

**SUBJECT:** Commercial lessees' rights to return of a security deposits.

**COMMITTEE:** Business and Industry — favorable, with amendment

**VOTE:** 8 ayes — Brimer, Dukes, J. Davis, Elkins, George, Giddings, Solomons, Woolley  
0 nays  
1 absent — Corte

**WITNESSES:** For — None  
Against — None  
On — Larry Niemann, Texas Building Owners and Managers/Texas Mini Storage Association; Bill Stinson, Texas Association of Realtors

**BACKGROUND:** Property Code, ch. 93 sets forth provisions regarding the rights of commercial tenants and landlords.

**DIGEST:** HB 2803, as amended, would amend the Property Code with regard to security deposits.

A security deposit would be defined as the greater of either: (1) the amount specified in the lease; or (2) the amount provided in an estoppel certificate the landlord or a subsequent landlord prepared at the time of the lease or upon assuming ownership of the property.

The landlord would have to refund a tenant's security deposit within 60 days of when the tenant vacated the premises, except that the duty to refund the deposit would not begin until a forwarding address was provided. The landlord would have to keep accurate records of all security deposits received.

A landlord who deducted amounts from the security deposit would have to provide an itemized list describing all deductions unless the tenant owed rent

when the property was surrendered and there was no controversy regarding the amount of rent owed. The landlord would be forbidden from retaining any of the security deposit to cover the costs of normal wear and tear.

A landlord who in bad faith retained a security deposit would be liable for three times the wrongfully withheld portion of the security deposit, plus \$100 and the attorney's fees incurred in a suit to recover the deposit if it were brought after the time for returning the deposit expired. Also, in a suit brought by the tenant to recover a deposit, the landlord would have to prove that retaining the security deposit was reasonable.

A landlord who in bad faith failed to provide the itemized list required by the chapter would lose the right to retain any part of the security deposit or to sue the tenant for damages to the premises and would be liable to the tenant for attorney's fees incurred in a suit to recover the deposit.

A landlord would be presumed to act in bad faith if the landlord did not return the security deposit or provide the itemized list of charges within 30 days of the tenant vacating the premises.

A new owner, except for a mortgage holder who takes by foreclosure would be liable for the security deposit if the landlord transferred or otherwise lost its interest in the property, including through bankruptcy. However, the former landlord would remain liable for the deposit until the new owner gave the tenant written acknowledgment of the receipt and amount of the deposit from the former landlord. The tenant's interest in the security deposit would take precedence over any of the landlord's creditor's claims to the money, including those of a trustee in bankruptcy.

Finally, a tenant would not be permitted to withhold the last month's rent on the grounds that the security deposit covered it. A tenant that did so would be presumed to act in bad faith and would be liable to the landlord for three times the amount of the rent, plus the landlord's attorney's fees incurred in a suit to recover the rent.

The bill would take effect September 1, 2001, and only would apply to leases executed or renewed on or after the effective date.

NOTES:

The committee amendment would increase the time the landlord had to return the security deposit from 30 to 60 days, but leave the 30 days time to return the deposit in the bad faith provision.

The committee amendment also would delete a provision that would permit the landlord to withhold the security deposit where the tenant did not give advance notice of the intent to vacate if the lease contained such a provision that was printed in a conspicuous manner.

A related bill, HB 2186 by Y. Davis, which would require a commercial lease to contain the method of computing the charge that the landlord wished to assess against the security deposit, is also scheduled to be heard on today's the House General State Calendar.