

## **BILL ANALYSIS**

Senate Research Center  
86R6239 PMO-F

S.B. 518  
By: Zaffirini  
Business & Commerce  
2/21/2019  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law is not clear regarding the rights and responsibilities of both landlords and tenants when property is partially or totally uninhabitable. Accordingly, in the aftermath of Hurricane Harvey, persons living in rental properties faced significant challenges:

1. Tenants did not get a notice that their lease was being terminated because landlords sent the required notice to the rental unit even though the tenants were displaced in shelters or temporarily living with friends or family. Landlords also gave tenants very short notice that their lease was going to be terminated—often only one to three days' notice, which was inadequate because most persons were still in shelters;
2. Tenants had a difficult time getting their security deposits, pro rata rent, and prepaid rent back, which they needed to find a new place to live;
3. Tenants were being asked to pay rent even though their rental unit had been completely destroyed, or to pay the full rent even though their rental unit was only partially habitable;
4. Landlords and tenants who disagreed about the extent of the damage and habitability of the rental premises did not have an easy, clear way to get a court to rule on the issue; and
5. Regardless of any protections provided by statute, tenants often unknowingly waived their rights when they signed a lease.

Based on recommendations from the Access to Justice Commission, S.B. 518 would increase to 15 days the time landlords must give notice to tenants before terminating a lease, require landlords to provide notice to any address given by their tenants, require landlords to provide the full security deposit and any pro rata rent or prepaid rent back to their tenants within five days in the event that their units are completely uninhabitable, allow these landlord-tenant disputes to be heard in justice of the peace courts, allow tenants to withhold rent in the amount proportionate to the amount the premises are unusable, and provide that the rights granted under the property casualty loss provision cannot be waived by lease agreement. These changes would enhance protections for those living in rental properties during the aftermath of a natural disaster.

As proposed, S.B. 518 amends current law relating to remedies after certain casualty losses to residential rental premises.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 92.054, Property Code, by amending Subsections (b) and (c) and adding Subsections (b-1), (b-2), (b-3), (b-4), (b-5), (d), (e), (f), and (g), as follows:

(b) Incorporates existing second sentence of Subsection (b) into new Subsection (b)(4) and amends that sentence as noted in Subsection (b)(4). Makes no further changes to Subsection (b).

(b-1) Requires a notice described by Subsection (b) to be provided:

(1) to a landlord:

(A) by hand delivery or mail to a forwarding address that the landlord provides to the tenant by e-mail or otherwise; or

(B) if a forwarding address has not been provided as described by Paragraph (A):

(i) by hand delivery to the landlord or the landlord's representative at another location; or

(ii) by mail to the place where the tenant's rent is normally paid; or

(2) to a tenant:

(A) by hand delivery or mail to a forwarding address that the tenant provides to the landlord by e-mail or otherwise; or

(B) if a forwarding address has not been provided as described by Paragraph (A):

(i) by hand delivery to the tenant at another location; or

(ii) by mail to the tenant's rental premises.

(b-2) Prohibits a termination of a lease as authorized by Subsection (b) from taking effect before the 15th day after the date the notice is delivered. Provides that, if more than one method under Subsection (b-1) is used to provide notice, the method under which the notice was delivered on the earliest date applies for purposes of this subsection.

(b-3) Prohibits a landlord from charging rent for the rental premises and prohibits rent for the rental premises from accruing after the date the premises became as a practical matter totally unusable for residential purposes as a result of a casualty loss.

(b-4) Requires the landlord, subject to Subsection (b-5) and notwithstanding that the termination of the lease has not taken effect under Subsection (b-2), to pay to the tenant not later than the fifth day after the date a notice to terminate the lease provided under this section is delivered a refund of any prepaid rent, a pro rata refund of rent from the date the rental premises became as a practical matter totally unusable for residential purposes as a result of a casualty loss, and a full refund of any security deposit. Makes nonsubstantive changes. Deletes existing text entitling the tenant, if the lease is terminated, only to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.

(b-5) Provides that, if a tenant has not provided the landlord a forwarding address as described by Subsection (b-1)(2)(A), the period for providing the refund amounts specified by Subsection (b-4) is tolled until the tenant provides the landlord a written statement by e-mail or otherwise of the tenant's forwarding address for the purpose of refunding those amounts. Authorizes a tenant that provides notice under Subsection (b) to provide the written statement of the tenant's forwarding address in that notice. Requires a landlord that provides notice under Subsection (b) to include a statement informing the tenant of the requirement of this subsection.

(c) Entitles the tenant, if after a casualty loss the rental premises are partially unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, to reduction in the rent for the month in which the casualty loss occurs and any subsequent months in the lease term in which the rental premises are partially unusable for residential purposes. Entitles the tenant to determine the amount of the reduction in the rent, provided that the tenant is required to determine an amount that is proportionate to the extent the premises are unusable because of the casualty loss. Deletes existing text requiring the amount to be determined by a county or district court. Authorizes a tenant entitled to a reduction in rent to deduct and withhold from a rent payment the amount determined by the tenant. Deletes existing text authorizing a landlord and tenant to agree otherwise in a written lease. Makes nonsubstantive changes.

(d) Provides that it is a defense in a proceeding to recover unpaid rent for a rental premises, including a proceeding to recover possession of a rental premises for nonpayment of rent, that a rent payment was reduced, deducted, and withheld in accordance with Subsection (c).

(e) Requires the court, if a tenant asserts a defense under Subsection (d), to determine the amount of the reduction in the rent that is proportionate to the extent the premises are unusable because of the casualty. Requires the court, if the tenant withheld an amount less than the amount determined by the court, to enter a judgment for the tenant in an amount equal to the amount the tenant overpaid. Provides that if the tenant withheld an amount greater than the amount determined by the court, the court:

(1) is authorized to assess late fees in accordance with the lease if the court finds that the tenant acted in bad faith in reducing or withholding the rent payment;

(2) is required to order the tenant to pay into the registry of the court or, if the landlord consents in writing, directly to the landlord an amount equal to the amount the tenant underpaid and any late fees assessed under Subdivision (1); and

(3) is prohibited from entering a final judgment in the proceeding before the 10th business day after the date the court issued the order of payment under Subdivision (2); and

(4) is required to dismiss the proceeding against the tenant if the tenant complies with the order of payment under Subdivision (2) before the 10th business day after the date the court issued the order of payment under Subdivision (2).

(f) Provides that it is a defense in a proceeding to recover possession of a rental premises after the landlord terminates a lease under this section that the premises are totally or partially usable for residential purposes.

(g) Provides that a provision of a lease is void if the provision purports to waive a right or exempt a party from a liability or duty under this section or expand a party's right to unilaterally terminate a lease under this section.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2019.