

BILL ANALYSIS

C.S.H.B. 3564
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding a lack of clarity in current law on the rights and responsibilities of tenants and landlords after a casualty loss, such as those caused by natural disasters. It has been noted that, in such circumstances, uncertainty surrounding the status of a lease can compound the hardship of an already highly stressful situation. C.S.H.B. 3564 seeks to address these concerns by providing for certain notice requirements, establishing certain refunds or reductions due to the tenant depending on the extent of damage to the premises, and providing for the termination of a lease by either party.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3564 amends the Property Code to set out the methods of delivery for a written notice to terminate a residential lease given by a landlord or tenant after a casualty loss not caused by certain negligence or fault if the rental premises are as a practical matter totally unusable for residential purposes. The bill establishes that such a termination may not take effect before the seventh day after the delivery date of the notice and provides for the calculation of that period if more than one delivery method is used. The bill prohibits a landlord from charging rent and prohibits rent from accruing after the date the lease is terminated under the bill's provisions and the tenant has vacated the rental premises.

C.S.H.B. 3564 changes a tenant's entitlement to refunds for a lease terminated under the applicable circumstances from a pro rata refund of rent from the date the tenant moves out and a refund of any security deposit otherwise required by law to the following, which the landlord is required to pay not later than the 30th day after the lease termination date: a refund of any prepaid rent and prorated rent and all deposits, less lawful deductions, in which the landlord is prohibited from including any damages incurred due to the casualty loss. The bill tolls the 30-day refund period until the tenant has provided a forwarding address to the landlord if the landlord is unable to send a refund to the tenant because the tenant has not done so.

C.S.H.B. 3564 specifies that the proportionate reduction in rent to which a tenant is entitled with regard to rental premises that, after a casualty loss that is not caused by certain negligence or fault, are partially unusable for residential purposes is a reduction in rent for the month in which the casualty loss occurs and any subsequent months in the lease term in which the rental

premises are partially unusable for those purposes. The bill removes a provision authorizing a landlord and tenant to agree otherwise regarding such a reduction in a written lease. The bill requires a tenant entitled to such a reduction to give written notice to the individual to whom or the entity to which the tenant normally pays rent as follows:

- identifying the portion of the rental premises that is partially unusable for residential purposes;
- stating the proposed amount of reduction in rent that the tenant believes is appropriate; and
- stating that the tenant intends to file suit against the landlord if the landlord does not agree to the proposed reduction in rent within the 10-day period prescribed by the bill.

The bill requires the landlord, not later than the 10th day after the date of receipt of the notice, to provide a written response to the tenant agreeing or objecting to the tenant's right to the reduction and the proposed amount. The bill establishes that a landlord's failure to timely provide a written response is considered an agreement by the landlord to the tenant's right to the reduction and the proposed amount of the reduction and authorizes the tenant to withhold the proposed amount from a rent payment.

C.S.H.B. 3564 authorizes either party to file suit in justice, county, or district court if the landlord and tenant are unable to agree on whether the tenant is entitled to a rent reduction or on the amount of the proposed reduction. The bill requires the court to determine whether the tenant is entitled to a reduction and, if so, the amount of the reduction that is proportionate to the extent the premises are unusable due to the casualty loss. The bill makes the tenant liable for rent due under the lease until the date the court enters a final judgment in the action or the parties reach an agreement to settle the dispute. The bill requires a justice court in which the suit is filed, if applicable, to conduct a hearing on the matter not earlier than the sixth day after the date of citation service and not later than the 10th day after that date. The bill establishes as a defense in a proceeding to recover possession of a rental premises after the landlord terminates a lease under the applicable casualty loss circumstances that the premises are usable for residential purposes.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3564 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute makes the following changes regarding the termination of a residential lease because the rental premises are totally unusable for residential purposes after an applicable casualty loss:

- makes certain revisions to the methods of delivery for a notice given by a landlord or tenant to terminate the lease;
- changes the date such a termination may take effect from the 15th day after the date the notice of termination is delivered to the seventh day after that date;
- changes the date after which a landlord may not charge rent and rent may not accrue for the rental premises from the date the premises became as a practical matter totally unusable for residential purposes as the result of a casualty loss to the date the lease is terminated and the tenant has vacated the premises;
- changes the date a landlord is required to refund to the tenant prepaid and prorated rent and certain deposits from not later than the fifth day after the date the notice to terminate

the lease is provided to not later than the 30th day after the date the lease is terminated and the tenant has vacated the premises, changes the specification of refundable deposits from a full refund of any security deposits to a refund of all deposits less lawful deductions, and prohibits a landlord from including in those lawful deductions any damages incurred due to the casualty loss; and

- with regard to tolling the refund period due to the tenant's failure to provide a forwarding address, removes certain specifications relating to the manner in which the tenant provides such an address and relating to a requirement for the landlord to inform the tenant of the requirement to provide such an address as part of the termination notice if the landlord is the party that terminates the lease.

The substitute makes the following changes regarding a reduction in rent because the rental premises are partially unusable for residential purposes after an applicable casualty loss:

- does not include provisions entitling the tenant, without a prior notice requirement, to determine the amount of the reduction and to deduct and withhold that amount from a rent payment;
- includes requirements for a tenant entitled to such a reduction instead to give a certain written notice of a proposed rent reduction amount and other specified information to the individual or entity to whom the tenant normally pays rent and for a landlord to provide a written response agreeing or objecting to the proposed reduction within a 10-day notice period;
- includes an authorization for the tenant to withhold the proposed amount if the landlord fails to timely provide a response;
- includes provisions relating to a suit by either party in justice, county, or district court if the landlord and tenant are unable to agree on the tenant's entitlement to a reduction or to the amount of the reduction;
- does not include provisions establishing a defense in a proceeding to recover unpaid rent that a rent payment was reduced, deducted, and withheld in accordance with the bill's provisions and relating to the court's actions in a proceeding in which a tenant asserts such a defense; and
- does not include a specification regarding the degree to which the rental premises are usable in relation to a defense established in a proceeding to recover possession of a rental premises after the landlord terminates a lease as provided by the bill that the premises are usable for residential purposes.

The substitute does not include a provision voiding a lease provision that purports to waive a right or exempt a party from a liability or duty under the bill's provisions or purports to expand a party's right to unilaterally terminate a lease.