

SUBJECT: Landlord and tenant obligations; residential rental locators requirements

COMMITTEE: Business and Industry — favorable with amendments

VOTE: 6 ayes — Brady, Corte, Crabb, Eiland, Janek, Rhodes
0 nays
2 present, not voting — Brimer, Solomons
1 absent — Giddings

SENATE VOTE: On final passage, May 11 — voice vote

WITNESSES: For — David Mintz, Texas Apartment Association; Bettie Naylor, Advantage Properties
Against — None

DIGEST: SB 1334, as amended, would amend the landlord and tenant sections of the Property Code concerning the interruption of utilities, the removal of door locks, the disclosure of information to the tenant, the provision of remedies for landlord retaliation and the definition of a residential locator.

The bill would take effect January 1, 1996; however, the bill's smoke detector provisions would become effective September 1, 1995, and the Texas Real Estate Commission would be required to adopt rules by December 1, 1995.

Security device requirements would not apply to a temporary residential tenancy under a sale contract where the buyer occupied the property before closing or where the seller occupied the property within 90 days after closing.

Interruption of Utilities Service. A landlord would be prohibited from interrupting a tenant's water, waste water, gas or electric service except in cases of bona fide or emergency repairs and construction or in situations where the tenant's dwelling unit was individually metered or submetered,

the electrical service was in the landlord or landlord's agent's name and the landlord was complying with Public Utility Commission (PUC) rules. The landlord could also interrupt utility service when the tenant was at least seven days late in paying rent and the landlord had mailed or hand-delivered a written notice to the tenant stating the earliest interruption date of electrical services, the amount tenant must pay to avoid the interruption and the name and location of the individual or on-site management office where delinquent rent may be paid during the landlord's normal business hours. The landlord's notice would have to be sent within five days before the electrical service was interrupted.

Interruptions to the tenant's electrical service could not begin before or after the landlord's normal business hours nor could it begin on a day immediately preceding a day when the landlord or other designated individual was not available or the on-site management office was not open to accept rent and restore electrical service.

A landlord would be required to restore interrupted electrical service within two hours of the time the tenant paid the delinquent electric bill or rent to the landlord during business hours.

If the landlord or his agent improperly interrupted electrical service, the tenant would be allowed either to recover the premises or terminate the lease. After subtracting any money the tenant owes the landlord, the tenant would also be able to recover from the landlord an amount equal to the sum of the tenant's actual damages; one month's rent or \$500, whichever was greater and reasonable attorney's fees and court costs.

A provision of a lease that purports to waive a right or exempts a party from liability or duty would be void.

Door Lock Changes. A landlord or agent who changes a door lock of a tenant delinquent in rent payment would be required to place a written notice on tenant's door informing the tenant of an on-site location — open 24 hours a day — where the tenant could go to obtain a new key or informing the tenant of a telephone number that — answered 24 hours a day — that a tenant could call to have key delivered within two hours. The landlord would be required to provide a new key to the tenant at any

hour regardless of the amount of rent and other delinquent charges the tenant owed. A written notice of the tenant's outstanding rent and delinquent charges would have to be sent to the tenant.

If a tenant was delinquent in rent, a landlord could not prevent the tenant from entering the leased premises unless the landlord mailed a notice to the tenant that stated the earliest date the landlord planned to change the door locks, the amount of rent the tenant owed and the place where the tenant could pay delinquent rent. The landlord's notice of intention to change the door locks would have to be mailed within five days or hand-delivered within three days before the date the door locks were to be changed

A landlord could not change a tenant's door locks on a day, or on a day immediately before a day, on which the landlord or other designated individual was not available, or on which any on-site management office was not open for the tenant to pay the delinquent rent.

A landlord who intentionally prevented a tenant from entering the tenant's dwelling would be required to provide the tenant with a key to the changed lock without regard to whether the tenant paid the delinquent rent.

If a landlord arrived at the dwelling in a timely manner in response to a tenant's telephone call and the tenant was not present to receive the new key to the changed lock, the landlord would have to leave a notice on the front door of the dwelling stating the time the landlord arrived with the key and the street address where the tenant could go to obtain the key during office hours.

A landlord who failed to follow the door lock provisions outlined in this bill would be subject to a civil penalty of one month's rent plus \$500, actual damages, court costs and reasonable attorney fees after subtracting any delinquent rent owed by the tenant. A landlord who intentionally prevented a tenant from entering the tenants dwelling and did not provide a key to the dwelling's changed lock could be assessed an additional civil penalty equal to one month's rent.

Disclosure Information. A landlord would be required to disclose rental dwelling information in writing — including the name and address of the

record title holder of the tenant's dwelling — within seven days of receiving a written request by a government official or employee.

If a landlord did not provide disclosure information, the government employee seeking the information could request a court to order the landlord to disclose the information or ask for a judgment against the landlord for an amount equal to the governmental body's actual costs in discovering the information, a judgment against the landlord for \$500 and a judgment against the landlord for court costs and attorney's fees.

An apartment's managing or leasing agent would act as the landlord's agent to receive government notices for violations of health, sanitation, safety or nuisance laws on the landlord's property. Notices would include demands for abatement of nuisances, repair of a substandard dwelling, remedy of dangerous conditions, reimbursement of costs incurred by the governmental body in curing the violation, fines and process services. The person who collected the rent from a tenant would be the landlord's authorized agent for receiving government notices if the landlord's name and business street address in Texas had not been provided in writing to the tenant or government employee.

A landlord would be prohibited from retaliating against a tenant who in good faith attempted to provide a remedy under the lease, municipal ordinance, state or federal statute; gave a landlord notice to repair or exercise a remedy under this bill or made a valid complaint about a housing code violation or utility problem to either a public utility, a nonprofit agency or a governmental entity responsible for enforcing building or housing codes.

A landlord could not — within six months after the date of a tenant's seeking remedies to a housing situation — retaliate against a tenant either by filing an eviction proceeding, depriving the tenant use of the premises; decreasing services to the tenant, increasing the tenant's rent, terminating the tenant's lease or engaging in bad faith in a course of conduct that materially interferes with the tenant's rights under the tenant's lease.

An eviction or lease termination would not constitute retaliation if the tenant had materially breached the lease by violating written lease

provisions that prohibit serious misconduct or criminal acts and the tenant failed to take certain actions after landlord had given the tenant a termination notice at end of the rental term.

The tenant would be allowed to recover certain remedies from the landlord if the landlord retaliated, including a civil penalty of one month's rent plus \$500, actual damages, moving costs, civil penalties or declaratory relief or injunctive relief as well as court costs and reasonable attorney's fees in an action for recovery of property damages. Delinquent rents or money owed to the landlord would be subtracted from the tenant's remedies.

If the tenant filed or prosecuted a suit for retaliatory actions based on the tenant's complaint that a governmental building inspector or utility representative later determined did not exist, there would be a rebuttable presumption that the tenant acted in bad faith. If a tenant filed or prosecuted a suit in bad faith, the landlord could recover from the tenant a civil penalty of one month's rent plus \$500, court costs and reasonable attorney's fees as well as possession of the dwelling unit.

Residential Rental Locators. A residential rental locator would be defined as a person hired to locate an apartment unit for lease to a prospective tenant. Residential rental locators would be required to hold a real estate license and would have to post their license — along with the address and telephone number of the Texas Real Estate Commission that authorized the license — in a conspicuous place accessible to the locator's clients. The Texas Real Estate Commission would adopt regulations and establish standards relating to permissible forms of advertising by residential rental locators. A violation of the provisions in this bill by a locator could result in suspension or revocation of the locator's license and an administrative penalty.

A person who engaged in a residential rental locator business without a license would be subject to a Class B misdemeanor penalty.

Smoke Detectors. Landlords would be required to test smoke detectors to ensure that they are in working order at the beginning of the tenant's possession rather than when the smoke detector was installed after the

tenant has taken possession. A smoke detector in good working order at the beginning of the tenant's possession would be presumed to continue in such condition until the tenant requested its repair.

A landlord would be liable for failure to install a smoke detector at the time of the tenant's initial occupancy or when the landlord failed to install, inspect or repair a smoke detector after the tenant gave seven days notice of a need for such installation, inspection or repair.

A tenant whose landlord did not install a smoke detector at the time of initial occupancy by the tenant could obtain a court order directing the landlord to comply with the tenant's request for installation if the tenant was in possession of the dwelling unit. The remedy of one month's rent plus \$100 would be considered a civil penalty and, along with the remedy of unilateral termination of the lease, would only apply to failure to install, inspect or repair, not to the failure to install at the time of initial occupancy. A tenant could not obtain attorney's fees for a judgment against the landlord for damages caused by the landlord's violation.

A tenant would be liable to the landlord for any damages resulting from the tenant's removing a battery from a smoke detector without immediately replacing it with a working battery or knowingly disconnecting or intentionally damaging a smoke detector causing it to malfunction. A tenant would not be liable if the damage was caused by the landlord's failure to repair the smoke detector within a reasonable time after the tenant's request.

The tenant would be liable only if the lease included a provision in underlined or boldfaced type stating the tenant's duties regarding the smoke detector and the landlord had given notice at least seven days earlier of the landlord's intent to exercise remedies if the tenant did not fix the smoke detector or replace the batteries. The landlord would have to furnish a separate notice after discovering that the tenant had disconnected or damaged the smoke detector or removed the battery. If a tenant was liable, the landlord would have the same remedies as the tenant under current law, except for unilateral termination of the lease.

A tenant's guest or invitee who suffered damage from the landlord's failure to install, inspect or repair a smoke detector could recover damages against the landlord. A guest or invitee who suffered damage because the tenant removed a battery from or knowingly disconnected or intentionally damaged a smoke detector, causing it to malfunction, could recover damages against the tenant.

NOTES: The committee amendments would redefine residential rental locator, exempt a temporary residential tenancy from security device requirements and provide a new section on landlord and tenant rights and obligations with regard to smoke detectors.