INDUSTRY GUIDANCE

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New Laws in Effect Regarding Early Lease Termination Due to Family Violence and Clarification of Georgia Security Deposit Statutes

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This White Paper summarizes changes to the Landlord Tenant Act that went into effect July 1, 2018. The information discussed is general in nature and is not intended to serve as legal advice. It is intended to assist Atlanta Apartment Association owners and managers in understanding this issue area but may not apply to the specific fact circumstances or business situations of all owners and managers. For specific legal advice, consult your attorney.

Executive Summary

On May 8, 2018, Governor Nathan Deal signed House Bill 834 (HB 834) which amended the Landlord Tenant Act to allow victims of family violence to terminate their lease under specific, validated circumstances. The original version of the bill contained broad and sweeping termination rights that could be used by tenants simply wishing to terminate a lease, whether or not they were victims of family violence. The Georgia Apartment Association (GAA) worked with legislators extensively throughout 2017 and into 2018 in an effort to prevent and/or reduce abuses in the legislation and offer verified family violence victims this new right. Ultimately, Rep. Mandi Ballinger incorporated the consensus provisions into new legislation and introduced House Bill 834.

The bill also sought to clarify and revise portions of the security deposit statutes at O.C.G.A. 44-7-33, 34 & 35. These changes now make it clear that the move-out inspection does not have to be mailed or sent to the resident within three business days. The law does provide that the tenant shall upon request have the right to inspect the premises and the list (move-out inspection) within five days after the termination of the residential lease and vacation of the premises or the surrender and acceptance of the premises and the inspection by the landlord or his or her agent.

Both the new law which is codified as O.C.G.A 44-7-23, and the security deposit clarification apply to all new leases entered into after July 1, 2018, including renewal modifications and extensions of any kind.

Termination of Lease Due to A Family Violence Court Order

The issue of victims' rights has been the subject of extensive discussion between the Association, advocates, and legislators since early 2017. The new rights follow the early

termination provisions provided for in the Servicemember's Civil Relief Act. The new law consists of four rules that must be followed:

1. **A resident may terminate his or her rental agreement effective 30 days after providing the landlord with a copy of a civil family violence order or criminal family violence order designed to protect such tenant or his or her minor child; or protecting such tenant when he or she is a joint tenant, or his or her minor child, even when such protected tenant had no obligation to pay rent to the landlord.**

   This means that if a resident obtains a protective order for either themselves and/or their child who may not even be a tenant or a named occupant on the lease, then the resident may provide a 30-day written notice and terminate the tenancy.

   This is the case even if the family violence does not occur at the property. The reasoning behind this is that an aggressor or abuser who commits the violence off the property may know where his or her victim resides, and the legislature wanted the victim to be able to get away from his or her aggressor in order to be safe.

   If a resident moves out immediately after presenting management with a protective order, the resident remains responsible for rent for an additional 30 days. The resident is not responsible for lack of notice fees, termination fees, liquidated damages, or any other damages that might be assessed against a resident who fails to fulfill the terms of the lease and breaches the lease agreement.

   The resident could also elect to remain in possession through the 30-day notice period, but they will be responsible for all other sums that come due or are incurred through the lease termination date.

2. **If the resident obtains an *ex parte* temporary protective order (TPO) then the resident must provide a copy of a police report in order to terminate the lease**.

   An *ex parte* order is one that is obtained at the courthouse whereby the victim makes an application and usually goes before the judge on the same day or within a short period of time without the presence of the aggressor who may attempt to avoid service which would delay the protection needed. The TPO is usually issued for a period of 30 days. If the resident submits a TPO without the police report, then the lease will not terminate with a 30 days' notice. The police report must accompany the order granting temporary protection that was obtained *ex parte.*

   If the TPO is not *ex parte* then the resident merely has to present the order granting the protection. If there are any questions with regards to whether the order presented is *ex parte* then legal counsel should be consulted. However, the order will typically reference the proceeding as one that was conducted *ex parte.*

3. **If the resident signs a lease but has not yet taken possession of the apartment, the resident may terminate the lease prior to taking possession by providing at least 14 days written notice and providing a copy of the family violence order and a copy of the police report if the order was obtained *ex parte*.**

   This means a resident who is a victim of family violence who is scheduled to move in next month could give 14 days' notice and submit a copy of the family violence order and a police report if an ex parte TPO is obtained in order to terminate the tenancy. In this instance, the resident would have no further rental obligation as it would be like the lease was not entered into at all. This could occur when a resident is trying to get away from his or her aggressor, so he or she leases an apartment thinking the aggressor may not know his or her location. If after signing the lease the aggressor finds out that he or she is moving into an apartment, the prospective resident may decide to provide the 14 days' notice and submit the order in order to get away from the aggressor.

4. **The rules that allow the victim to get out of the lease early due to family violence does not apply to the aggressor.**

   For example, if a wife is the victim of family violence and she gives 30-days' notice and provides the family violence order, then the wife can terminate the lease and vacate, but the husband will remain liable under the contract. The aggressor clearly does not meet the definition of a victim and cannot take advantage of the law. The husband will remain liable if he subsequently moves out prior to the end of the lease term for any lost rent, or liquidated damages due under the lease contract.

In Summary, the new law seeks to protect victims of family violence by allowing the victim to terminate the lease with 30 days' notice provided that the protective order is submitted to the landlord. It does not matter whether the family violence occurs on or off the property as protection is still afforded to the victim even if it occurs offsite. If a TPO is submitted in order to terminate the lease, then the resident must also provide a police report. If a resident executes a lease that will take effect in the future, the resident can terminate the lease with 14 days' notice if he or she is a victim of family violence, provided a protective order is issued and given to the landlord, or if it is a TPO, the police report is provided with the TPO. Lastly, the rules do not apply to the aggressor as the aggressor will continue to remain liable under the contract, if they are a party to the lease.

Security Deposit/Clarification and Revisions to O.C.G.A. 44-7-33, 34 & 35

In addition to the new lease termination provisions for the victims of family violence, HB 834 provided clarification and revisions to O.C.G.A 44-7-33, 34 & 35.

Under a residential lease, a landlord is subject to the security deposit act and obligated to comply with the multiple rules contained within the statutes. Although the security deposit is intended to protect the landlord against physical damage to the leased premises, it cannot be used to cover ordinary wear and tear. Damages should never be assessed to cover cleaning

costs unless they are excessive, and a third-party company is retained to perform the work. Judges and juries do not like the retention of security deposits applied to damages unless they are excessive and are accompanied by invoices and photographs to substantiate the damages. In addition, the failure to comply with each and every requirement of the security deposit statutes subject the owner and management to a claim for treble damages, which is three times the security deposit plus reasonable attorney's fees.

The statute remains in tact that it is not to serve as a preclusion to retention of the security deposit for certain designated items unrelated to physical damage to the premises, such as nonpayment of rent, late charges, utilities, or pet fees. *See Kimber v. Towne Hills Development Co.* 156 Ga. App. 401 (1980). This means you can always apply the security deposit to unpaid rent and utilities even if no move-in or move-out inspection was conducted and, in the case, where there are no damages beyond normal wear.

The law now makes it clear that the landlord's duty to perform the move-out inspection starts at the earliest of 1) termination of the lease (either by the landlord or resident) and the resident vacating the premises; or 2) resident's surrender of the premises and landlord's acceptance of the surrender of possession.

Previously, there were challenges to whether the resident must be given a list of damages exceeding normal wear and tear within three business days after vacating. Now, it is clear that the move-out inspection must only be conducted within three business days and not given to the resident. The resident *must request* the right to inspect the premises and see the damage list within *the earliest* of five business days from: 1) termination of the lease (either by the landlord or resident) and the resident vacating the premises; or 2) resident's surrender of the premises and landlord's acceptance of the surrender.

The amendment does not say that the request made by the resident to inspect the list and premises must be in writing. Therefore, the request could be made verbally, which creates an issue of fact. It would be possible to see a former resident claim they called management on the phone or asked them in person for a copy of the list within five business days-even if the resident never made such a request. It would be advisable to establish best practices which include keeping detailed conversation logs and using notices at move-out. The notice should inform the resident that they have the right to inspect the list and premises within five business days and let them know if they intend to invoke these rights they must notify you in writing.

The statute does not provide any time frame that a resident could submit their own dispute to the damage list if the tenant requests the five days right to inspect the premises and damage list. The courts will likely allow a resident to dissent to the damages at a later date. This is really no different than how judges currently treat the move-out as they allow the resident to dispute the damages and require the landlord to prove the damages, unless the resident signs the move-out inspection without dissent.

The new law also allows a tenant who did not request a copy of the damage list and was not present at the move-out inspection or vacated without performing an inspection to dispute the damages. Again, judges have always allowed the resident to dispute the damages at any time without regards to whether the resident was present for the move-out inspection unless they signed the move-out inspection concurring with the damages.

It is in the landlord's best interest, if possible, to attempt to conduct the move-out inspection with the resident so that the damages can be listed and signed for by the resident on the move-out inspection form. If the tenant signs the landlord's final damage list and fails to dissent to the damages, then the tenant shall not be entitled to recover the security deposit for those damages provided on the move-out inspection form. *The estimated damages should be provided on the move-out inspection at the time the move-out inspection is conducted.*

Previously, the landlord had "one month" after the lease termination or surrender and acceptance of the premises to return the security deposit or the portion not applied to damages and to mail the list of damages to the tenant. Now, the landlord has "30 days after obtaining possession of the premises" to return the deposit or mail the damage list.

The move-out inspection must be conducted within three business days after termination of the lease and the resident vacates the premises or resident's surrender of the premises and landlord's acceptance of the surrender. If the premises are discovered to be abandoned, the landlord should perform the move-out inspection as soon as they discover an abandoned apartment and possession is obtained. If a set out occurs the move-out inspection should be conducted within three business days from the date of the actual set out. The landlord must send the damage list within 30 days after termination of the residential lease and vacation of the premises or the surrender and acceptance of the premises, whichever occurs first. Failure to comply with these provisions strictly may subject the owner or management company to treble damages, which are three times the security deposit plus reasonable attorney's fees.

Timeline for Compliance with Security Deposit Statutes

- Move-in inspection is conducted at move-in and signed by all parties noting any damages at the time of move in.
- Within three business days after termination of the residential lease and vacation of the premises or the surrender and acceptance of the premises, which occurs first, landlord shall inspect the premises and perform the move-out inspection noting any damages and the estimated costs to make any repairs. This should be noted on the move-out inspection form. If the tenant is present, the tenant should sign the move-out inspection noting any dissent to any of the damages listed.
- Within five business days after the termination of the residential lease and vacation of the premises or surrender and acceptance of the premises and the inspection of the landlord, the tenant may request (orally or in writing) to inspect the premises and the move-out inspection list.

- If tenant vacates or surrenders the premises without notifying the landlord, then the move-out inspection should be conducted within a reasonable time after discovering the premises has been surrendered by vacancy. The best practice is to perform the move-out inspection within three business days from the date after discovering the premises has been surrendered by vacancy.
- Within 30 days after obtaining possession, the deposit should either be returned to the former resident or the move-out inspection form with the comprehensive list of damages should be sent to the resident's last known address or the forwarding address, if one was provided by the resident. If there are damages that are less than the security deposit, the move-out inspection with the list of damages should be sent with the difference between the damages and the security deposit. If the damages exceed the amount of the security deposit, then only the move-out inspection with the itemized list of damages need to be sent to the last known address or forwarding address. The best practice is to send the move-out inspection by certified mail or make a copy of the envelope evidencing the date the move-out inspection with the itemized list of damages was sent to the former resident.

In Summary, the clarifications and revisions made to O.C.G.A. 44-7-33, 34 & 35 make it clear that within three business days from the earliest of termination of the lease and the resident vacating the premises, or resident's surrender of the premises and the landlord's acceptance of the surrender, the landlord **must** conduct the move-out inspection which contains the itemized list of damages with estimated costs to make the repairs. This clarifies any challenge made as to when the itemized list must be given. The landlord is clearly not required to send the list of damages to the tenant within three business days.

The tenant can invoke the right to come back within five business days to inspect the premises and review the list. This request can be made in writing or orally by the resident. It is important to keep good documentation in conversation logs and use confirmation notices in writing if you receive a notice to vacate advising the resident they must notify you in writing if they desire to inspect the list and premises within five business days after move-out.

Within 30 days from the date the landlord obtains possession, the full security deposit should be sent to the resident's last known address (which might be the apartment address) or to the tenant's forwarding address, or if there are damages to the premises, the move-out inspection with the itemized list should be sent to the resident notifying the resident of the amount deducted from the deposit with the remainder sent back to the resident. If the damages exceed the amount of the security deposit, then the move-out inspection form should be sent with the itemized list of damages and should include a comprehensive list of all damages to include the amounts due to the landlord. Failure to comply with any of these provisions subjects the landlord to three times the security deposit plus reasonable attorney's fees.

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Fowler, Hein, Cheatwood & Williams serves as corporate and litigation counsel in the multifamily housing industry. Their practice areas include, but are not limited to, evictions, defense of lawsuits, mold litigation, fair housing defense throughout the country, code enforcement defense, lease revisions, and general consultation of their clients.

REFERENCES

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