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By:  Zaffirini S.B. No. 518

A BILL TO BE ENTITLED

AN ACT

relating to remedies after certain casualty losses to residential rental premises.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 92.054, Property Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1), (b-2), (b-3), (b-4), (b-5), (d), (e), (f), and (g) to read as follows:

(b)  If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed.

(b-1)  A notice described by Subsection (b) must be provided:

(1)  to a landlord:

(A)  by hand delivery or mail to a forwarding address that the landlord provides to the tenant by e-mail or otherwise; or

(B)  if a forwarding address has not been provided as described by Paragraph (A):

(i)  by hand delivery to the landlord or the landlord's representative at another location; or

(ii)  by mail to the place where the tenant's rent is normally paid; or

(2)  to a tenant:

(A)  by hand delivery or mail to a forwarding address that the tenant provides to the landlord by e-mail or otherwise; or

(B)  if a forwarding address has not been provided as described by Paragraph (A):

(i)  by hand delivery to the tenant at another location; or

(ii)  by mail to the tenant's rental premises.

(b-2)  A termination of a lease as authorized by Subsection (b) may not take effect before the 15th day after the date the notice is delivered. If more than one method under Subsection (b-1) is used to provide notice, the method under which the notice was delivered on the earliest date applies for purposes of this subsection.

(b-3)  A landlord may not charge rent for the rental premises and rent for the rental premises may not accrue after the date the premises became as a practical matter totally unusable for residential purposes as a result of a casualty loss.

(b-4)  Subject to Subsection (b-5) and notwithstanding that the termination of the lease has not taken effect under Subsection (b-2), if a notice to terminate [~~If~~] the lease is provided under this section [~~terminated~~], the landlord shall pay to the tenant not later than the fifth day after the date the notice is delivered:

(1)  a refund of any prepaid rent;

(2)  [~~is entitled only to~~] a pro rata refund of rent from the date the rental premises became as a practical matter totally unusable for residential purposes as a result of a casualty loss; [~~tenant moves out~~] and

(3)  [~~to~~] a full refund of any security deposit [~~otherwise required by law~~].

(b-5)  If a tenant has not provided the landlord a forwarding address as described by Subsection (b-1)(2)(A), the period for providing the refund amounts specified by Subsection (b-4) is tolled until the tenant provides the landlord a written statement by e-mail or otherwise of the tenant's forwarding address for the purpose of refunding those amounts. A tenant that provides notice under Subsection (b) may provide the written statement of the tenant's forwarding address in that notice. A landlord that provides notice under Subsection (b) must include a statement informing the tenant of the requirement of this subsection.

(c)  If after a casualty loss the rental premises are partially unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, the tenant is entitled to reduction in the 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 residential purposes. The tenant is entitled to determine the amount of the reduction in the rent, provided that the tenant must determine [~~in~~] an amount that is proportionate to the extent the premises are unusable because of the casualty loss [~~, but only on judgment of a county or district court~~]. A tenant entitled to a reduction in rent may deduct and withhold from a rent payment the amount determined by the tenant [~~A landlord and tenant may agree otherwise in a written lease~~].

(d)  It is a defense in a proceeding to recover unpaid rent for a rental premises, including a proceeding to recover possession of a rental premises for nonpayment of rent, that a rent payment was reduced, deducted, and withheld in accordance with Subsection (c).

(e)  If a tenant asserts a defense under Subsection (d), the court shall determine the amount of the reduction in the rent that is proportionate to the extent the premises are unusable because of the casualty. If the tenant withheld an amount less than the amount determined by the court, the court shall enter a judgment for the tenant in an amount equal to the amount the tenant overpaid. If the tenant withheld an amount greater than the amount determined by the court, the court:

(1)  may assess late fees in accordance with the lease if the court finds that the tenant acted in bad faith in reducing or withholding the rent payment;

(2)  shall order the tenant to pay into the registry of the court or, if the landlord consents in writing, directly to the landlord:

(A)  an amount equal to the amount the tenant underpaid; and

(B)  any late fees assessed under Subdivision (1);

(3)  may not enter a final judgment in the proceeding before the 10th business day after the date the court issued the order of payment under Subdivision (2); and

(4)  shall dismiss the proceeding against the tenant if the tenant complies with the order of payment under Subdivision (2) before the 10th business day after the date the court issued the order of payment under Subdivision (2).

(f)  It is a defense in a proceeding to recover possession of a rental premises after the landlord terminates a lease under this section that the premises are totally or partially usable for residential purposes.

(g)  A provision of a lease is void if the provision purports to:

(1)  waive a right or exempt a party from a liability or duty under this section; or

(2)  expand a party's right to unilaterally terminate a lease under this section.

SECTION 2.  The changes to law made by this Act apply only to a lease entered into or renewed on or after the effective date of this Act. A lease entered into or renewed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3.  This Act takes effect September 1, 2019.