INDUSTRY GUIDANCE

June 2019

Georgia Retaliatory Eviction Law to Take Effect July 1, 2019

On May 8, 2019, House Bill 346 (HB 346) establishing Retaliatory Eviction protections was signed into law by Governor Brian Kemp. ***The statute which is codified as O.C.G.A 44-7-24 will apply to all new residential leases entered into and after July 1, 2019, including renewal modifications and extensions of any kind.***

Retaliatory eviction laws, adopted by more than 40 states, are designed to protect a resident from a landlord who may seek to evict a resident for exercising certain legal rights related to his or her lease. Proponents of HB 346 argued that tenants are unlikely to report legitimate violations of housing and health codes or request necessary repairs from their landlords for fear that their landlord may retaliate against them by forcing them to move out of their rental home.

The Georgia statute applies only to residential leases and prohibits residential landlords from taking certain actions within 3 months of the date the tenant exercised its rights under the law. Generally, the landlord may not file an eviction, interfere with the tenant's right to use the rental home, decrease services, increase the rent, or terminate the lease other than serious misconduct or criminal acts within 3 months following a tenant complaint to the landlord or a local code enforcement authority about code violations involving a life, health, safety, or habitability concern.

The new law allows a resident to assert a *defense* to stop an eviction case (presumably by denial of a writ of possession or dismissal of the dispossessory proceeding) *and* to assert a *counterclaim* to recover damages against the landlord[1].

Which of the Tenant's Actions Are Protected?

The new law defines what a tenant must demonstrate to proceed with an action or defense of retaliatory eviction. The retaliation must be related to one of four protected activities listed below involving a residential life, health, safety, or habitability concern.

[1] The law did not clarify whether a tenant can file an entirely separate civil lawsuit for damages that is apart from or outside of an eviction proceeding.

Protected Tenant Actions. The statute [OCGA 44-7-24(a) and (b)] provides tenants with protection when taking a variety of actions and prohibits landlords from taking certain actions against tenants for engaging in these protected actions. Tenants are primarily protected from retaliation for the following "protected acts":

- A good faith exercise of the tenant's rights granted in a lease, ordinance, or statute;
- Requesting or giving notice to the landlord of the need for a repair that the landlord is required to repair;
- Complaining to a governmental entity responsible for enforcing building or housing codes or a public utility, and the tenant:
  (A) Claims a building or housing code violation or utility problem that is the duty of the landlord to repair; and
  (B) Acts in good faith in that a reasonable person would believe that the complaint is valid, and that the violation or problem occurred; and
- Establishing or participating in a tenant organization to address problems related to the habitability of the property, such as life, health, or safety concerns.

For example, in *Sims v. Century Kiest Apartments* 567 S.W.2d 526 (1978) a Texas court found that a former tenant who complained about increasingly deteriorating conditions in his apartment, reported violations of health and building codes to city authorities, and joined a tenants' rights movement, could maintain an action for retaliatory eviction when his landlord evicted him following these actions

What Else Must the Tenant Have to Prove Retaliation?

In *addition* to establishing the tenant utilized one or more of the above "protected activities," the tenant must *also* prove to the court that - within three (3) months of taking a protected action - the landlord sought to take one or more of the five "prohibited landlord actions" listed in the next section.

Landlord's List of Prohibited Conduct

Under OCGA 44-7-24[c] A landlord *could* be held liable for retaliation if the landlord does any one of the following within **three months (3)** of the tenant engaging in the protected actions described above:

- Filing an eviction action (except for non-payment of rent or serious lease violations).
- Depriving the tenant of use of the premises except for reasons authorized by law.
- Decreasing services to the tenant.
- Increasing the tenant's rent.
- Terminating the resident's lease.
- Materially interfering with the tenant's rights under the lease or a statute.

Landlord's Defenses and Conduct That Is Not Considered Retaliatory

The new law expressly provides the landlord with a "safe harbor" and allows the landlord to increase rent or reduce services, file an eviction, or terminate a lease *under certain conditions* – notwithstanding that the tenant exercised one of its four protected rights. OCGA 44-7-24(d)(1) and (2).

A landlord is *not* be liable for retaliation if the landlord can prove:

- *The Landlord gave notice to the tenant to vacate or filed a dispossessory (eviction) action when the tenant was delinquent in rent;*
- *The Tenant, Tenant's family, or guest or invitee intentionally damaged property on the premises or by word or conduct threatened the personal safety of the landlord, the landlord's employees, or another resident;*

- *The Tenant breached the lease for serious misconduct or criminal acts;*
- *The Tenant holds over possession after the Tenant gave the Landlord a notice of Tenant's termination or intent to vacate;*
- *Tenant holds over after landlord non-renews a written lease at the end of the term;*
- *Tenant's rent is increased or services are reduced pursuant to an escalation clause in the written lease for utilities, taxes or insurance; as part of a pattern of rent increases or reducing services for the entire multifamily community; or as part of a rent increase due to the terms of the resident's or landlord's participation in a program regulated by the state or federal government involving the receipt of federal funds, tenant assistance, or tax credits.*

The above list represents a Landlord's affirmative defenses to a Tenant's claim of retaliation, or what can also be referred to as Landlord's "Safe Harbor." If a resident is delinquent in rent or if the resident holds over at the end of the term (written lease) after Landlord gives notice to non-renew (terminate the tenancy), then the Landlord will have a valid defense to the Tenant's retaliatory eviction claim in a dispossessory action. A Landlord who can prove one of the "Safe Harbor" defenses is entitled to prevail in a separate cause of action for retaliatory eviction if the courts construe that a tenant can file a separate cause of action.

It shall also be a rebuttable defense to a retaliatory eviction defense or potential claim if the property has been inspected within the prior 12 months pursuant to any federal, state, or local program which certifies that the property complies with applicable building and housing codes or that the property has been inspected within the prior 12 months by a code enforcement officer or a licensed building inspector who certifies that the property complies with applicable building and housing codes. Many of the local codes only require a certain percentage, such as 20% or more units required to be inspected during any given year so that the entire property is inspected during a five (5) year period. This defense is helpful if the tenant who is making the retaliatory eviction defense or claim was one of the apartments inspected within the last twelve (12) months. Again, this is a rebuttable presumption, meaning the tenant can bring forth evidence that could show otherwise.

How Does the New Law Help a Tenant?

The new "Anti-Retaliation Statute" expressly states that the tenant can successfully *defend* an eviction action *and recover damages* from the Landlord if he or she can successfully prove the eviction was filed purely in retaliation for taking a protected action. OCGA 44-7-24(e).

The new law empowers a court to *deny a writ of possession* or *dismiss the eviction* if the Tenant successfully proves his or her defense and the Landlord cannot prove one of the "Safe Harbor" exceptions.

Additionally, the Court could award the Tenant a civil penalty up to one month's rent. *And*, the Court could also award *an additional* $500.00, court costs, and reasonable attorney's fees if the Landlord's conduct is "willful, wanton, or malicious," less any delinquent rent or other sums for which the resident is liable to the landlord.

A resident who asserts a defense of retaliatory eviction and prevails will likely result in the dismissal of the dispossessory action. A resident who successfully prevails after asserting a counterclaim in a dispossessory action or potentially in a separate lawsuit for retaliatory eviction, may recover a civil penalty up to one month's rent, $500.00, plus court costs.

Conclusion

It is difficult to predict how the courts will interpret the statute and we will have to wait to see how courts handle such claims [and whether they will allow the tenant to file a separate cause of action after the eviction occurs, similar to the interpretation followed in Texas].

Residential rental owners and management should implement training and review procedures to help with compliance and reduction of liability. Before filing an eviction, terminating a lease, increasing rent, or reducing services or access to amenities the on-site staff may want to review whether the tenant has taken any of the "protected actions" in the last three months. If so, then the owner or management could anticipate the potential of the defense or claim being raised by the Tenant or the possibility that it could complicate the eviction case.

This Industry Guidance summarizes an important change to the Georgia Landlord Tenant Act effective July 1, 2019. The information discussed is general in nature and is not intended to serve as legal advice. It is intended to assist Georgia and Atlanta Apartment Association owners and managers in understanding this issue area, but it may not be applicable to the specific fact circumstances or business situations of all owners and managers. It cannot and should not be used to set industry standards of any kind. It is intended to be a guide to establishing operational policies and procedures by each residential rental owner and manager which will aid in their compliance with the law. For specific legal advice, consult your attorney.