

SUBJECT: Revising residential tenant rights and remedies

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons

0 nays

1 present not voting — Zedler

1 absent — Bailey

WITNESSES: (*on committee substitute*):

For — Julie Balovich, Texas Low Income Housing Information Service;
David Mintz, Texas Apartment Association

Against — None

BACKGROUND: Property Code, sec. 92.0081 states that a landlord may intentionally prevent a tenant from entering the leased premises if a tenant is delinquent in paying all or part of the rent and the landlord has mailed notice by the fifth calendar day before the locks are changed or posted notice inside the main entry door of the tenant's residence by the third calendar day before the locks are changed. Written notice must state the earliest date the landlord proposes to change the door locks, the amount of rent the tenant must pay to prevent changing the door locks, and the name and street address where payment may be made during the landlord's normal business hours. If a landlord is found in violation, the tenant may either recover possession of the premises or terminate the lease. The tenant also may recover a civil penalty of one month's rent plus \$500 and any additional costs and damages permitted by a court.

The landlord of a multi-unit complex that has towing or parking policies applicable to tenants must provide the tenant a copy of the policies before a lease agreement is executed. If the policies are contained in the lease agreement, the title to the paragraph must read "Parking" or "Parking Rules" and be capitalized, underlined, or printed in bold print.

Property Code, sec. 92.056 and 95.0561 provides that a landlord has the duty to repair or remedy a condition that materially affects the physical health and safety of a tenant. Tenants must provide notice of a needed repair. If the landlord fails to make the repair within a reasonable time, the tenant must give a subsequent notice that the tenant intends to make the necessary repairs and may then deduct the cost of repairs from the rent or terminate the lease. The tenant's deduction for costs of repairs cannot exceed one month's rent or \$500, whichever is greater.

A landlord who in bad faith fails to refund an application deposit is liable for an amount equal to the sum of \$100, three times the amount of the application deposit, and the applicant's reasonable attorney's fees in a suit to recover the deposit.

DIGEST:

CSHB 3101 would amend Property Code, ch. 92 to establish certain rights and responsibilities of landlords and tenants. The bill would address the following issues:

- **Changing a tenant's locks.** A landlord wishing to have the right to change the locks of a tenant's residence because of delinquent rent would have to establish this right in the lease agreement. The landlord could not change the locks with the tenant inside or more than once during a rental period.
- **Parking.** As a precondition for allowing a tenant to park in a specific parking or common parking area, the landlord could require a tenant to provide only the make, model, color, year, license number, and state of registration of the vehicle to be parked.
- **Late payment of rent, fees.** A landlord could not charge a tenant late fees for failing to pay rent unless notice of the fee was included in a written lease, the fee was a reasonable estimate of uncertain damages to the landlord that would result from late payment, and the rent remained unpaid after the second day the rent was originally due. A late fee could include an initial fee and a daily fee for each day rent remained unpaid. Daily fees could not be charged for more than 15 days on a single month's rent.

Charging excessive or unreasonable fees would make a landlord liable to the tenant for an amount equal to the sum of \$100, three

times the amount of the late fee charged by the landlord, and the tenant's reasonable attorney's fees.

- **Tenant's rights and remedies.** A lease would have to contain language in underlined or bold print that informed the tenant of the remedies available under Property Code, sec. 92.056 and 95.0561, duty and notice to repair and deduction from rent for repairs.
- **Application fee.** The bill would define "application fee" as a nonrefundable sum of money given to the landlord to offset the costs of screening an applicant for acceptance of rent. A "rental application" would be a written request made by an applicant to a landlord to lease premises from the landlord.
- **Notice of rental eligibility.** At the time an applicant was provided with a rental application, the landlord would have to provide printed notice of the landlord's selection criteria and the grounds for which the rental application could be denied, including criminal history, previous rental history, current income, credit history, or failure to provide accurate or complete information on the application form. If a landlord provided notice of eligibility, the applicant would have to sign an acknowledgement that notice was provided. The acknowledgement could be part of the rental application in underlined or bold print.

If a landlord decided to reject an applicant without providing advance notice of the eligibility criteria, the landlord would have to return the application fee and any application deposit. If it was requested, the landlord would furnish the refund by mail.

- **Landlord's failure to refund.** The bill would permit a tenant to recover \$100, three times the amount wrongfully retained, and the applicant's attorney's fees for a landlord who in bad faith failed to refund an application fee or deposit.
- **Waiver.** A provision of a rental application that attempted to waive a right or exempt a party from a liability or duties specific to rental applications and deposits would be considered void.

The bill would apply only to lease agreements or renewals of lease agreements entered into, or a rental application received by an applicant, on or after the effective date.

The bill would take effect January 1, 2008.

**SUPPORTERS
SAY:**

CSHB 3101 would give additional protections to vulnerable tenants. The safeguards included in the bill would allow a tenant, whose only reference to the law was the lease agreement, to be informed of the tenant's rights and to know how to take action against an unscrupulous landlord. Hardworking Texans deserve affordable housing without landlords wrongfully retaining deposits, charging excessive fees, or imposing unwarranted penalties that could take money needed for food, education, health care, and retirement. CSHB 3101 represents a compromise between the interests of landlords and tenants and would promote fair business dealings between them.

**OPPONENTS
SAY:**

Laws that require landlords to be responsible for notifying tenants of their rights are unnecessary. Tenants who do not read their lease agreements, which often reference current law and a landlord's policies, would be unlikely to benefit from additional notices. Also, basing a late fee on uncertain damages could prevent a landlord from recouping fully for damages resulting from delinquent rent, particularly if the renter repeatedly was delinquent.