

By: Farrar

H.B. No. 3564

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

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

17 (1) to a landlord:

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

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

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

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

3 (2) to a tenant:

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

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

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

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

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

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

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

1 (1) a refund of any prepaid rent;

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

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

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

18 (c) If after a casualty loss the rental premises are
19 partially unusable for residential purposes and if the casualty
20 loss is not caused by the negligence or fault of the tenant, a
21 member of the tenant's family, or a guest or invitee of the tenant,
22 the tenant is entitled to reduction in the rent for the month in
23 which the casualty loss occurs and any subsequent months in the
24 lease term in which the rental premises are partially unusable for
25 residential purposes. The tenant is entitled to determine the
26 amount of the reduction in the rent, provided that the tenant must
27 determine [~~in~~] an amount that is proportionate to the extent the

1 premises are unusable because of the casualty loss [~~, but only on~~
2 ~~judgment of a county or district court~~]. A tenant entitled to a
3 reduction in rent may deduct and withhold from a rent payment the
4 amount determined by the tenant [~~A landlord and tenant may agree~~
5 ~~otherwise in a written lease~~].

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

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

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

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

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

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

27 (3) may not enter a final judgment in the proceeding

1 before the 10th business day after the date the court issued the
2 order of payment under Subdivision (2); and

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

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

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

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

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

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

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