



SERVICEMEMBER'S CIVIL RELIEF ACT

LANDLORD-TENANT, RESIDENTIAL, ETC.



LANDLORD/TENANT

When a person rents a residence as a tenant, he/she obtains an interest in the rented property concurrently with that of the landlord. The landlord typically designs the lease agreement, however, the lease will likely tend to favor the landlord and not necessarily protect the tenant. In South Carolina, the law regulating landlord-tenant conduct is known as the Residential Landlord and Tenant Act of 1986. Its general contents are as follows:

LENGTH OF A LEASE

Most leases extend over a period of a year or less. A written lease in such situations is thus not necessary. Without a written lease, the rental term is considered to be month to month, with the rent payable in monthly installments at the beginning of the month or term. Other terms may be established by written agreement, including the length of time that the tenant will occupy the property.

MILITARY CLAUSES

While many leases contain a "military clause," such clauses vary in the protection they afford. A better clause allows the tenant to terminate early upon a showing of: 1) PCS out of the area; 2) release from active duty; or 3) assignment to government quarters. In most cases, an adequate military clause is an essential term, so you should not sign without one. A minimum of thirty **(30) days notice** is usual for any termination. Provisions can also be made for military landlords. Note that if you receive orders for more than 90 days you can end a lease without penalty under the Servicemembers Civil Relief Act (SCRA). For additional information regarding SCRA protections please refer to the SCRA handout and/or you may speak with an attorney at 20FW Legal Office.

SECURITY DEPOSITS

Most landlords require a security deposit of one month's rent. The landlord is then authorized to hold the security deposit until termination of the lease, at which time he must return it to the tenant within thirty (30) days of termination. The tenant is likewise required to provide a forwarding address.

In the event the tenant leaves with rent outstanding, the landlord can apply payment to the delinquent rent. If the tenant made damages to the rental property, the landlord may deduct the amount of damages after providing an itemized list. Should he wrongfully withhold the deposit, however, he is liable for an amount equal to three times (3x) the amount wrongfully withheld, as well as attorney fees.

LANDLORD RESPONSIBILITIES

The landlord is required to comply with applicable building and housing codes concerning health and safety. He must keep the premises fit, habitable, and safe. He must make running hot and cold water available, along with operable heating. He must maintain all facilities and appliances in reasonably good, safe working order.

TENANT RESPONSIBILITIES

The tenant must comply with any obligations imposed upon tenants by building and housing codes. He must also keep the dwelling reasonably safe and clean, use the facilities and appliances in a reasonable manner, and refrain from deliberately or negligently damaging the premises. Otherwise, the tenant is liable for repairs of damage to the property. The landlord and tenant may agree that the tenant is responsible for repairs if the agreement is made in good faith. The landlord however, must not enter the agreement in order to evade his legal obligations.

TENANT RECOURSE

If the landlord is guilty of substantial noncompliance with building and safety codes affecting the tenant's health or safety, the tenant can give written notice of termination if the premises are not repaired within fourteen (14) days. The tenant may also obtain court-ordered relief for noncompliance. If the noncompliance is willful, the tenant may recover a reasonable attorney's fee.

In the case of essential services, the tenant may, upon written notice, procure reasonable services to repair and deduct those costs from the rent. He may additionally recover damages and a reasonable attorney's fee. A tenant may not make repairs himself and deduct that cost from the rent. Should a tenant seek one of these remedies, or merely report the landlord to a government agency, the landlord may not retaliate with increased rent that exceeds fair rental value. He may neither withhold essential services nor maintain an action for possession. If, after providing notice to the landlord that the landlord is in breach of the lease for failure to meet his obligations to the tenant, the tenant may leave the rental unit (terminate the lease) without penalty. Note, however, that the landlord always has time to cure any defects in his obligations after the tenant has provided notice

LANDLORD ENTRY

Typically, the landlord may only enter the leased premises between 9 AM and 6 PM to furnish regularly scheduled services or those requested by the tenant. He must first notify the tenant of such expected entry. The landlord may, however, enter the premises at any time for an emergency.

Unexpected Occurrences

A tenant may terminate the lease if the premises becomes uninhabitable due to condemnation, fire, or other casualty. In the event of the tenant's death, the lease is usually binding upon his or her heirs. You should therefore seek a clause permitting the surviving spouse or executor to terminate should death occur.

Should a third person incur injury on the premises due to negligent construction, the landlord is liable for his or her injuries. The tenant on the other hand, is liable for injury caused by negligent use of the premises.

SIGNING THE LEASE

Generally, a lease must be signed by both parties in order to take effect. Nonetheless, the Landlord and Tenant Act contains an exception for situations in which the tenant does not sign the lease, but moves in and pays rent which the landlord in turn accepts.

SPECIFIC PROVISIONS

The following may be of interest:

- (1) Any oral agreement for the use of an apartment or house for more than one year is not enforceable.
- (2) Subleases entered without the written consent of the landlord are void as applied to the landlord.
- (3) Failure to pay rent terminates a tenancy, and the tenant must thereafter vacate without the standard thirty (30) days' notice.
- (4) A landlord may evict a tenant when the tenant has failed to pay the rent on time, when the term of the lease has ended, or when the conditions of the lease have been violated. In such cases, the landlord must serve notice upon the tenant to appear in Magistrate's Court within ten (10) days in order to show why he should not be ejected from the property.
- (5) Failure to vacate the premises after proper written notification by the landlord may subject the tenant to a separate claim for damages and attorney's fees.

PREMATURE TERMINATION OF LEASES

When a person enters into a lease, they are obligated to honor the terms of that lease, the same is true for military members. However, SCRA gives protection to members who enter active duty service after executing a lease. To be eligible for the protections of this provision, the following must be demonstrated:

- (1) The lease was executed prior to entering active duty service or the member received military orders for a period of not less than 90 days;
- (2) The lease was executed by the military member, or on the behalf of the military member;
- (3) The property was used for dwelling, professional, agricultural, business, or other similar purposes; and,
- (4) The property was used or occupied by the service member or dependents for the purpose stated in the lease.

Many states also have "military lease" provisions which permit the termination of leases when a military member receives PSC orders. For month-to-month rentals, the effective date of termination under this is 30 days after the next

rental payment is due after the termination notice is given to the lessor. For all other leases, the termination date is the last day of the month following the month notice of termination is served.

EVICTION PROCEEDINGS

The court can order a stay of eviction for not more than three months, and any "such other relief as may be just." This second remedy grants the courts liberal authority to grant a stay of eviction proceedings for a period of longer than three months. However, it would not be wise to assume that state courts would be willing to expand the protections of the SCRA. This section of the Act only prevents a protected person from being evicted. It does not relieve a military member of the obligation to pay rent for the time which gave rise to the eviction action, or for the time the stay is in place.

SCRA prevents both active duty service members and their dependents from eviction for nonpayment of rent under limited circumstances. To be eligible for this protection, a party must demonstrate:

- (1) The eviction action arose while the sponsor or member was on active duty military service;
- (2) The place from where the person is being evicted is a dwelling;
- (3) Rent does not exceed \$2,615.16 per month (adjusted each year for inflation); and,
- (4) The ability to pay is materially affected by military service.

MORTGAGE FORECLOSURE

Under certain circumstances, a military member may be able to prevent mortgage foreclosures. To be eligible for this protection, the following must be established:

- (1) The obligation on real or personal property arose prior to the term of active duty military service;
- (2) The member had ownership of the property prior to entering into active duty military service;
- (3) The military member owned the property at the time the SCRA protection is sought; and,
- (4) The ability to pay is materially affected by military service.

Additionally, a court may order a stay of proceedings, or any other equitable relief.

INTEREST CAPS

SCRA currently limits interest on civil obligations to a maximum of 6% for the entire duration of a member's military service. Three requirements must be met before this provision applies:

- (1) The obligation in question must have been incurred before the member entered into active duty service;
- (2) The military member must be on active duty service at the time this limitation is sought; and,
- (3) The military member's active duty service has materially affected the ability to pay the original terms of the debt.

To receive the protections of this provision of the SCRA, a service member need only send the creditor a letter requesting a 6% interest cap accompanied by a copy of orders. It is the obligation of the military member requesting the cap to notify the creditor when the member is released from active duty service. However, this cap does not apply to federally guaranteed student loans.

DO NOT RELY EXCLUSIVELY ON THIS PAMPHLET. THIS HANDOUT PROVIDES ONLY A GENERAL EXPLANATION OF SERVICEMEMBERS CIVIL RELIEF ACT REGARDING LANDLORD/TENANT, RESIDENTIAL, AND ETC. GUIDELINES. ADDITIONAL LEGAL ADVICE IS AVAILABLE TO MILITARY MEMBERS, DEPENDENTS AND RETIREES AT THE BASE LEGAL OFFICE BY CALLING 895-1560.