

1-1 By: Anchia, et al. (Senate Sponsor - Carona) H.B. No. 3101
1-2 (In the Senate - Received from the House May 7, 2007;
1-3 May 8, 2007, read first time and referred to Committee on Business
1-4 and Commerce; May 18, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 18, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3101 By: Janek

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a residential tenant's rights and remedies.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 92.0081, Property Code, is amended by
1-13 amending Subsections (b), (d), and (h) and adding Subsections
1-14 (e-1), (k), and (l) to read as follows:

1-15 (b) A landlord may not intentionally prevent a tenant from
1-16 entering the leased premises except by judicial process unless the
1-17 exclusion results from:

1-18 (1) bona fide repairs, construction, or an emergency;
1-19 (2) removing the contents of premises abandoned by a
1-20 tenant; or

1-21 (3) changing the door locks on the door to the tenant's
1-22 individual unit of a tenant who is delinquent in paying at least
1-23 part of the rent.

1-24 (d) A landlord may not intentionally prevent a tenant from
1-25 entering the leased premises under Subsection (b)(3) unless:

1-26 (1) the landlord's right to change the locks because of
1-27 a tenant's failure to timely pay rent is placed in the lease;

1-28 (2) the tenant is delinquent in paying all or part of
1-29 the rent; and

1-30 (3) ~~(2)~~ the landlord has locally mailed not later
1-31 than the fifth calendar day before the date on which the door locks
1-32 are changed or hand-delivered to the tenant or posted on the inside
1-33 of the main entry door of the tenant's dwelling not later than the
1-34 third calendar day before the date on which the door locks are
1-35 changed a written notice stating:

1-36 (A) the earliest date that the landlord proposes
1-37 to change the door locks;

1-38 (B) the amount of rent the tenant must pay to
1-39 prevent changing of the door locks; ~~and~~

1-40 (C) the name and street address of the individual
1-41 to whom, or the location of the on-site management office at which,
1-42 the delinquent rent may be discussed or paid during the landlord's
1-43 normal business hours; and

1-44 (D) in underlined or bold print, the tenant's
1-45 right to receive a key to the new lock at any hour, regardless of
1-46 whether the tenant pays the delinquent rent.

1-47 (e-1) A landlord who changes the locks or otherwise prevents
1-48 a tenant from entering the tenant's individual rental unit may not
1-49 change the locks or otherwise prevent a tenant from entering a
1-50 common area of residential rental property.

1-51 (h) If a landlord violates this section, the tenant may:

1-52 (1) either recover possession of the premises or
1-53 terminate the lease; and

1-54 (2) recover from the landlord a civil penalty of one
1-55 month's rent plus \$1,000 ~~[\$500]~~, actual damages, court costs, and
1-56 reasonable attorney's fees in an action to recover property
1-57 damages, actual expenses, or civil penalties, less any delinquent
1-58 rent or other sums for which the tenant is liable to the landlord.

1-59 (k) A landlord may not change the locks on the door of a
1-60 tenant's dwelling under Subsection (b)(3):

1-61 (1) when the tenant or any other legal occupant is in
1-62 the dwelling; or

1-63 (2) more than once during a rental payment period.

(1) This section does not affect the ability of a landlord to pursue other available remedies, including the remedies provided by Chapter 24.

SECTION 2. Section 92.0131, Property Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) As a precondition for allowing a tenant to park in a specific parking space or a common parking area that the landlord has made available for tenant use, the landlord may require a tenant to provide only the make, model, color, year, license number, and state of registration of the vehicle to be parked.

SECTION 3. Subchapter A, Chapter 92, Property Code, is amended by adding Section 92.019 to read as follows:

Sec. 92.019. LATE PAYMENT OF RENT; FEES. (a) A landlord may not charge a tenant a late fee for failing to pay rent unless:

(1) notice of the fee is included in a written lease;

(2) the fee is a reasonable estimate of uncertain damages to the landlord that are incapable of precise calculation and result from late payment of rent; and

(3) the rent remains unpaid after the second day after the date the rent was originally due.

(b) A late fee under this section may include an initial fee and a daily fee for each day the rent continues to remain unpaid.

(c) A landlord who violates this section is liable to the tenant for an amount equal to the sum of \$100, three times the amount of the late fee charged in violation of this section, and the tenant's reasonable attorney's fees.

(d) A provision of a lease that purports to waive a right or exempt a party from a liability or duty under this section is void.

(e) This section relates only to a fee, charge, or other sum of money required to be paid under the lease if rent is not paid as provided by Subsection (a)(3), and does not affect the landlord's right to terminate the lease or take other action permitted by the lease or other law. Payment of the fee, charge, or other sum of money by a tenant does not waive the right or remedies provided by this section.

SECTION 4. Subchapter A, Chapter 92, Property Code, is amended by adding Section 92.020 to read as follows:

Sec. 92.020. EMERGENCY PHONE NUMBER. (a) A landlord that has an on-site management or superintendent's office for a residential rental property must provide to a tenant a telephone number that will be answered 24 hours a day for the purpose of reporting emergencies related to a condition of the leased premises that materially affects the physical health or safety of an ordinary tenant.

(b) The landlord must post the phone number required by Subsection (a) prominently outside the management or superintendent's office.

(c) This section does not apply to or affect a local ordinance governing a landlord's obligation to provide a 24-hour emergency contact number to a tenant that is adopted before January 1, 2008, if the ordinance conforms with or is amended to conform with this section.

(d) A landlord to whom Subsection (a) does not apply must provide to a tenant a telephone number for the purpose of reporting emergencies described by that subsection.

SECTION 5. Section 92.056, Property Code, is amended by adding Subsection (g) to read as follows:

(g) A lease must contain language in underlined or bold print that informs the tenant of the remedies available under this section and Section 92.0561.

SECTION 6. The heading to Subchapter I, Chapter 92, Property Code, is amended to read as follows:

SUBCHAPTER I. RENTAL APPLICATION [~~DEPOSITS~~]

SECTION 7. Section 92.351, Property Code, is amended by adding Subdivisions (1-a) and (5-a) to read as follows:

(1-a) "Application fee" means a nonrefundable sum of money that is given to the landlord to offset the costs of screening an applicant for acceptance as a tenant.

(5-a) "Rental application" means a written request

made by an applicant to a landlord to lease premises from the landlord.

SECTION 8. Subchapter I, Chapter 92, Property Code, is amended by adding Section 92.3515 to read as follows:

Sec. 92.3515. NOTICE OF ELIGIBILITY REQUIREMENTS. (a) At the time an applicant is provided with a rental application, the landlord shall make available to the applicant printed notice of the landlord's tenant selection criteria and the grounds for which the rental application may be denied, including the applicant's:

- (1) criminal history;
- (2) previous rental history;
- (3) current income;
- (4) credit history; or
- (5) failure to provide accurate or complete information on the application form.

(b) If the landlord makes the notice available under Subsection (a), the applicant shall sign an acknowledgment indicating the notice was made available. If the acknowledgment is not signed, there is a rebuttable presumption that the notice was not made available to the applicant.

(c) The acknowledgment required by Subsection (b) must include a statement substantively equivalent to the following: "Signing this acknowledgment indicates that you have had the opportunity to review the landlord's tenant selection criteria. The tenant selection criteria may include factors such as criminal history, credit history, current income, and rental history. If you do not meet the selection criteria, or if you provide inaccurate or incomplete information, your application may be rejected and your application fee will not be refunded."

(d) The acknowledgment may be part of the rental application if the notice is underlined or in bold print.

(e) If the landlord rejects an applicant and the landlord has not made the notice required by Subsection (a) available, the landlord shall return the application fee and any application deposit.

(f) If an applicant requests a landlord to mail a refund of the applicant's application fee to the applicant, the landlord shall mail the refund check to the applicant at the address furnished by the applicant.

SECTION 9. Section 92.354, Property Code, is amended to read as follows:

Sec. 92.354. LIABILITY OF LANDLORD. A landlord who in bad faith fails to refund an application fee or deposit in violation of this subchapter is liable for an amount equal to the sum of \$100, three times the amount wrongfully retained ~~[of the application deposit]~~, and the applicant's reasonable attorney's fees ~~[in a suit to recover the deposit]~~.

SECTION 10. Subchapter I, Chapter 92, Property Code, is amended by adding Section 92.355 to read as follows:

Sec. 92.355. WAIVER. A provision of a rental application that purports to waive a right or exempt a party from a liability or duty under this subchapter is void.

SECTION 11. This Act applies only to a lease agreement or a renewal of a lease agreement entered into, or a rental application received by an applicant, on or after the effective date of this Act. A lease agreement or a renewal of a lease agreement entered into, or a rental application received by an applicant, before the effective date of this Act is covered by the law in effect at the time the lease agreement or renewal of the lease agreement was entered into or the rental application was received, and the former law is continued in effect for that purpose.

SECTION 12. This Act takes effect January 1, 2008.

* * * * *