. STAT. ANN. § 521-80 (West 2017); LA. STAT. ANN. § 9:3261.1 (2015); ME. REV. STAT. ANN. tit. 14, § 6001 (2018); NEV. REV. STAT. ANN. § 118A.345 (West 2017); Meliah Schultzman, *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium*, NAT’L HOUSING L. PROJECT, 1, 3, 10, 23, 26, 30, 47, 54, 80, 88, 96, 101, 131, 140, 148, 153, 162, 186, 191, 205, 219, 225 (2013), <http://nhlp.org/files/Domestic%20violence%20housing%20compendium%20FINAL7.pdf> (listing the numerous other states that grant early lease termination rights to tenant-victims).

22. This Article refers to “early lease termination rights,” “early lease termination,” and all variations thereof interchangeably. This Article refers to “early lease termination rights” as the tenant’s ability to end a lease prior to the lease’s natural end date in order to move to evade an abuser. With “early lease termination rights,” the tenant would be able to end the lease without any required consent of the landlord and would not be held liable under the lease. *See* Elena Marty-Nelson, *We Gotta Get out of This Place: When Residential Tenants Leave Due to Exigent Circumstances*, 35 U. ARK. LITTLE ROCK L. REV. 871, 872–73 (2013) (discussing situations when tenants need to end their leases early because of exigent circumstances).

tenant-victims to end their leases early—without liability—to evade abusers.<sup>23</sup>

This Article explores why the law should address tenant-victims who need to end their leases early due to personal violence. It argues that granting early lease termination rights is critical for tenant-victim safety. Moreover, the Article argues that amending the Act can help promote tenant-victim safety.

There are four Parts in this Article. Part I demonstrates that the Act does not grant tenant-victims early lease termination rights. It also sets forth the limited duties that a landlord has under the Act. This Part specifically illustrates the options landlords have when tenant-victims violate a lease to evade abusers.

Part II explains the dynamics of how the Act can prevent tenant-victims from moving. In turn, this Part shows that preventing tenant-victims from moving exacerbates tenant-victim and economic harm. Part II also demonstrates that tenant-victims represent a significant segment of Florida's population.

Part III explains why existing laws do not adequately protect tenant-victims from their abusers. It discusses the different ways an abuser can evade being punished and physically removed from the tenant-victim. Part III illustrates how, unless tenant-victims move, abusers can simply return to the known rental address to revictimize the tenant-victim. Furthermore, Part III explains how emergency housing and relocation assistance does not solve the dilemma that tenant-victims face.

Part IV concludes by proposing an amendment to the Act. This Part analyzes landlord property rights, demonstrates they are not absolute, and shows that landlord property rights would not be unduly impaired by amending the Act. Additionally, Part IV analyzes tenant-victim early lease termination statutes of other states. The analysis of other states' statutes is used as a starting point for this Article's amendment proposal. Part IV then proposes specific language for an amendment to the Act. It explains how the amendment proposal would work in tandem with existing law to limit the violence against tenant-victims.

#### I. THE FLORIDA RESIDENTIAL LANDLORD AND TENANT ACT ALLOWS TENANT-VICTIMS TO BE HARMED BY ABUSERS

To show that the Act allows tenant-victims to be harmed by abusers requires a full understanding of the relevant portions of the Act. A review of these provisions demonstrates that the Act specifically fails to grant early lease termination rights to tenant-victims.

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23. See *infra* Part IV.



### A. *Types of Leases Under the Act*

There are two primary types of leases under the Act: leases with<sup>24</sup> and without specific durations<sup>25</sup> for the tenancy. For leases without a specific duration, depending on the tenancy,<sup>26</sup> tenant-victims are obligated to give seven, fifteen, thirty, or sixty days' notice prior to terminating the tenancy.<sup>27</sup> For specific duration leases, the leases "may contain a provision requiring the tenant to notify the landlord within a specified period before vacating the [rental]."<sup>28</sup> If such a provision exists, the landlord can require the tenant-victim to give up to sixty days' notice prior to exiting the lease.<sup>29</sup> Accordingly, absent valid grounds for early lease termination,<sup>30</sup> tenant-victims who need to immediately move to escape abuse cannot do so because they have to give weeks or months of prior notice.<sup>31</sup>

### B. *Valid Grounds for Early Lease Termination*

There are multiple valid, statutory grounds for early lease termination; however, none of these include moving to escape an abuser.<sup>32</sup> For example, "[a]ny servicemember"<sup>33</sup> may terminate his or her rental agreement by providing the landlord with a written notice of termination."<sup>34</sup> Additionally, a landlord has a duty to ensure that the physical premises of the rental are fit for habitation.<sup>35</sup> However, tenant-victims do not have an early lease termination right to move

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24. Specific duration refers to leases signed for a specific length of time, such as one year. See FLA. STAT. ANN. § 83.575 (West 2013).

25. See FLA. STAT. ANN. § 83.57 (West 2017).

26. The tenancy can be from week to week, month to month, quarter to quarter, or year to year. *Id.*

27. *Id.*

28. *Id.* This Article refers to "rental" and "rentals" as a dwelling unit that is "[a] structure or part of a structure that is rented for use as a home." FLA. STAT. ANN. § 83.43(2) (West 2008).

29. FLA. STAT. ANN. § 83.575(1) (West 2013).

30. See discussion *infra* Section I.B.

31. See *supra* text accompanying notes 26–30.

32. See FLA. STAT. ANN. § 83.56(1) (West 2013); see also FLA. STAT. ANN. § 83.682(1) (West 2013).

33. "Servicemember" is referred to as a person in the military. See FLA. STAT. ANN. § 83.682 (West 2003).

34. § 83.682(1) (Westlaw).

35. See FLA. STAT. ANN. § 83.51 (West 2013); see also *Fieldhouse v. Tam Inv. Co.*, 959 So. 2d 1214, 1215 (Fla. Dist. Ct. App. 2007) (noting the physical premises around the rental); *Youngblood v. Pasadena at Pembroke Lakes S., Ltd.*, 882 So. 2d 1097, 1098 (Fla. Dist. Ct. App. 2004) (addressing the case in reference to the physical premises of the rental); *Firth v. Marhoefer*, 406 So. 2d 521, 522 (Fla. Dist. Ct. App. 1981) (discussing the cause of action based on the physical premises of the rental).

to escape abuse.<sup>36</sup> As a result, without valid grounds for early lease termination, a landlord can hold a tenant-victim liable when moving to evade an abuser.

### *C. Landlord's Legal Authority for Holding Tenant-Victims Liable for Violating a Lease*

Crucially, the Act gives landlords every right to continue to hold the tenant-victim liable. “If the tenant breaches the rental agreement for the dwelling unit and the landlord has obtained a writ of possession . . . the landlord may . . . [s]tand by and do nothing, holding the lessee liable for the rent as it comes due . . . .”<sup>37</sup> It is disturbing that the Act authorizes landlords to “[s]tand by and do nothing,”<sup>38</sup> meanwhile, tenant-victims can be harmed by abusers by being unable to move.<sup>39</sup>

## II. WHY EARLY LEASE TERMINATION FOR TENANT-VICTIMS IS IMPORTANT AND MUST BE ADDRESSED

Before discussing this Article’s suggested solution through an amendment to the Act, this Part will specifically show why a limited tenant-victim early lease termination right is important. This Part explains the burdens that are placed on tenant-victims—and society—when tenant-victims are not given early lease termination rights.

### *A. Tenant-Victims’ Inability to Move*

Most tenant-victims cannot afford to violate their lease, even if doing so is in an attempt to evade abusers.<sup>40</sup> Under the Act, landlords can hold tenant-victims liable for rent.<sup>41</sup> Liability can include a landlord confiscating a tenant-victim’s security deposit.<sup>42</sup> Importantly, as is for most Americans, most tenant-victims cannot afford to forgo any funding that could otherwise be used for moving.<sup>43</sup> The

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36. See FLA. STAT. ANN. § 83.56(1) (West 2013); FLA. STAT. ANN. § 83.682(1) (West 2003).

37. FLA. STAT. ANN. § 83.595 (West 2008).

38. § 83.595(3) (Westlaw).

39. *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country*, NAT’L. CTR. HOMELESSNESS & POVERTY (Feb. 2007), <https://www.nlchp.org/documents/Lost-Housing-Lost-Safety.pdf>.

40. See § 83.595 (Westlaw); see also *Barriers to Leaving*, UNIV. MICH., <http://stopabuse.umich.edu/about/barriers.html> [<https://perma.cc/JEP2-VAEK>] (noting that one of the prominent barriers to moving is the financial cost associated with moving).

41. See *supra* Part I.

42. See FLA. STAT. ANN. § 83.49(3)(a) (West 2013).

43. See Ylan Q. Mui, *The Shocking Number of Americans Who Can’t Cover a \$400 Expense*, WASH. POST (May 25, 2016), <https://www.washingtonpost.com/news/wonk/wp>



current median cost of monthly rent in Florida is \$1,077.<sup>44</sup> Additionally, only forty-six percent of Americans can come up with \$400 for an emergency.<sup>45</sup>

Furthermore, the Act can prevent tenant-victims from moving because breaching a lease negatively affects credit<sup>46</sup> and rental history reports.<sup>47</sup> Credit and rental history reports allow a landlord to do background checks on prospective tenants; through these reports, a landlord can learn that tenant-victims violated prior leases by failing to pay rent.<sup>48</sup> As a consequence, tenant-victims would have difficulty securing new rental housing because they would likely fail the requisite credit and rental history reports for new rentals.<sup>49</sup> Therefore, the Act can prevent tenant-victims from moving and evading abusers. In turn, tenant-victims' inability to move has disastrous consequences on tenant-victims and the economy.

### 1. *Tenant-Victim Harm*

Tenant-victims who are unable to move suffer severe physical and psychological harm.<sup>50</sup> Tenant-victims who cannot move<sup>51</sup> cannot flee from their abusers. Accordingly, tenant-victims are extremely likely to be revictimized; “[u]nchecked, [personal] violence almost always increases in frequency and severity.”<sup>52</sup> Nearly a quarter of all

/2016/05/25/the-shocking-number-of-americans-who-cant-cover-a-400-expense/?utm\_term=.75ac8ef2ac1f [https://perma.cc/58V8-WLUD]; *QuickFacts Florida*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/FL> [https://perma.cc/5Y7E-55Q8].

44. See *QuickFacts Florida*, *supra* note 43.

45. REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2015, BOARD GOVERNORS FED. RES. SYS. 1, 22 (2016), <https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>; see *Could You Come Up with \$400 if Disaster Struck?*, NPR (Apr. 23, 2016, 6:26 PM), <http://www.npr.org/2016/04/24/475432149/could-you-come-up-with-400-if-disaster-struck> [https://perma.cc/B4A7-BH5D]; see also Mui, *supra* note 43.

46. See David Rameden, *When the Database is Wrong: Do Consumers Have Any Effective Remedies Against Credit Reporting Agencies or Information Providers?*, 100 COM. L.J. 390, 390 (1995) (stating that negative credit reports can prevent a person from obtaining another apartment rental).

47. Laurie Ball Cooper, *Legal Responses to the Crisis of Forced Moves Illustrated in Evicted*, 126 YALE L.J. F. 448, 456 (2017) (reviewing MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016)) (noting that “rental history reports” reveal a lot of information about the tenant’s prior rental history).

48. See *id.* at 452, 456; Rameden, *supra* note 46, at 390.

49. See Cooper, *supra* note 47, at 456.

50. Jessie Bode Brown, *The Costs of Domestic Violence in the Employment Arena: A Call for Legal Reform and Community-Based Education Initiatives*, 16 VA. J. SOC. POL’Y & L. 1, 20–21 (2008) (stating that domestic violence can be physical and psychological).

51. See discussion *supra* Section II.A.

52. *About Domestic Violence*, CTR. COUNTY WOMEN’S RES. CTR., <http://ccwrc.org/about-abuse/about-domestic-violence> [https://perma.cc/B5EQ-63W7].

homicides are the result of domestic, stalking, sexual, or dating violence.<sup>53</sup> Additionally, personal violence victims have significantly higher rates of suicide, anxiety, and depression than the average population.<sup>54</sup> Consequently, the moving barriers that the Act creates<sup>55</sup> compound tenant-victim harms.

## 2. *Economic Harm*

Moreover, not having early lease termination harms the economy.<sup>56</sup> Personal violence results in approximately \$4.1 billion in healthcare costs annually.<sup>57</sup> Additionally, \$1.8 billion is lost because of reduced productivity.<sup>58</sup> Overall, through healthcare costs and loss of productivity, personal violence costs society \$5.9 billion per year.<sup>59</sup> Thus, not granting tenant-victims early lease termination rights significantly injures Florida's economy.

### *B. Early Lease Termination Rights Affect a Large Segment of Florida's Population*

Importantly, the absence of early lease termination rights for tenant-victims is an issue for a large portion of Florida's population.<sup>60</sup> Large numbers of renters<sup>61</sup> and high rates of personal violence<sup>62</sup> make early lease termination a vital part of protecting Florida's population.

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53. *National Violent Death Reporting System*, *supra* note 7.

54. *See Understanding and Addressing Violence Against Women*, WORLD HEALTH ORG. 2–3 (2012), [http://apps.who.int/iris/bitstream/10665/77432/1/WHO\\_RHR\\_12.36\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/77432/1/WHO_RHR_12.36_eng.pdf).

55. *See* discussion *supra* Section II.A.

56. Deborah M. Weissman, *Law, Social Movements, and the Political Economy of Domestic Violence*, 20 DUKE J. GENDER L. & POL'Y 221, 226 (2013) (“[Personal] violence [is] intricately related to economic issues and . . . individual victims as well as the national economy suffer[] economic harm” as a result.).

57. Press Release, Centers for Disease Control & Prevention, CDC Study Documents High Costs and Impact of Intimate Partner Violence (Oct. 25, 2005), <https://www.cdc.gov/media/pressrel/r051025.htm> [<https://perma.cc/UC7B-E2RL>] (describing the impact that personal violence has on the economy).

58. *Id.*

59. *Id.*

60. 35.2% of Florida's housing units are rentals. *QuickFacts Florida*, *supra* note 43.

61. *See id.*

62. There were 105,640 reported cases of personal violence in Florida in 2016. *Florida's County and Jurisdictional Reported Domestic Violence Offenses, 2016*, FLA. DEPT'L. ENFORCEMENT 22 (2016), [http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV\\_OFF\\_JUR\\_16.aspx](http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_OFF_JUR_16.aspx) [<https://perma.cc/T88D-7KAL>].

### 1. *Florida's Number of Tenant-Victims*

Large numbers of Florida's renters are affected by the Act.<sup>63</sup> As of 2016, there were approximately 9.4 million dwelling units<sup>64</sup> in Florida;<sup>65</sup> of these dwelling units, 35.2% were occupied by renters.<sup>66</sup> Moreover, there were 105,640 reported cases of personal violence in Florida in 2016.<sup>67</sup> By calculating 35.2% of the 105,640 reported cases of personal violence, this Article approximates that there were at least 37,186 tenant-victims in 2016.<sup>68</sup>

Unfortunately, this statistic is likely much higher.<sup>69</sup> Many personal violence victims do not report abuse because of fear of the abuser.<sup>70</sup> Only about half of all personal violence incidents are reported to police.<sup>71</sup> Personal violence victims are often scared to report their abusers because of "the risk of reprisals by the [abusers]."<sup>72</sup> Therefore, this Article posits that the number of tenant-victims in Florida each year is likely closer to 75,000.

## III. EXISTING LAWS FAIL TO ADEQUATELY PROTECT TENANT-VICTIMS FROM THEIR ABUSERS

Although existing laws have made efforts to reduce personal violence, these laws have not addressed this dimension of the problem.<sup>73</sup> Before discussing this Article's solution of amending the Act, this Part will describe existing law and why it fails to adequately protect tenant-victims from abusers.

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63. The Act is applied to Florida's tenants. See FLA. STAT. ANN. § 83.40 (West 2017); FLA. STAT. ANN. § 83.41 (West 2017); see also *QuickFacts Florida*, *supra* note 43 (noting that 35.2% of housing is occupied by renters).

64. "Dwelling unit" is defined as any structure that is used for housing. See FLA. STAT. ANN. § 83.43(2) (West 2008).

65. *QuickFacts Florida*, *supra* note 43.

66. See *id.*

67. *Florida's County and Jurisdictional Reported Domestic Violence Offenses, 2016*, *supra* note 62.

68. *Id.*; see *QuickFacts Florida*, *supra* note 43.

69. See Tom Lininger, *Prosecuting Batterers After Crawford*, 91 VA. L. REV. 747, 768–69 (2005); Lynn Langton et al., *Victimizations Not Reported to the Police, 2006–2010*, U.S. DEPT JUST. 1 (Aug. 2012), <https://www.bjs.gov/content/pub/pdf/vnrp0610.pdf> (stating that many personal violence victims do not report the abuse).

70. See Langton et al., *supra* note 69, at 1.

71. Brian A. Reaves, *Police Response to Domestic Violence, 2006–2015*, U.S. DEPT JUST. 1 (2017), <https://www.bjs.gov/content/pub/pdf/prdv0615.pdf>.

72. Lininger, *supra* note 69, at 769.

73. The Act's failure to grant tenant-victims early lease termination rights compounds the problems of tenant-victim and economic harms. See discussion *supra* Section II.A.

### A. Criminal Law

Police discretion limits the protection criminal law provides tenant-victims from their abusers.<sup>74</sup> Florida criminal law specifically states that police “may” arrest a person when “[t]here is probable cause to believe that the person has committed an act of domestic violence, . . . dating violence, [or] . . . [a]ny battery upon another person.”<sup>75</sup> Accordingly, police “may”<sup>76</sup> decide whether an abuser should be physically removed from the tenant-victim.<sup>77</sup> This Article acknowledges that police arrest discretion can be valuable in criminal law; however, police discretion also means that abusers are not mandatorily removed from tenant-victims.

Statistics prove that police discretion permits abusers to remain with tenant-victims.<sup>78</sup> There were 105,640 reported cases of personal violence in Florida in 2016.<sup>79</sup> However, there were only 63,193 actual arrests for personal violence in the same year.<sup>80</sup> Hence, Florida’s police arrested abusers only sixty percent of the time.<sup>81</sup> Thus, potential abusers are not always physically removed from victims because of police discretion.<sup>82</sup>

Criminal law also fails to protect tenant-victims from abusers because of prosecutorial discretion. Prosecutors are given ultimate oversight in determining whether to charge someone with a crime.<sup>83</sup>

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74. See Nirej S. Sekhon, *Redistributive Policing*, 101 J. CRIM. L. & CRIMINOLOGY 1171, 1172 (2011) (stating that police officers have ample discretion in determining whether to arrest someone for a crime).

75. FLA. STAT. ANN. § 901.15 (West 2018).

76. Police officers “may” arrest an abuser when one of the statute’s elements are met. *Id.*

77. See Sekhon, *supra* note 74, at 1172.

78. See *infra* notes 82–86 and accompanying text.

79. *Florida’s County and Jurisdictional Reported Domestic Violence Offenses, 2016*, *supra* note 62.

80. *Florida’s County and Jurisdictional Domestic Violence Related Arrests, 2016*, FLA. DEPT L. ENFORCEMENT 21 (2016), [http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV\\_ARR\\_JUR16.aspx](http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_ARR_JUR16.aspx) [<https://perma.cc/D3EG-GK9X>].

81. Dividing the number of personal violence reports and actual arrests shows that police arrested abusers only sixty percent of the time. See *Florida’s County and Jurisdictional Domestic Violence Related Arrests, 2016*, *supra* note 80; *Florida’s County and Jurisdictional Reported Domestic Violence Offenses, 2016*, *supra* note 62.

82. See FLA. STAT. ANN. § 901.15 (West 2016) (stating that a police officer “may” arrest a person).

83. See *United States v. Goodwin*, 457 U.S. 368, 382 (1982) (“A prosecutor should remain free . . . to exercise the broad discretion entrusted to him to determine the extent of the societal interest in prosecution.”); Lawrence A. Cunningham, *Deferred Prosecutions and Corporate Governance: An Integrated Approach to Investigation and Reform*, 66 FLA. L. REV. 1, 46–47 (2014) (discussing the implications of prosecutors having virtually unfettered discretion over what cases to pursue); Peter L. Markowitz, *Prosecutorial Discretion Power at Its Zenith: The Power to Protect Liberty*, 97 B.U. L. REV. 489, 490 (2017) (addressing the fact that prosecutors can determine when, and if, to pursue the prosecution of the crimes).

“[T]he decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutor’s] discretion.”<sup>84</sup> Therefore, tenant-victims are at the mercy of prosecutors in the criminal justice system.<sup>85</sup>

Furthermore, criminal law fails to protect tenant-victims from their abusers because of ineffective “no-contact” orders.<sup>86</sup> No-contact orders are a type of protective order that courts can grant in an effort to protect tenant-victims from abusers.<sup>87</sup> A no-contact order states that an abuser must “refrain from any contact of any type with the victim.”<sup>88</sup> However, no-contact orders fail to adequately protect tenant-victims.<sup>89</sup> Abusers can violate the no-contact order and are penalized only after the revictimization of the tenant-victim has occurred.<sup>90</sup> Thus, no-contact orders do not adequately protect tenant-victims from abusers.

In addition, tenant-victims are not protected by criminal law because abusers are not imprisoned for an adequate length of time. The maximum length of imprisonment for many personal violence crimes<sup>91</sup> is sixty days or less than one year.<sup>92</sup> Moreover, abusers are not likely to receive the—already miniscule—maximum penalties for personal violence. Most abusers plead guilty in exchange for a lesser charge or a lower sentence.<sup>93</sup> “[T]he reality [is] that criminal

84. *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (footnote omitted).

85. Claire Houston, *How Feminist Theory Became (Criminal) Law: Tracing the Path to Mandatory Criminal Intervention in Domestic Violence Cases*, 21 MICH. J. GENDER & L. 217, 254 (2014) (“While there [are] few arrests in domestic violence cases, there [are] even fewer prosecutions.” (footnote omitted)).

86. See FLA. STAT. ANN. § 903.047(1)(b) (West 2016); FLA. STAT. ANN. § 921.244 (West 2008); Keith Guzik, *The Forces of Conviction: The Power and Practice of Mandatory Prosecution upon Misdemeanor Domestic Battery Suspects*, 32 L. & SOC. INQUIRY 41, 50 (2007) (explaining that no-contact orders are commonly violated).

87. See Guzik, *supra* note 86, at 50.

88. § 903.047(1)(b) (Westlaw).

89. See Guzik, *supra* note 86, at 50.

90. An abuser is only ordered to “refrain” from having contact with the victim. § 903.047(1)(b) (Westlaw). An abuser is punished only after the abuser has violated a no-contact order. See FLA. STAT. ANN. § 921.244(2) (West 2008).

91. See *supra* notes 1–5 and accompanying text.

92. Crimes associated with domestic, stalking, and dating violence can include assault and battery; assault has a maximum imprisonment of sixty days and battery has a maximum imprisonment of less than one year. See FLA. STAT. ANN. §§ 775.082(4)(a)–(b) (West 2017); FLA. STAT. ANN. § 784.011(2) (West 2017); FLA. STAT. ANN. § 784.03 (West 2001).

93. See Lindsey Devers, *Plea and Charge Bargaining*, U.S. DEP’T JUST. 1 (2011), <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf> (stating that approximately ninety to ninety-five percent of all criminal cases are pleaded down so that the defendant can receive a less-severe sentence); see also Joseph A. Colquitt, *Ad Hoc Plea Bargaining*, 75 TUL. L. REV. 695, 695 (2001) (“Plea bargaining is an accepted, and even essential, part of our criminal justice system . . . .”); Jerold H. Israel, *Excessive Criminal Justice Caseloads: Challenging the Conventional Wisdom*, 48 FLA. L. REV. 761, 768 (1996) (“The burden of heavy dockets has been recognized by the Court in the course of justifying its refusal to hold unconstitutional plea bargaining . . . .” (footnote omitted)).



justice today is for the most part a system of pleas . . . .”<sup>94</sup> In turn, abusers are not likely to be physically removed from tenant-victims for a significant period. Because of discretion, ineffective no-contact orders, and minimal imprisonment, criminal law does not completely protect tenant-victims from abusers.

### *B. Civil Law Injunctions*

Like criminal law, civil law injunctions<sup>95</sup> do not adequately protect tenant-victims from abusers. Personal violence victims can obtain an injunction against their abusers.<sup>96</sup> An injunction is a court order requiring an abuser not to have contact with a victim.<sup>97</sup> However, injunctions fail to totally protect tenant-victims.<sup>98</sup> Injunctions do not physically restrain an abuser from harming a tenant-victim again.<sup>99</sup> An abuser can violate the injunction and is penalized only after revictimizing the tenant-victim.<sup>100</sup> Consequently, civil law injunctions do not entirely protect tenant-victims.

### *C. Emergency Temporary Housing and Relocation Assistance*

Additionally, emergency temporary housing<sup>101</sup> does not wholly defend tenant-victims from their abusers. Space in emergency temporary housing centers is extremely limited.<sup>102</sup> Centers are often unable

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94. *Lafler v. Cooper*, 566 U.S. 156, 170 (2012).

95. Injunctions are a form of protective order. *See Cannon v. Thomas ex rel. Jewett*, 133 So. 3d 634, 640 (Fla. Dist. Ct. App. 2014) (noting that an injunction is used “for protection against . . . violence”); Amy Karan & Lauren Lazarus, *Florida’s Four Orders of Protection Against Violence: Distinguishing the Difference*, 77 FLA. B.J. 31, 31 (2003) (“Florida law provides for . . . orders of protection against violence, also commonly known, locally and nationally, as *restraining orders*, and in Florida, legally called *injunctions*.”).

96. A victim of domestic violence has standing to seek an injunction against an abuser. FLA. STAT. ANN. § 741.30(1)(a) (West 2017). Stalking violence victims can seek an injunction against their abusers. FLA. STAT. ANN. § 784.0485(1) (West 2012). A person who is a sexual violence victim has the power to seek an injunction to try and thwart the threat of an abuser. *See* § 784.046(2)(c) (Westlaw). Dating violence victims can file for an injunction against their abusers. FLA. STAT. ANN. § 784.046(2)(b) (West 2017).

97. *See* FLA. STAT. ANN. § 741.30(6)(a) (West 2017).

98. *See* Linda Dakis, *Injunctions for Protection*, 68 FLA. B.J. 48, 50 (1994) (discussing how abusers can make, and act on, the decision to violate an injunction).

99. *See id.*

100. Under the language of Section 741.31, all the violations are past tense or present tense; hence, the abuser revictimizes the tenant-victim and is only punished after doing so. *See* FLA. STAT. ANN. § 741.31(4)(a) (West 2016); *see also* Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1025 (2014) (discussing how abuse against victims actually increases when the abuser finds out that the victim is taking steps to get away from the abuser).

101. Emergency temporary housing serves the purpose of providing a safe space for domestic violence victims; Florida passed legislation to open these emergency housing centers. *See* FLA. STAT. ANN. § 39.901 (West 2017).

102. Linda Vinton et al., *Florida’s Domestic Violence Needs Assessment*, FLA. DEP’T



to house all of the victims who need housing.<sup>103</sup> Moreover, emergency temporary housing fails to remedy tenant-victim liability; tenant-victims can still be held liable under the Act when tenant-victims obtain emergency housing.<sup>104</sup> In turn, tenant-victims in emergency temporary housing may still have negative credit and rental history reports.<sup>105</sup> As a result, tenant-victims in these centers continue to have difficulty finding new rentals.<sup>106</sup> Unfortunately, emergency temporary housing does not completely solve the dilemma that tenant-victims face.

Furthermore, “relocation assistance”<sup>107</sup> fails to totally safeguard tenant-victims from abuse. As a requirement for relocation assistance, someone must report the abuse to authorities and victims must cooperate with law enforcement and prosecutors.<sup>108</sup> The requirements for relocation assistance are unrealistic for many victims; most victims do not report abuse to authorities because of fear of reprisal from abusers.<sup>109</sup> Hence, many victims will not receive the funding for relocation assistance. Therefore, relocation assistance fails to thoroughly defend tenant-victims from abusers.

#### IV. AN AMENDMENT TO THE FLORIDA RESIDENTIAL LANDLORD AND TENANT ACT

This Part concludes by proposing an amendment to the Act; the proposed amendment would help close the identified gap in the law. The amendment would grant tenant-victims early lease termination—without landlord consent—so that tenant-victims could move to evade abusers. This Part shows that the amendment would not unlawfully restrict landlord property rights. Additionally, this Part analyzes other states’ statutes, recommends specific language for the proposed amendment, and explains how the amendment would work in tandem with existing criminal and civil law to protect tenant-victims.

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CHILD. & FAMILIES 4, 17, 18 (2007), <https://www.dcf.state.fl.us/programs/domesticviolence/publications/docs/NeedsAssessment0607.pdf> (describing emergency housing centers as having limited space).

103. *See id.* (explaining that many victims cannot be accommodated at emergency housing centers because of limited space).

104. Florida created emergency temporary housing centers. FLA. STAT. ANN. § 39.901 (West 2017). However, Florida did not resolve the Act’s failure to grant tenant-victims early lease termination rights. *See supra* Parts I, II.

105. *See* discussion *supra* Section II.A.

106. *See* discussion *supra* Section II.A.

107. Relocation assistance is funding that the State of Florida grants to victims who need to escape immediately from an abusive environment. *See* FLA. STAT. ANN. § 960.196 (West 2015); FLA. STAT. ANN. § 960.198 (West 2015); FLA. STAT. ANN. § 960.199 (West 2015).

108. *See* § 960.196 (Westlaw); § 960.198 (Westlaw); § 960.199 (Westlaw).

109. *See* Lininger, *supra* note 69, at 769.

### A. *Landlord Property Rights Are Not Absolute*

Landlord property rights would not be unduly impaired by amending the Act to grant tenant-victims early lease termination rights. Property rights are important, but not boundless.<sup>110</sup> “[E]ven constitutionally protected property rights are not absolute.”<sup>111</sup> “All . . . property rights are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are reasonably necessary to secure the health, safety, good order, [and] general welfare.”<sup>112</sup> A limited right to early lease termination for tenant-victims is reasonably related to securing the health and safety of tenant-victims. Therefore, landlord property rights would not be harmed by amending the Act for tenant-victim safety.

Some might argue that landlord property rights would be impaired because of “false reporting.”<sup>113</sup> However, the rate of false reporting for personal violence crimes is virtually non-existent.<sup>114</sup> Very few people would abuse the amendment to simply evade a bad lease. False reporting for personal violence is only 2–8%,<sup>115</sup> a lower rate than false reporting for other crimes.<sup>116</sup> As a consequence, landlord property rights would not be unduly impaired by amending the Act.

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110. Compare Fla. Const. art. I, § 2 (“All natural persons . . . have inalienable rights, among which are the right to . . . acquire, possess and protect property.”), and *Dep’t of Law Enf’t v. Real Prop.*, 588 So. 2d 957, 964 (Fla. 1991) (“Property rights are among the basic substantive rights expressly protected by the Florida Constitution.”), with *Shriners Hosps. for Crippled Children v. Zrillic*, 563 So. 2d 64, 67–68 (Fla. 1990) (stating that the right to property is not indefinite), and *Golden v. McCarty*, 337 So. 2d 388, 390 (Fla. 1976) (stating that property rights can give way to the safety of society).

111. *Shriners Hosps. for Crippled Children*, 563 So. 2d at 68.

112. *Golden*, 337 So. 2d at 390.

113. “A false report is a report of a [personal violence] that did not happen.” Kimberly A. Lonsway et al., *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*, 42 PROSECUTOR 10, 15 (2009). Society often assumes—though incorrectly—that personal violence victims lie. See Nancy Chi Cantalupo, *For the Title IX Civil Rights Movement: Congratulations and Cautions*, 125 YALE L.J. F. 281, 289 (2016).

114. See Lonsway et al., *supra* note 113, at 11 (stating that false reporting for personal violence crimes is only 2–8%).

115. Cassia Spohn et al., *Unfounding Sexual Assault: Examining the Decision to Unfound and Identifying False Reports*, 48 LAW & SOC’Y REV. 161, 162 (2014); Lonsway et al., *supra* note 113, at 11.

116. See Lisa R. Avalos, *Policing Rape Complainants: When Reporting Rape Becomes a Crime*, 20 J. GENDER RACE & JUST. 459, 459 (2017) (stating that “[r]ape is one of the most under-reported crimes that there is”); Lonsway et al., *supra* note 113, at 14.

## B. Comparison with States Similar to Florida

Unlike similar states,<sup>117</sup> Florida does not authorize early lease termination for tenant-victims.<sup>118</sup> California,<sup>119</sup> Texas,<sup>120</sup> and New York,<sup>121</sup> which are all like Florida in population<sup>122</sup> and gross domestic product (GDP),<sup>123</sup> offer tenant-victims early lease termination rights. Thus, the tenant-victim early lease termination statutes of California,<sup>124</sup> Texas,<sup>125</sup> and New York<sup>126</sup> provide useful examples of different approaches to the problem. The analysis of these states will serve as a starting point for this Article's amendment proposal.

### 1. California

California's early lease termination statute for tenant-victims provides as follows:

- (a) A tenant may notify the landlord that he or she or a household member was a victim of an act that constitutes an act of domestic violence . . . sexual assault . . . [or] stalking . . . and that the tenant intends to terminate the tenancy.
- (b) A notice to terminate a tenancy under this section shall be in writing, with one of the following attached to the notice:
  - (1) A copy of a temporary restraining order, emergency protective order, or protective order lawfully issued . . . that protects the tenant or household member from further domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult.

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117. This Article posits that California, Texas, and New York similar to Florida because these four states are the largest in terms of population and gross domestic product. *See infra* text accompanying notes 122–23.

118. *See supra* Part I.

119. *See* CAL. CIV. CODE § 1946.7 (West 2019).

120. *See* TEX. PROP. CODE ANN. § 92.016 (West 2010).

121. *See* N.Y. REAL PROP. LAW § 227-c (McKinney 2007).

122. California, Texas, New York, and Florida are the four largest states in terms of population. *See QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/FL,NY,TX,CA/PST045217> [<https://perma.cc/MP9K-JKXZ>].

123. The largest four states, in terms of GDP, are California, Texas, New York, and Florida. *See California*, BUREAU ECON. ANALYSIS, U.S. DEPT COM. (2017), <https://www.bea.gov/regional/bearfacts/pdf.cfm?fips=06000&areatype=STATE&geotype=3>; *Florida*, BUREAU OF ECON. ANALYSIS, U.S. DEPT COM. (2017), <https://www.bea.gov/regional/bearfacts/pdf.cfm?fips=12000&areatype=STATE&geotype=3>; *Texas*, FORBES, <https://www.forbes.com/places/tx> [<https://perma.cc/X87E-XSSZ>] (last visited Apr. 5, 2019); *New York*, U.S. DEPT COM. (2017), <https://www.bea.gov/regional/bearfacts/pdf.cfm?fips=36000&areatype=STATE&geotype=3>.

124. CAL. CIV. CODE § 1946.7 (West 2019).

125. TEX. PROP. CODE ANN. § 92.016 (West 2010).

126. N.Y. REAL PROP. LAW § 227-c (McKinney 2007).

(2) A copy of a written report by a peace officer employed by a state or local law enforcement agency acting in his or her official capacity stating that the tenant or household member has filed a report alleging that he or she or the household member is a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult.

(3)(A) Documentation from a qualified third party based on information received by that third party while acting in his or her professional capacity to indicate that the tenant or household member is seeking assistance for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse.

(c) The notice to terminate the tenancy shall be given within 180 days of the date that any order described in paragraph (1) of subdivision (b) was issued [or] within 180 days of the date that any written report described in paragraph (2) of subdivision (b) was made . . . .

(d) If notice to terminate the tenancy is provided to the landlord under this section, the tenant shall be responsible for payment of rent for no more than 14 calendar days following the giving of the notice . . . . The tenant shall be released from any rent payment obligation under the lease or rental agreement without penalty.<sup>127</sup>

California's statute has positive aspects in determining when to authorize early lease termination rights for tenant-victims. The California statute does not limit early lease termination to only domestic violence; the statute includes other personal violence as well.<sup>128</sup> Expanding the scope of the statute beyond domestic violence is critical—not all tenant-victims are domestic violence victims.<sup>129</sup> As a result, this Article's amendment includes all personal violence victims,<sup>130</sup> not just victims of domestic violence.

Furthermore, the California statute allows police reports or "qualified third party"<sup>131</sup> documentation,<sup>132</sup> as an evidentiary basis

127. § 1946.7(a)–(d) (Westlaw).

128. Early lease termination can be granted to victims of sexual assault, human trafficking, stalking, and domestic violence. *See* § 1946.7(a) (Westlaw).

129. *See supra* text accompanying notes 1–5; Bryden & Lengnick, *supra* note 5, at 1201–02; Mullen & Pathé, *supra* note 5, at 289.

130. Tenant-victims are victims of domestic, stalking, sexual, and dating violence. *See supra* text accompanying notes 1–5.

131. A "[q]ualified third party" is a third-party professional and is defined as "a health practitioner, domestic violence counselor . . . [or] sexual assault counselor." CAL. CIV. CODE § 1946.7(f)(2) (West 2019). "Health practitioner" is used to mean "a physician and surgeon, osteopathic physician and surgeon, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor." § 1946.7(f)(3) (Westlaw).

132. Documentation is a statement from a qualified third party. The statement includes the qualified third party's contact information, verification of the qualified third

for authorizing tenant-victim early lease termination.<sup>133</sup> Allowing police reports to qualify for permitting early lease termination is sound policy.<sup>134</sup> Almost all personal violence police reports are substantiated.<sup>135</sup> Additionally, allowing qualified third-party documentation as a means for granting early lease termination is practical; it responds to the reality that many victims are scared to report to police.<sup>136</sup> Authorizing qualified third-party documentation for early lease termination would allow these tenant-victims another avenue for early lease termination. Accordingly, this Article's proposal includes police reports and qualified third-party documentation as evidentiary bases that can support granting tenant-victims early lease termination.

## 2. Texas

The Texas early lease termination statute provides:

(b) A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if the tenant complies with Subsection (c) and provides the landlord or the landlord's agent a copy of one or more of the following orders protecting the tenant or an occupant from family violence:

(1) a temporary injunction issued under Subchapter F, Chapter 6, Family Code;

(2) a temporary ex parte order issued under Chapter 83, Family Code; or

(3) a protective order issued under Chapter 85, Family Code.

(c) A tenant may exercise the rights to terminate the lease under Subsection (b), vacate the dwelling before the end of the lease term, and avoid liability beginning on the date after all of the following events have occurred:

(1) a judge signs an order described by Subsection (b);

(2) the tenant provides a copy of the relevant documentation described by Subsection (b) to the landlord;

(3) the tenant provides written notice of termination of the lease to the landlord on or before the 30th day before the date the lease terminates;

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party's credentials, attesting the accounts of the victim, and an understanding that the documentation is to be used to end the victim's lease. *See* § 1946.7(b)(3)(B) (Westlaw).

133. *See* §§ 1946.7(b)(2), (3)(A) (Westlaw).

134. *See* § 1946.7(b) (Westlaw).

135. There is very little false reporting of personal violence. *See supra* text accompanying notes 113–15.

136. *See* Lininger, *supra* note 69, at 769 (stating that victims are often scared to prosecute their abusers because of "the risk of reprisals by the batterers").

- (4) the 30th day after the date the tenant provided notice under Subdivision (3) expires; and
- (5) the tenant vacates the dwelling.<sup>137</sup>

Texas's statute is positive for tenant-victims because it allows various protective orders to qualify for early lease termination.<sup>138</sup> Including protective orders for early lease termination is sound policy. Having a court-issued protective order demonstrates that the abuser is a risk to the tenant-victim.<sup>139</sup> Unfortunately, protective orders are not always effective at stopping abuse.<sup>140</sup> Thus, early lease termination for tenant-victims who already have protective orders would allow tenant-victims to escape abusers who do not abide by protective orders.<sup>141</sup> Therefore, this Article's amendment proposal includes the various protective orders available to tenant-victims.<sup>142</sup>

### 3. *New York*

New York's tenant-victim early lease termination statute provides as follows:

1. In any lease or rental agreement covering premises occupied for dwelling purposes, a lessee or tenant for whose benefit any order of protection has been issued by a court of competent jurisdiction, shall be permitted to terminate such lease or rental agreement and quit and surrender possession of the leasehold premises, and of the land so leased or occupied pursuant to the provisions of this section and to be released from any liability to pay to the lessor or owner, rent or other payments in lieu of rent for the time subsequent to the date of termination of such lease in accordance with subdivision two of this section.
2. (a) A lessee or tenant for whose benefit any order of protection has been issued by a court of competent jurisdiction, may, on ten days' notice to the lessor or owner of the premises occupied by such person, and to any co-tenants of such lessee or tenant, seek

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137. TEX. PROP. CODE ANN. § 92.016(b)–(c) (West 2010).

138. Protective orders are a type of court order that order abusers not to contact victims; this includes injunctions and ex parte orders. *See* TEX. FAM. CODE ANN. § 83.001(a) (West 2001); § 92.016(b)(1)–(3) (Westlaw); Karan & Lazarus, *supra* note 95, at 31.

139. *See* discussion *supra* Section III.A; *see also supra* text accompanying notes 95–97.

140. *See supra* notes 95–99 and accompanying text.

141. Many abusers do not abide by protective orders. *See* Dakis, *supra* note 98, at 50; Guzik, *supra* note 86, at 50; Stoeber, *supra* note 100, at 1025.

142. The protective orders that are available to personal violence victims in Florida are civil law injunctions and criminal no-contact orders. *See* FLA. STAT. ANN. § 741.30(1)(a) (West 2017); FLA. STAT. ANN. § 903.047(b) (West 2016); FLA. STAT. ANN. § 921.244(1) (West 2008).



an order of the court that issued such order of protection authorizing such lessee or tenant to terminate such party's lease or rental agreement. Such court shall hear any such application at any time that the order of protection remains in effect, whether or not the action in which it was issued remains open.

(b) The court shall issue such order only if the applicant lessee or tenant establishes to the satisfaction of the court that:

(i) notwithstanding the existence of an order of protection there continues to exist a substantial risk of physical or emotional harm to such person or such person's child from the party covered by the order of protection if the parties remain in the premises and that relocation will substantially reduce such risk;

(ii) the lessee or tenant attempted to secure the voluntary consent of the lessor or owner to terminate the lease or rental agreement and the lessor or owner refused to permit termination; and

(iii) the lessee or tenant is acting in good faith.

(c) The court shall condition the granting of the order on the following terms:

(i) All sums due under the lease or rental agreement through the termination date of such lease or rental agreement are timely paid;

(ii) That upon termination:

(a) the premises are delivered to the lessor or owner free of all tenants and occupants and in accordance with the terms of the lease relating to delivery of the premises at the termination of the lease, provided that the applicant shall not be responsible for ensuring that the person covered by the order of protection is not present; or

(b) if there are also tenants on the lease other than the applicant tenant and the person covered by the order of protection, the court shall not, except upon consent of such additional tenants, terminate the entire co-tenancy, but the court may sever the co-tenancy, in which case the applicant tenant shall vacate by the termination date.<sup>143</sup>

The New York statute unnecessarily overburdens tenant-victims by requiring a showing of "good faith"<sup>144</sup> and substantial risk of continued harm.<sup>145</sup> A good faith requirement is not needed; virtually all personal violence claims are true.<sup>146</sup> Moreover, requiring a showing of a substantial risk of continued harm when a tenant-victim has a protective order is redundant;<sup>147</sup> the protective order itself proves

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143. N.Y. REAL PROP. LAW § 227-c(1)-(2) (McKinney 2007).

144. § 227-c(2)(b)(iii).

145. § 227-c(2)(b)(i).

146. See Cantalupo, *supra* note 113, at 290 n.40; Lonsway et al., *supra* note 113, at 11.

147. A victim must have an existing protective order and show a substantial risk of continued harm. See §§ 227-c(1)-(2)(b)(i).

that there is a risk of harm.<sup>148</sup> Furthermore, a requirement of substantial risk of continued harm allows abusers to violate the protective order, harm the tenant-victim in the interim, and be penalized only after the tenant-victim has been revictimized.<sup>149</sup> As a result, the amendment proposal that this Article puts forward does not include good faith<sup>150</sup> or risk of continued harm requirements.<sup>151</sup>

### *C. Proposed Amendment to the Florida Residential Landlord and Tenant Act*

This Article proposes an amendment to the Act that directly addresses the Act's failure to grant tenant-victims early lease termination rights.<sup>152</sup> The proposed amendment is based, in part, on how California, Texas, and New York have addressed the issue of tenant-victims and early lease termination rights.<sup>153</sup> This Article has considered the benefits and drawbacks of the California,<sup>154</sup> Texas,<sup>155</sup> and New York<sup>156</sup> statutes<sup>157</sup> and models the proposed amendment accordingly.

The following section would be added to the Act:

- (1) A tenant may, without the consent of the landlord, terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if the tenant complies with Subsection (3) and provides the landlord or the landlord's agent a copy of one or more of the following orders or reports regarding physical or psychological harm, as the result of domestic, stalking, sexual, or dating violence:
  - (a) any injunction for domestic violence, as defined in Chapter 741;<sup>158</sup>
  - (b) any injunction for stalking, sexual, or dating violence, as defined in Chapter 784<sup>159</sup>

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148. See *supra* notes 95–101 and accompanying text.

149. §§ 227-c(1)–(2)(b)(i); see Dakis, *supra* note 98, at 50; Stoever, *supra* note 100, at 1025.

150. § 227-c(2)(b)(iii).

151. § 227-c(2)(b)(i).

152. See *infra* text accompanying notes 158–63.

153. See discussion *supra* Section IV.B.

154. CAL. CIV. CODE § 1946.7 (West 2019).

155. TEX. PROP. CODE ANN. § 92.016(b) (West 2010).

156. N.Y. REAL PROP. LAW § 227-c(1) (McKinney 2007).

157. See discussion *supra* Section IV.B.

158. FLA. STAT. ANN. § 741.30(1) (West 2017).

159. Stalking violence victims can seek an injunction under Section 784.0485. FLA. STAT. ANN. § 784.0485(1) (West 2016). Sexual and dating violence victims may seek an injunction under Section 784.046. FLA. STAT. ANN. § 784.046 (West 2017).

- (c) any protective order, as defined in Chapters 921<sup>160</sup> and 903.<sup>161</sup>
  - (d) a copy of a written report by a peace officer employed by a state or local law enforcement agency acting in his or her official capacity stating that the tenant has filed a report alleging that he or she is a victim of domestic violence, stalking, sexual violence, or dating violence; or
  - (e) documentation from a qualified third party based on information received by that third party while acting in his or her professional capacity to indicate that the tenant is seeking assistance for physical or psychological injuries or abuse resulting from an act of domestic violence, stalking, sexual violence, or dating violence.
- (2) Documentation from a qualified third party shall include:
- 1. the qualified third party's credentials;
  - 2. the qualified third party's statement of the physical or psychological injuries as the result of domestic violence, stalking, sexual violence, or dating violence; and
  - 3. the qualified third party's statement of understanding that the documentation is to be used so that the victim may end his or her lease.

Section 83.43 of the Act<sup>162</sup> would also be amended to add the following:

- (18) "Qualified third party" means a physician and surgeon, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, domestic violence counselor, and sexual violence counselor.<sup>163</sup>

#### *D. Analysis of the Proposed Amendment*

This Article's proposed amendment seeks to grant tenant-victims early lease termination rights so that tenant-victims may move to evade abusers.<sup>164</sup> Under this Article's amendment, tenant-victims would be allowed to end their leases early and would not face liability for doing so.<sup>165</sup> In turn, tenant-victims would have access to their security deposits<sup>166</sup> and would not have negative credit and rental

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160. A criminal court can issue a no-contact order that helps protect the victim by ordering the abuser not to contact the victim. *See* FLA. STAT. ANN. § 921.244(1) (West 2008).

161. A criminal court can issue a no-contact order as part of a defendant's pretrial release. *See* FLA. STAT. ANN. § 903.047(b) (West 2016).

162. Section 83.43 is the definitions section of the Act. FLA. STAT. ANN. § 83.43 (West 2008).

163. This part of the amendment is listed as "18" because Section 83.43 already has an existing 17 definitions. Part "18" would simply be added to the definition list already listed in Section 83.43. *See id.*

164. *See* discussion *supra* Section IV.C.

165. *See* discussion *supra* Section IV.C.

166. Tenant-victims would have access to their security deposits so long as the

history reports.<sup>167</sup> Therefore, the proposed amendment would cure the tenant-victims' moving barriers.

In addition, this Article's proposed amendment seeks to compensate for the inadequacy of existing criminal law.<sup>168</sup> Discretion, minimal prison sentences, and plea bargaining can leave tenant-victims exposed to abusers.<sup>169</sup> Therefore, the amendment grants tenant-victims early lease termination using only police reports or qualified third-party documentation.<sup>170</sup> This ensures that tenant-victims are not required to pursue what may prove to be futile criminal action as a condition of early lease termination; tenant-victims need only report the abuse.<sup>171</sup> As a result, the proposed amendment would help offset criminal law's inability to completely protect tenant-victims.

Moreover, the amendment set forth in this Article would help make protective orders more effective.<sup>172</sup> Protective orders are only as good as the abusers who wish to follow them; abusers are free to violate protective orders and are penalized only after revictimizing the tenant-victim.<sup>173</sup> This Article's amendment solves the protective order issue by allowing protective orders to serve as a basis for granting tenant-victims early lease termination. Tenant-victims who have protective orders would be able to move when they feel it is appropriate for their own safety.<sup>174</sup> Accordingly, the amendment proposal addresses the inadequacy of protective orders.

This Article's amendment also helps emergency temporary housing centers.<sup>175</sup> Emergency temporary housing centers are often full and unable to house all victims.<sup>176</sup> The amendment alleviates this issue by granting early lease termination rights for tenant-victims.<sup>177</sup> Tenant-victims would be able to end their leases early and find new rentals,

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tenant-victims complied with all other terms of the lease. For instance, a tenant can be held liable for damage to the property. *See, e.g.*, FLA. STAT. ANN. § 83.52(6) (West 2017).

167. *See* Cooper, *supra* note 47, at 456; Rameden, *supra* note 46, at 390.

168. *See* discussion *supra* Section III.A.

169. *See* discussion *supra* Section III.A.

170. Sections (1)(d) and (1)(e) of 83.515 of the proposed amendment would specifically allow police reports and qualified third party documentation as a means for granting tenant-victims early lease termination. *See* discussion *supra* Section IV.C.

171. *See* discussion *supra* Section IV.C.

172. Protective orders do not always prevent abusers from harming victims. *See* Dakis, *supra* note 98, at 50; Guzik, *supra* note 86, at 50; Stoeber, *supra* note 100, at 1025.

173. *See* FLA. STAT. ANN. § 741.31(4)(a) (West 2016); FLA. STAT. ANN. § 903.047(1)(b) (West 2016); FLA. STAT. ANN. § 921.244(2) (West 2008).

174. Under the current Act, without landlord consent, tenant-victims cannot lawfully move to evade abusers; even if tenant-victims have protective orders and abusers violate the protective orders, the Act does not grant early lease termination rights. *See supra* Part I.

175. *See* discussion *supra* Section III.C.

176. *See* Vinton et al., *supra* note 102, at 4.

177. *See* discussion *supra* Section III.C.

even if emergency temporary housing centers are at capacity. Thus, the amendment set forth in this Article would help address the deficiency of emergency temporary housing.

Furthermore, this Article's amendment proposal would resolve the ineffectiveness of relocation assistance.<sup>178</sup> To qualify for relocation assistance, the abuse must be reported to authorities and victims must cooperate with law enforcement.<sup>179</sup> Many victims do not report and therefore do not qualify for relocation assistance.<sup>180</sup> The amendment alleviates this issue by granting tenant-victims early lease termination when qualified third-party documentation is present;<sup>181</sup> tenant-victims would not be obligated to report to law enforcement. Therefore, the amendment proposed in this Article would solve the inadequacy of relocation assistance.

Critically, the amendment would reduce tenant-victim harm. This Article's amendment grants tenant-victims early lease termination rights so tenant-victims can move to evade abusers.<sup>182</sup> In turn, tenant-victims who can escape their abusers can reduce the physical and psychological harm associated with personal violence.<sup>183</sup> Consequently, this Article's amendment proposal would reduce tenant-victim harm.

## CONCLUSION

The Act currently does not provide a remedy to tenant-victims who need to move to escape abusers. Tenants who believed they were safe in their homes can easily become tenant-victims and have little recourse for evading abuse. Society will come to realize the enormous impact that not granting tenant-victims early lease termination has on tenant-victims and society.

Amending the Act to grant tenant-victims early lease termination rights would be a proactive solution, allowing tenant-victims the option of moving from abusers to forgo harm. An amendment giving early lease termination rights to tenant-victims would close the tenant-victim harm gap that existing laws have failed to close. Amending the Act can offer an avenue of safety that many tenant-victims do not have.

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178. See discussion *supra* Section III.C.

179. See FLA. STAT. ANN. § 960.196(2)(b) (West 2015); FLA. STAT. ANN. § 960.198(2) (West 2015); FLA. STAT. ANN. § 960.199(2) (West 2015).

180. See Lininger, *supra* note 69, at 769.

181. This Article's amendment specifically explains who qualifies as a third party and what documentation is required. See discussion *supra* Section III.C.

182. Personal violence usually increases in severity and frequency. See discussion *supra* Section II.A.1. Granting early lease termination rights, which this Article proposes, would allow tenant-victims to move to escape abuse. See discussion *supra* Section III.C.

183. Personal violence victims are subjected to harsh personal and psychological harm. See discussion *supra* Section II.A.1.