

SUBJECT: Eviction and repair procedures for residential rental properties

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Brimer, Rhodes, Dukes, Janek, Solomons, Woolley

0 nays

3 present, not voting — Corte, Elkins, Giddings

SENATE VOTE: On final passage, April 28 — voice vote

WITNESSES: No public hearing

BACKGROUND : Landlords generally may file suit to evict tenants who have violated a lease after giving notice to vacate. A landlord who prevails in an eviction suit is entitled to a judgment for possession of the rental premises and a writ of possession. Officers may use reasonable force, if necessary, in executing a writ.

Tenants who have been illegally locked out of their leased premises by their landlords may obtain a writ of reentry that entitles them to immediate and temporary possession of the premises. The writ of reentry must be served in the same manner as a writ of possession in an eviction suit.

Landlords have a duty to repair or remedy a condition that materially affects the physical health or safety of tenants. Tenants must provide notice of a needed repair. If the landlord fails to make the repair, the tenant may deduct the cost of repairs from the rent or terminate the lease after providing another notice of intent to do so. Deductions for repairs are limited to a monthly total of one month's rent.

DIGEST: SB 1678 would amend Property Code provisions addressing the following residential landlord-tenant issues:

- **Eviction** — A landlord who had previously notified or reminded a tenant that the rent was due and unpaid could include in a subsequent notice that

the tenant pay the delinquent rent or vacate the premises by a specified date and time. A court rendering a default judgment against a tenant in an eviction suit would have to notify the tenant in writing by sending a copy of the judgment to the premises by first class mail within 48 hours after the entry of the judgment. The writ of possession would have to require a written warning of a specified size for posting on the tenant's front door; the warning would have to give a date and time for execution of the writ that was at least 24 hours after posting. Sheriffs and constables, rather than officers, would be authorized to use reasonable force in executing a writ of possession or reentry.

- **Abandonment** — A landlord would be required to mitigate damages if a tenant abandoned the leased premises in violation of the lease. Lease provisions purporting to waive a right or exempt a landlord from this duty or liability would be void.
- **Repairs** — A tenant could deduct the cost of repairs from the rent or terminate the lease if the landlord failed to make repairs within a reasonable time following a single notice via certified mail, return receipt requested, or by registered mail. The tenant's deduction for the cost of repairs in a single month could not exceed one month's rent or \$500, whichever was greater. Seven days from receipt of notice would be a rebuttable presumption of reasonable time. The presumption could be rebutted based on the date the notice was received, the severity and nature of the condition, and the reasonable availability of material, labor and utilities.

Most provisions of SB 1678 would take effect September 1, 1997. The provisions addressing repairs would apply only to leases entered into on or after January 1, 1998.

NOTES:

SB 1678 contains provisions identical to those in four bills favorably reported from the House Committee on Business and Industry: HB 1978 by Hinojosa, HB 2016 by Burnam and Danburg, HB 2291 by Naishtat, and HB 2290 by Naishtat, which passed by the House on the Local and Consent Calendar but died in the Senate Jurisprudence Committee.