

1 SB291
2 156352-2
3 By Senator Marsh
4 RFD: Banking and Insurance
5 First Read: 28-JAN-14

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8 SYNOPSIS: This bill would amend the Uniform Landlord
9 and Tenant Act, to further provide for the refund
10 of deposits, the termination of a lease for
11 noncompliance with a rental agreement, abandonment
12 of the property, and procedures for eviction.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to the Uniform Landlord and Tenant Act; to
19 amend Sections 35-9A-201, 35-9A-421, 35-9A-423, and 35-9A-461,
20 Code of Alabama 1975; to further provide for the refund of
21 deposits, the termination of a lease for noncompliance with a
22 rental agreement, abandonment of the property, and procedures
23 for eviction.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 35-9A-201, 35-9A-421, 35-9A-423,
26 and 35-9A-461, Code of Alabama 1975, are amended to read as
27 follows:

1 "§35-9A-201.

2 "(a) A landlord may not demand or receive money as
3 security, in an amount in excess of one month's periodic rent,
4 except for pets, changes to the premises, or increased
5 liability risks to the landlord or premises, for tenant's
6 obligations under a rental agreement.

7 "(b) Upon termination of the tenancy, money held by
8 the landlord as security may be applied to the payment of
9 accrued rent and the amount of damages that the landlord has
10 suffered by reason of the tenant's noncompliance with Section
11 35-9A-301 all as itemized by the landlord in a written notice
12 delivered to the tenant together with the amount due ~~35~~ 60
13 days after termination of the tenancy and delivery of
14 possession.

15 "(c) If the landlord does not refund the entire
16 deposit, the landlord, within the ~~35-day~~ 60-day period, shall
17 provide the tenant an itemized list of amounts withheld.

18 "(d) Upon vacating the premises, the tenant shall
19 provide to the landlord a valid forwarding address, in
20 writing, to which the deposit or itemized accounting, or both,
21 may be mailed. If the tenant fails to provide a valid
22 forwarding address, the landlord shall mail, by first class
23 mail, the deposit or itemized accounting, or both, to the last
24 known address of the tenant or, if none, to the tenant at the
25 address of the property. Any deposit unclaimed by the tenant
26 as well as any check outstanding shall be forfeited by the
27 tenant after a period of ~~180~~ 90 days.

1 "(e) The landlord's mailing by first class mail to
2 the address provided in writing by the tenant, within ~~35~~ 60
3 days of the refund or itemized accounting, or both, is
4 sufficient compliance with this chapter.

5 "(f) If the landlord fails to mail a timely refund
6 or accounting within the ~~35-day~~ 60-day period, the landlord
7 shall pay the tenant double the amount of the tenant's
8 original deposit.

9 "(g) This section does not preclude the landlord or
10 tenant from recovering other damages to which the landlord or
11 tenant may be entitled.

12 "(h) The holder of the landlord's interest in the
13 premises at the time of the termination of the tenancy is
14 bound by this section.

15 "§35-9A-421.

16 "(a) Except as provided in this chapter, if there is
17 a material noncompliance by the tenant with the rental
18 agreement, an intentional misrepresentation of a material fact
19 in a rental agreement or application, or a noncompliance with
20 Section 35-9A-301 materially affecting health and safety, the
21 landlord may deliver a written notice to terminate the lease
22 to the tenant specifying the acts and omissions constituting
23 the breach and that the rental agreement will terminate upon a
24 date not less than ~~14~~ seven days after receipt of the notice.
25 ~~An intentional misrepresentation of a material fact in a~~
26 ~~rental agreement or application may not be remedied or cured.~~
27 ~~If the breach is not remedied within the 14 days after receipt~~

1 of the notice to terminate the lease, the rental agreement
2 shall terminate on the date provided in the notice to
3 terminate the lease unless the tenant adequately remedies the
4 breach before the date specified in the notice, in which case
5 the rental agreement shall not terminate.

6 "(b) If rent is unpaid when due, the landlord may
7 deliver a written notice to terminate the lease to the tenant
8 specifying the amount of rent and any late fees owed to remedy
9 the breach and that the rental agreement will terminate upon a
10 date not less than ~~seven~~ four days after receipt of the
11 notice. ~~If the breach is not remedied within the seven days,~~
12 ~~the rental agreement shall terminate.~~ If a noncompliance of
13 rental agreement occurs under both subsection (a) and this
14 subsection, the ~~seven-day~~ four-day notice period to terminate
15 the lease for nonpayment of rent in this subsection shall
16 govern.

17 "(c) Except as provided in this chapter, a landlord
18 may recover actual damages and reasonable attorney fees and
19 obtain injunctive relief for noncompliance by the tenant with
20 the rental agreement or Section 35-9A-301.

21 "(d) No breach of any of the terms or obligations of
22 the lease may be cured by a tenant except by the express
23 written consent of the landlord. The following acts or
24 omissions by a tenant or occupant shall constitute a
25 noncurable default of the rental agreement, and in such cases
26 the landlord may terminate the rental agreement upon a
27 seven-day notice. The tenant shall have no right to remedy

1 such a default unless the landlord consents. Such acts and
2 omissions include, but are not limited to, the following:

3 "(1) Possession or use of illegal drugs in the
4 dwelling unit or in the common areas.

5 "(2) Discharge of a firearm on the premises of the
6 rental property, except in cases of self-defense, defense of a
7 third party, or as permissible in Section 13A-3-23.

8 "(3) Criminal assault of a tenant or guest on the
9 premises of the rental property, except in cases of
10 self-defense, defense of a third party, or as permissible in
11 Section 13A-3-23.

12 "§35-9A-423.

13 "(a) If a rental agreement requires the tenant to
14 give notice to the landlord of an anticipated extended absence
15 in excess of 14 days pursuant to Section 35-9A-304 and the
16 tenant willfully fails to do so, the landlord may recover
17 actual damages from the tenant.

18 "(b) During any absence of a tenant in excess of 14
19 days, the landlord may enter the dwelling unit at times
20 reasonably necessary.

21 "(c) If a tenant abandons the dwelling unit, the
22 landlord shall make reasonable efforts to rent it at a fair
23 rental. But such duty shall not take priority over the
24 landlord's right to first rent other vacant units. If the
25 landlord rents the dwelling unit for a term beginning before
26 the expiration of the rental agreement, it terminates as of
27 the date of the new tenancy. If the tenancy is from

1 month-to-month or week-to-week, the term of the rental
2 agreement for this purpose is deemed to be a month or a week,
3 as the case may be.

4 "(d) If a tenant leaves property in the unit more
5 than 14 days after termination pursuant to this chapter, the
6 landlord has no duty to store or protect the tenant's property
7 in the unit and may dispose of it without obligation.

8 "(e) In addition to any other means by which a
9 landlord determines that a property has been abandoned by the
10 tenant, a property shall be considered abandoned if the
11 electric service to the property has been terminated.

12 "§35-9A-461.

13 "(a) A landlord's action for eviction, rent,
14 monetary damages, or other relief relating to a tenancy
15 subject to this chapter shall be governed by the Alabama Rules
16 of Civil Procedure and the Alabama Rules of Appellate
17 Procedure except as modified by this chapter.

18 "(b) District courts and circuit courts, according
19 to their respective established jurisdictions, shall have
20 jurisdiction over eviction actions, and venue shall lie in the
21 county in which the leased property is located. Eviction
22 actions shall be entitled to precedence in scheduling over all
23 other civil cases.

24 "(c) Service of process shall be made in accordance
25 with the Alabama Rules of Civil Procedure. However, if a
26 sheriff, constable, or process server is unable to serve the
27 defendant personally, service may be had by delivering the

1 notice to any person who is sui juris residing on the
2 premises, or if after reasonable effort no person is found
3 residing on the premises, by posting a copy of the notice on
4 the door of the premises, ~~and on the same day of posting or by~~
5 ~~the close of the next business day, the sheriff, the~~
6 ~~constable, the person filing the complaint, or anyone on~~
7 ~~behalf of the person, or shall by sending certified mail~~
8 notice of the filing of the unlawful detainer action by
9 enclosing, directing, stamping, and mailing by first class a
10 copy of the notice to the defendant at the mailing address of
11 the premises and if there is no mailing address for the
12 premises to the last known address, if any, of the defendant
13 and making an entry of this action on the return filed in the
14 case. Service of the notice by posting or certified mailing
15 shall be complete as of the date of the posting or the
16 certified mailing of the notice.

17 "(d) The district court shall set eviction actions
18 as soon as practicable after the time provided for the
19 defendant to file an answer.

20 "(d)(e) Notwithstanding subsection (a) of Section
21 12-12-70, any party may appeal from an eviction judgment
22 entered by a district court to the circuit court at any time
23 within seven days after the entry thereof. The filing of a
24 timely post-judgment motion pursuant to the Alabama Rules of
25 Civil Procedure shall suspend the running of the time for
26 filing a notice of appeal. In cases where post-judgment
27 motions are filed, the full time fixed for filing a notice of

1 appeal shall be computed from the date of the entry in the
2 civil docket of an order granting or denying such motion, or
3 the date of the denial of such motion by operation of law
4 pursuant to Rule 59.1 of the Alabama Rules of Civil Procedure.
5 Upon filing of an appeal by either party, the clerk of the
6 court shall schedule the action for trial as a preferred case,
7 and it shall be set for trial within 60 days from the date of
8 the filing of the appeal. In eviction actions, an appeal by a
9 tenant to circuit court or to an appellate court does not
10 prevent the issuance of a writ of restitution or possession
11 unless the tenant pays to the clerk of the circuit court all
12 rents properly payable under the terms of the lease since the
13 date of the filing of the action, and continues to pay all
14 rent that becomes due and properly payable under the terms of
15 the lease as they become due, during the pendency of the
16 appeal. In the event of dispute, the amounts properly payable
17 shall be ascertained by the court.

18 "(1) If the tenant should fail to make any payments
19 determined to be properly payable as they become due under
20 this subsection, upon motion, the court shall issue a writ of
21 restitution or possession and the landlord shall be placed in
22 full possession of the premises.

23 "(2) Upon disposition of the appeal, the court shall
24 direct the clerk as to the disposition of the funds paid to
25 the clerk pursuant to this subsection.

26 "~~(e)~~ (f) If an eviction judgment enters in favor of a
27 landlord, a writ of possession shall issue upon application by

1 the landlord. Notwithstanding Rule 62 of the Alabama Rules of
2 Civil Procedure, the automatic stay on the issuance of the
3 writ of possession or restitution shall be for a period of
4 seven days. If a tenant without just cause re-enters the
5 premises, the tenant can be held in contempt and successive
6 writs may issue as are necessary to effectuate the eviction
7 judgment.

8 "~~(f)~~ (g) In the event that the landlord is placed in
9 possession under a writ of restitution or possession, and on
10 appeal the judgment is reversed and one entered for the tenant
11 or the proceeding on appeal is quashed or dismissed, the
12 circuit court may award a writ of restitution or possession to
13 restore the tenant to possession as against the landlord, but
14 not as against a third party. The issuance of the writ rests
15 in the discretion of the appellate court, and the circuit
16 court, in all cases, may direct writs of restitution or
17 possession to be issued by the trial court when, in the
18 judgment of the circuit court, such writ is proper or
19 necessary."

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.