

1 HB423
2 127165-1
3 By Representatives Jones and Beckman
4 RFD: Judiciary
5 First Read: 31-MAR-11

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8 SYNOPSIS: Existing law provides for the Uniform
9 Residential Landlord and Tenant Act.

10 This bill would amend the act to further
11 define the term "day," would further provide for
12 the tenant to recover reasonable attorney fees
13 under certain conditions, would further provide for
14 unenforceable rental agreements, would provide for
15 access to a landlord's property, would provide that
16 a material misrepresentation by the tenant would be
17 a material noncompliance with the rental agreement,
18 would further provide for noncurable default of the
19 rental agreement, would further provide for the
20 landlord's remedy for a tenant's abandonment of
21 rental property, and would clarify that the
22 landlord may recover reasonable attorney fees as a
23 part of the landlord's remedy after termination of
24 a rental agreement.

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26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 Relating to landlord and tenant agreements pursuant
4 to the Uniform Residential Landlord and Tenant Act; to amend
5 Sections 35-9A-141, 35-9A-163, 35-9A-303, 35-9A-401,
6 35-9A-421, 35-9A-423, and 35-9A-426, Code of Alabama 1975; to
7 provide further for a defined term; to provide further for
8 unenforceable rental agreements; to provide access to a
9 landlord's property; to further provide for the tenant to
10 recover reasonable attorney fees under certain conditions in
11 the event of noncompliance by the landlord; to further provide
12 for material noncompliance with the rental agreement by the
13 tenant; to further provide for certain noncurable acts or
14 omissions by a tenant or occupant; to further provide for the
15 landlord's remedy for a tenant's abandonment of rental
16 property; and to clarify the landlord's damages after
17 termination of a rental agreement.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 35-9A-141, 35-9A-163, 35-9A-303,
20 35-9A-401, 35-9A-421, 35-9A-423, and 35-9A-426 of the Code of
21 Alabama 1975, are amended to read as follows:

22 "§35-9A-141.

23 "Subject to additional definitions contained in
24 subsequent articles of this chapter which apply to specific
25 articles or divisions thereof, and unless the context
26 otherwise requires, in this chapter:

1 "(1) "action" includes recoupment, counterclaim,
2 set-off, suit in equity, and any other proceeding in which
3 rights are determined, including an action for possession;

4 "(2) "building and housing codes" include any law,
5 ordinance, or governmental regulation concerning fitness for
6 habitation, or the construction, maintenance, operation,
7 occupancy, use, or appearance of any premises or dwelling
8 unit;

9 "(3) "day" means calendar day ~~unless otherwise~~
10 specified, notwithstanding Rule 6 of the Alabama Rules of
11 Civil Procedure; however, in any case where the application of
12 a time period in this chapter consisting of a specific number
13 of days results in the last day of that time period falling on
14 a weekend or an official holiday, then the last day of that
15 time period shall be considered the next official business day
16 when the court is open;

17 "(4) "dwelling unit" means a structure or the part
18 of a structure, including a manufactured home, that is rented
19 as a home, residence, or sleeping place by one or more
20 persons;

21 "(5) "eviction" means a civil action filed as a
22 remedy, where a tenant has lawfully taken possession of a
23 premises and fails or refuses, after the termination of the
24 possessory interest of the tenant, to deliver possession of
25 the premises to anyone lawfully entitled or to his or her
26 agent or attorney;

1 "(6) "good faith" means honesty in fact in the
2 conduct of the transaction concerned;

3 "(7) "landlord" means the owner, lessor, or
4 sublessor of the dwelling unit or the building of which it is
5 a part, and it also means a manager of the premises;

6 "(8) "organization" includes a corporation,
7 government, governmental subdivision or agency, business
8 trust, estate, trust, partnership or association, two or more
9 persons having a joint or common interest, and any business
10 entity;

11 "(9) "owner" means one or more persons, jointly or
12 severally, in whom is vested (i) all or part of the legal
13 title to property or (ii) all or part of the beneficial
14 ownership and a right to present use and enjoyment of the
15 premises. The term includes a mortgagee only when in
16 possession;

17 "(10) "person" includes an individual, individuals,
18 or organization;

19 "(11) "premises" means a dwelling unit and the
20 structure of which it is a part and facilities and
21 appurtenances therein and grounds, areas, and facilities held
22 out for the use of tenants generally or whose use is promised
23 by the rental agreement to the tenant;

24 "(12) "rent" means all payments to be made to or for
25 the benefit of the landlord under the rental agreement;

26 "(13) "rental agreement" means all agreements,
27 written or oral, and valid rules and regulations adopted under

1 Section 35-9A-302 embodying the terms and conditions
2 concerning the use and occupancy of a dwelling unit and
3 premises;

4 "(14) "roomer" means a person occupying a dwelling
5 unit that does not include a toilet, a refrigerator, stove,
6 kitchen sink, and either a bath tub or a shower, all provided
7 by the landlord, and where one or more of these facilities are
8 used in common by occupants in the structure;

9 "(15) "single family residence" means a structure
10 maintained and used as a single dwelling unit. Notwithstanding
11 that a dwelling unit shares one or more walls with another
12 dwelling unit, it is a single family residence if it has
13 direct access to a street or thoroughfare and shares neither
14 heating facilities, hot water equipment, nor any other
15 essential facility or service with any other dwelling unit;
16 and

17 "(16) "tenant" means a person entitled under a
18 rental agreement to occupy a dwelling unit to the exclusion of
19 others.

20 "§35-9A-163.

21 "(a) A rental agreement may not provide that the
22 tenant:

23 (1) agrees to waive or forego rights or remedies
24 established under Section 35-9A-204, 35-9A-401, or 35-9A-404,
25 or requirements of security deposits established by this
26 chapter or under the law of unlawful detainer;

1 "(2) authorizes any person to confess judgment on a
2 claim arising out of the rental agreement;

3 "(3) agrees to pay the landlord's attorney's fees or
4 cost of collection; or

5 "(4) agrees to the exculpation or limitation of any
6 liability of the landlord arising under law or to indemnify
7 the landlord for that liability or the costs connected
8 therewith.

9 "(b) A provision prohibited by subsection (a)
10 included in a rental agreement is unenforceable. If a landlord
11 ~~deliberately uses~~ seeks to enforce a provision in a rental
12 agreement containing provisions known by the landlord to be
13 prohibited, the tenant may recover in addition to actual
14 damages an amount up to one months' periodic rent and
15 reasonable attorney's fees.

16 "§35-9A-303.

17 "(a) A tenant shall not unreasonably withhold
18 consent to the landlord to enter into the dwelling unit in
19 order to inspect the premises, make necessary or agreed
20 repairs, decorations, alterations, or improvements, supply
21 necessary or agreed services, or exhibit the dwelling unit to
22 prospective or actual purchasers, mortgagees, tenants,
23 workmen, or contractors.

24 "(b) A landlord may enter the dwelling unit without
25 consent of the tenant only in the following circumstances:

26 "(1) In case of emergency.

27 "(2) Pursuant to court order.

1 "(3) As permitted by Sections 35-9A-422 and
2 35-9A-423(b).

3 "(4) At reasonable times and with prior notice as
4 provided in subsection (c), to show the premises to a
5 prospective tenant or purchaser, if a landlord provides the
6 tenant separate from the rental agreement a general notice
7 signed by the tenant for the right to access for such a
8 purpose within four months of the expiration of the rental
9 agreement, and only in the company of a prospective tenant or
10 purchaser.

11 "(5) When the landlord has reasonable cause to
12 believe the tenant has abandoned or surrendered the premises.

13 "(c) A landlord shall not abuse the right of access
14 or use it to harass the tenant. Except as provided in this
15 section or unless it is impracticable to do so, the landlord
16 may show the premises at any reasonable time by giving the
17 tenant at least two days' notice of the landlord's intent to
18 enter and may enter only at reasonable times. Posting of a
19 note on the primary door of entry to the residence of the
20 tenant stating the intended time and purpose of the entry
21 shall be a permitted method of notice for the purpose of the
22 landlord's right of access to the premises.

23 "(d) If a landlord provides separate from the lease
24 in a general notice or an advance schedule in excess of two
25 days for repairs, maintenance, pest control, or for service
26 relating to health or safety, whether such notice is for a
27 specific time or within a designated time period, then no

1 additional day's notice is required to access the premises. A
2 tenant may consent to provide a landlord with access to the
3 premises with less than two days' notice.

4 "(e) If a tenant requests repairs or maintenance or
5 improvements to a dwelling unit, the tenant shall be deemed to
6 have granted consent to the landlord to enter into the
7 dwelling unit and make the repairs, maintenance, or
8 improvements as requested by the tenant.

9 "§35-9A-401.

10 "(a) Except as provided in this chapter, if there is
11 a material noncompliance by the landlord with the rental
12 agreement or a noncompliance with Section 35-9A-204 materially
13 affecting health and safety, the tenant may deliver a written
14 notice to the landlord specifying the acts and omissions
15 constituting the breach and that the rental agreement will
16 terminate upon a date not less than 14 days after receipt of
17 the notice if the breach is not remedied within that period,
18 and the rental agreement shall terminate as provided in the
19 notice subject to the following:

20 "(1) if the breach is remediable by repairs or the
21 payment of damages or otherwise and the landlord adequately
22 remedies the breach before the date specified in the notice,
23 the rental agreement shall not terminate by reason of the
24 breach.

25 "(2) the tenant may not terminate for a condition
26 caused by the deliberate or negligent act or omission of the

1 tenant, a member of the tenant's family, a licensee, or other
2 person on the premises with the tenant's consent.

3 "(b) Except as provided in this chapter, the tenant
4 may recover actual damages and reasonable attorney fees and
5 obtain injunctive relief for noncompliance by the landlord
6 with the rental agreement or Section 35-9A-204. ~~If the~~
7 ~~landlord's noncompliance is in bad faith, the tenant may~~
8 ~~recover reasonable attorney's fees.~~

9 "(c) The remedy provided in subsection (b) is in
10 addition to any right of the tenant arising under subsection
11 (a).

12 "(d) If the rental agreement is terminated pursuant
13 to this section, the landlord shall return all security
14 recoverable by the tenant under Section 35-9A-201 and all
15 unearned prepaid rent.

16 "§35-9A-421.

17 "(a) Except as provided in this chapter, if there is
18 a material noncompliance by the tenant with the rental
19 agreement, an intentional misrepresentation of a material fact
20 in a rental agreement or application, or a noncompliance with
21 Section 35-9A-301 materially affecting health and safety, the
22 landlord may deliver a written notice to terminate the lease
23 to the tenant specifying the acts and omissions constituting
24 the breach and that the rental agreement will terminate upon a
25 date not less than 14 days after receipt of the notice. An
26 intentional misrepresentation of a material fact in a rental
27 agreement or application may not be remedied or cured. If the

1 breach is not remedied within the 14 days after receipt of the
2 notice to terminate the lease, the rental agreement shall
3 terminate on the date provided in the notice to terminate the
4 lease unless the tenant adequately remedies the breach before
5 the date specified in the notice, in which case the rental
6 agreement shall not terminate.

7 "(b) If rent is unpaid when due, the landlord may
8 deliver a written notice to terminate the lease to the tenant
9 specifying the amount of rent and any late fees owed to remedy
10 the breach and that the rental agreement will terminate upon a
11 date not less than seven days after receipt of the notice. If
12 the breach is not remedied within the seven days, the rental
13 agreement shall terminate. If a noncompliance of rental
14 agreement occurs under both subsection (a) and this
15 subsection, the seven-day notice period to terminate the lease
16 for nonpayment of rent in this subsection shall govern.

17 "(c) Except as provided in this chapter, a landlord
18 may recover actual damages and reasonable attorney fees and
19 obtain injunctive relief for noncompliance by the tenant with
20 the rental agreement or Section 35-9A-301. ~~If the tenant's~~
21 ~~noncompliance is willful, the landlord may recover reasonable~~
22 ~~attorney's fees.~~

23 "(d) The following acts or omissions by a tenant or
24 occupant shall constitute a noncurable default of the rental
25 agreement, and in such cases the landlord may terminate the
26 rental agreement upon a seven-day notice. The tenant shall
27 have no right to remedy such a default unless the landlord

1 consents. Such acts and omissions include, but are not limited
2 to, the following:

3 "(1) Possession or use of illegal drugs in the
4 dwelling unit or in the common areas.

5 "(2) Discharge of a firearm on the premises of the
6 rental property, except in cases of self-defense, defense of a
7 third party, or as permissible in Section 13A-3-23.

8 "(3) Criminal assault of a tenant or guest on the
9 premises of the rental property, except in cases of
10 self-defense, defense of a third party, or as permissible in
11 Section 13A-3-23.

12 "§35-9A-423.

13 "(a) If a rental agreement requires the tenant to
14 give notice to the landlord of an anticipated extended absence
15 in excess of 14 days pursuant to Section 35-9A-304 and the
16 tenant willfully fails to do so, the landlord may recover
17 actual damages from the tenant.

18 "(b) During any absence of a tenant in excess of 14
19 days, the landlord may enter the dwelling unit at times
20 reasonably necessary.

21 "(c) If a tenant abandons the dwelling unit, the
22 landlord shall make reasonable efforts to rent it at a fair
23 rental. But such duty shall not take priority over the
24 landlord's right to first rent other vacant units. If the
25 landlord rents the dwelling unit for a term beginning before
26 the expiration of the rental agreement, it terminates as of
27 the date of the new tenancy. ~~If the landlord fails to use~~

1 ~~reasonable efforts to rent the dwelling unit at a fair rental~~
2 ~~or if the landlord accepts the abandonment as a surrender, the~~
3 ~~rental agreement is deemed to be terminated by the landlord as~~
4 ~~of the date the landlord has notice of the abandonment.~~ If the
5 tenancy is from month-to-month or week-to-week, the term of
6 the rental agreement for this purpose is deemed to be a month
7 or a week, as the case may be.

8 "(d) If a tenant leaves property in the unit more
9 than 14 days after termination pursuant to this chapter, the
10 landlord has no duty to store or protect the tenant's property
11 in the unit and may dispose of it without obligation.

12 "§35-9A-426.

13 "If a rental agreement is terminated, the landlord
14 has a claim for possession and for rent and a separate claim
15 for actual damages for breach of the rental agreement and
16 reasonable attorney's fees ~~as provided in subsection (c) of~~
17 ~~Section 35-9A-421."~~

18 Section 2. This act shall become effective August 1,
19 2011, following its passage and approval by the Governor, or
20 its otherwise becoming law.