

House Bill 834 (AS PASSED HOUSE AND SENATE)

By: Representatives Ballinger of the 23rd, Beskin of the 54th, Blackmon of the 146th, Hilton of the 95th, Corbett of the 174th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 19-13-3 and Chapter 7 of Title 44 of the Official Code of Georgia
2 Annotated, relating to filing of petition seeking relief from family violence, granting of
3 temporary relief ex parte, hearing, dismissal of petition upon failure to hold hearing, and
4 procedural advice for victims, and landlord and tenant, respectively, so as to clarify matters
5 concerning the effect of a temporary ex parte order and the length of time it is effective; to
6 provide for the termination of a residential rental agreement under circumstances involving
7 family violence; to provide for definitions; to provide for notice and terms of termination;
8 to provide for applicability; to revise the procedures between the landlord and tenant for the
9 listing of damages before and after a tenancy; to clarify provisions relating to the return of
10 a security deposit and actions related thereto; to provide for related matters; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 Code Section 19-13-3 of the Official Code of Georgia Annotated, relating to filing of petition
15 seeking relief from family violence, granting of temporary relief ex parte, hearing, dismissal
16 of petition upon failure to hold hearing, and procedural advice for victims, is amended by
17 revising subsections (b) and (c) as follows:

18 "(b) Upon the filing of a verified petition in which the petitioner alleges with specific facts
19 that probable cause exists to establish that family violence has occurred in the past and may
20 occur in the future, the court may order such temporary relief ex parte as it deems
21 necessary to protect the petitioner or a minor of the household from violence. If the court
22 issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner
23 and such order shall remain in effect until the court issues an order dismissing such order
24 or a hearing as set forth in subsection (c) of this Code section occurs, whichever occurs
25 first.

26 (c) Within ten days of the filing of the petition under this article or as soon as practical
27 thereafter, but ~~in no case not~~ later than ~~30~~ 30 days after the filing of the petition, a hearing

28 shall be held at which the petitioner must prove the allegations of the petition by a
 29 preponderance of the evidence as in other civil cases. In the event a hearing cannot be
 30 scheduled within the county where the case is pending within the ~~30~~ 30 day period the
 31 same shall be scheduled and heard within any other county of that circuit. If a hearing is
 32 not held within ~~30~~ 30 days of the filing of the petition, the petition shall stand dismissed
 33 unless the parties otherwise agree.

34 (d) If the Court finds a party is avoiding service to delay a hearing, the Court may delay
 35 dismissal of the petition for an additional 30 days."

36 **SECTION 2.**

37 Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to landlord and
 38 tenant, is amended in Article 1, relating to general provisions, by adding a new Code section
 39 to read as follows:

40 "44-7-23.

41 (a) As used in this Code section, the term:

42 (1) 'Civil family violence order' means:

43 (A) Any protective order issued pursuant to Article 1 of Chapter 13 of Title 19,
 44 provided that the respondent was present or had notice of the hearing that resulted in
 45 the issuance of such order; or

46 (B) Any ex parte temporary protective order issued pursuant to Article 1 of Chapter 13
 47 of Title 19, provided that it is accompanied by a police report showing a basis for such
 48 order.

49 (2) 'Criminal family violence order' means:

50 (A) Any order of pretrial release issued as a result of an arrest for an act of family
 51 violence; or

52 (B) Any order for probation issued as a result of a conviction or plea of guilty, nolo
 53 contendere, or first offender to an act of family violence.

54 (3) 'Family violence' shall have the same meaning as set forth in Code Section 19-13-1.

55 (b) A tenant may terminate his or her residential rental or lease agreement for real estate
 56 effective 30 days after providing the landlord with a written notice of termination when a
 57 civil family violence order or criminal family violence order has been issued:

58 (1) Protecting such tenant or his or her minor child; or

59 (2) Protecting such tenant when he or she is a joint tenant, or his or her minor child, even
 60 when such protected tenant had no obligation to pay rent to the landlord.

61 (c) The notice to the landlord pursuant to subsection (b) of this Code section shall be
 62 accompanied by a copy of the applicable civil family violence order or criminal family

63 violence order and a copy of the police report if such order was an ex parte temporary
 64 protective order.

65 (d) Upon termination of a residential rental or lease agreement under this Code section, the
 66 tenant may occupy the real estate until the termination is effective. Such tenant shall be
 67 liable for the rent due under such agreement prorated to the effective date of the
 68 termination, payable at such time as would have otherwise been required by the terms of
 69 such agreement, and for any delinquent or unpaid rent or other sums owed to the landlord
 70 prior to the termination of such agreement. The tenant shall not be liable for any other fees,
 71 rent, or damages due to the early termination of the tenancy as provided for in this Code
 72 section. Notwithstanding any provision of law to the contrary, if a tenant terminates a
 73 residential rental or lease agreement pursuant to this Code section 14 or more days prior
 74 to occupancy, no damages or penalties of any kind will be assessable.

75 (e) This Code section shall apply to all residential real estate rental or lease agreements
 76 entered into on or after July 1, 2018, and to any renewals, modifications, or extensions of
 77 such agreements in effect on such date. This Code section shall not be waived or modified
 78 by the agreement of the parties under any circumstances."

79 **SECTION 3.**

80 Said chapter is further amended by revising Code Sections 44-7-33 through 44-7-35, relating
 81 to lists of existing defects and of damages during tenancy, right of tenant to inspect and
 82 dissent, action to recover security deposit, return of security deposit, grounds for retention
 83 of part, delivery of statement and sum due to tenant, unclaimed deposit, court determination
 84 of disposition of deposit, and remedies for landlord's noncompliance with article,
 85 respectively, as follows:

86 "44-7-33.

87 (a) Prior to tendering a security deposit, the tenant shall be presented with a
 88 comprehensive list of any existing damage to the premises; which list shall be for the
 89 tenant's permanent retention. The tenant shall have the right to inspect the premises to
 90 ascertain the accuracy of ~~the~~ such list prior to taking occupancy. The landlord and the
 91 tenant shall sign the list, and this shall be conclusive evidence of the accuracy of the list but
 92 shall not be conclusive as to latent defects. If the tenant refuses to sign the list, the tenant
 93 shall state specifically in writing the items on ~~the~~ such list to which he or she dissents and
 94 shall sign such statement of dissent.

95 (b)(1) ~~Within three business days after the date of the termination of occupancy~~
 96 termination of the residential lease and vacation of the premises or the surrender and
 97 acceptance of the premises, whichever occurs first, the landlord or his or her agent shall
 98 inspect the premises and compile a comprehensive list of any damage done to the

99 premises which is the basis for any charge against the security deposit and the estimated
 100 dollar value of such damage. The tenant shall upon request have the right to inspect the
 101 premises and such list within five business days after the termination of the ~~occupancy~~
 102 ~~in order to ascertain the accuracy of the list. residential lease and vacation of the premises~~
 103 or the surrender and acceptance of the premises and the inspection by the landlord or his
 104 or her agent. If the tenant is present with the landlord at the time of the inspection, the
 105 ~~The~~ landlord and the tenant shall sign the list, and this shall be conclusive evidence of the
 106 accuracy of the list. If the tenant refuses to sign the list, he or she shall state specifically
 107 in writing the items on the list to which he or she dissents and shall sign such statement
 108 of dissent. The landlord shall then comply with the provisions of Code Section 44-7-34.
 109 (2) If the tenant ~~terminates occupancy~~ vacates or surrenders the premises without
 110 notifying the landlord, the landlord may shall inspect the premises and compile a
 111 comprehensive list of any damage done to the premises which is the basis for any charge
 112 against the security deposit and the estimated dollar value of such damage make a final
 113 inspection within a reasonable time after discovering the ~~termination of occupancy~~
 114 premises has been surrendered by vacancy. The landlord shall sign the list and then
 115 comply with the provisions of Code Section 44-7-34.

116 (c) A tenant who disputes the accuracy of the final damage list ~~given compiled~~ pursuant
 117 to subsection (b) of this Code section and provided to the tenant pursuant to Code Section
 118 44-7-34 may bring an action in any court of competent jurisdiction in this state to recover
 119 the portion of the security deposit which the tenant believes to be wrongfully withheld for
 120 damages to the premises. The tenant's claims shall be limited to those items to which the
 121 tenant specifically dissented in accordance with this Code section. If the tenant is present
 122 for the inspection of the premises after vacancy and signs the landlord's final damage list
 123 or fails to sign a list or to dissent specifically in accordance with this Code section, the
 124 tenant shall not be entitled to recover the security deposit or any other damages under Code
 125 Section 44-7-35, provided that the lists required under this Code section contain written
 126 notice of the tenant's duty to sign or to dissent to the list. A tenant who did not inspect the
 127 premises after vacancy or was not present for the landlord's inspection of the premises after
 128 vacancy and, in either case, did not request a copy of the landlord's final damage list shall
 129 have the right to dispute the damages assessed by the landlord.

130 44-7-34.

131 (a) ~~Except as otherwise provided in this article, within one month~~ Within 30 days after the
 132 ~~termination of the residential lease or the surrender and acceptance~~ obtaining possession
 133 of the premises as provided in subsection (b) of Code Section 44-7-33, whichever occurs
 134 ~~fast~~, a landlord shall return to the tenant the full security deposit which was deposited with

135 the landlord by the tenant. No security deposit shall be retained to cover ordinary wear and
 136 tear which occurred as a result of the use of the premises for the purposes for which the
 137 premises were intended, provided that there was no negligence, carelessness, accident, or
 138 abuse of the premises by the tenant or members of his or her household or their invitees or
 139 guests. In the event that actual cause exists for retaining any portion of the security
 140 deposit, the landlord shall provide the tenant with a written statement listing identifying the
 141 exact reasons for the retention thereof., which shall include the comprehensive list of
 142 damages prepared as required by Code Section 44-7-33, if ~~If~~ the reason for retention is
 143 based on damages to the premises, ~~such damages shall be listed as provided in Code~~
 144 ~~Section 44-7-33.~~ When ~~the~~ such statement is delivered, it shall be accompanied by a
 145 payment of the difference between any sum deposited and the amount retained. The
 146 landlord shall be deemed to have complied with this Code section by mailing ~~the~~ such
 147 statement and any payment required to the last known address of the tenant via ~~first class~~
 148 first-class mail. If the letter containing the payment is returned to the landlord undelivered
 149 and if the landlord is unable to locate the tenant after reasonable effort, the payment shall
 150 become the property of the landlord 90 days after the date the payment was mailed.
 151 Nothing in this Code section shall preclude the landlord from retaining the security deposit
 152 for nonpayment of rent or of fees for late payment, for abandonment of the premises, for
 153 nonpayment of utility charges, for repair work or cleaning contracted for by the tenant with
 154 third parties, for unpaid pet fees, or for actual damages caused by the tenant's breach,
 155 provided that the landlord attempts to mitigate the actual damages.

156 (b) In any court action in which there is a determination that neither the landlord nor the
 157 tenant is entitled to all or a portion of a security deposit under this article, the judge or the
 158 jury, as the case may be, shall determine what would be an equitable disposition of the
 159 security deposit; and the judge shall order the security deposit paid in accordance with such
 160 disposition.

161 44-7-35.

162 (a) A landlord shall not be entitled to retain any portion of a security deposit if ~~the~~:

163 (1) The security deposit was not deposited in an escrow account in accordance with Code
 164 Section 44-7-31 or a surety bond was not posted in accordance with Code Section
 165 44-7-32; ~~and if the~~

166 (2) The initial ~~and final~~ damage ~~lists~~ list required by subsection (a) of Code Section
 167 44-7-33 ~~are~~ was not made and ~~provided~~ presented to the tenant as required by such
 168 subsection; and

169 (3) The final damage list required by subsection (b) of Code Section 44-7-33 was not
 170 compiled and made available to the tenant as required by such subsection.

171 (b) The failure of a landlord to provide ~~each of the lists and~~ written statements within the
172 time periods specified in Code ~~Sections 44-7-33 and~~ Section 44-7-34 shall work a
173 forfeiture of all ~~his~~ the landlord's rights to withhold any portion of the security deposit or
174 to bring an action against the tenant for damages to the premises.

175 (c) Any landlord who fails to return any part of a security deposit which is required to be
176 returned to a tenant pursuant to this article shall be liable to the tenant in the amount of
177 three times the sum improperly withheld plus reasonable attorney's fees; provided,
178 however, that the landlord shall be liable only for the sum erroneously withheld if the
179 landlord shows by the preponderance of the evidence that the withholding was not
180 intentional and resulted from a bona fide error which occurred in spite of the existence of
181 procedures reasonably designed to avoid such errors."

182 **SECTION 4.**

183 All laws and parts of laws in conflict with this Act are repealed.