

# **A Comparison of the Revised Uniform Residential Landlord and Tenant Act (Committee Draft) with the Uniform Residential Landlord and Tenant Act (1972)**

## **Section 102. Definitions.**

The Committee Draft for the Revised Uniform Residential Landlord Tenant Act (201\_) (hereinafter "Committee Draft") significantly adds to or modifies a number of defined terms as compared to the terms defined under § 1.301 of the Uniform Residential Landlord and Tenant Act (1974) (hereinafter "Existing Act"). The defined terms added or modified include "abandonment," "assignment," "assignee," "assignor," "attesting third party," "domestic violence," "electronic," "essential services," "good faith," "immediate family member," "lease," "normal wear and tear," "periodic rent," "periodic tenancy," "person," "perpetrator," "premises," "prepaid rent," "record," "security deposit," "sign," "stalking," "state," "sublease or sublet," "sublessee," "sublessor," "tenancy for a fixed term" and "uninhabitable."

As compared to the Existing Act, the Committee Draft no longer defines "organization," "rental agreement," or "single family residence."

The Committee Draft keeps the definitions of "action," "building, housing, and health codes," "dwelling unit," "landlord," "owner," "premises" "rent" "roomer" and "tenant" substantially the same.

## **Section 103. Scope.**

This section defines the scope of the Committee Draft. The Committee Draft applies to, regulates, and determines rights, obligations, and remedies under a lease for a dwelling unit in a state

The Committee Draft differs from the Existing Act only to the extent of proposing that the educational exclusion cover only specific educational arrangements that are considered dorm or dorm-like. Thus, University housing other than dormitories are covered by the Committee Draft.

## **Section 104. Common Law and Principles of Equity.**

This section of the Committee Draft is substantially the same as § 1.103 of the Existing Act. The Comment to § 104 emphasizes the application of contracts law, so that performances of promises the landlord and tenant make to each other are dependent upon the other.

## **Section 105. Construction Against Implicit Repeal.**

The Committee Draft keeps the language of § 1.104 of the Existing Act saying that no part of the Committee Draft should “be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.”

#### **Section 106. Administration of Remedies; Enforcement; Duty to Mitigate.**

This Committee Draft keeps the same language of the Existing Act. Only the format of the section has changed.

This section allows an aggrieved party to recover appropriate damages; establishes a duty of the aggrieved party to mitigate damages; and creates a cause of action for any right or obligation in the Committee Draft, unless a provision specifically calls for a different and limited effect.

The comment in the Committee Draft notes that its inclusion of a mitigation rule is consistent with the Existing Act. Unlike the Existing Act, the Committee Draft in Section 603 sets forth a safe harbor for landlords to follow in cases where a tenant has wrongfully abandoned the dwelling unit. If the safe harbor is followed, the landlord has met the mitigation obligation.

#### **Section 107. Settlement of Disputed Claim or Right.**

This section is essentially the same as § 1.106 of the Existing Act. It allows for good faith disputes to be settled by agreement between the parties.

#### **Section 108. Jurisdiction and Service of Process on Landlord.**

Like § 1.203 of the Existing Act, the Committee Draft provides jurisdiction to courts for any landlord in the state and respecting any conduct or claim covered under the Committee Draft. Additionally, the Committee Draft allows for the personal jurisdiction over a landlord who is not a resident of the state by the designation of an agent, who is a resident of the state, or authorized to do business in the state, upon whom service of process can be made. If no designation is made, the Committee Draft allows for process to be served by sending a copy of the process and pleading by registered mail to the landlord at the landlord’s last reasonably ascertainable address. This provision has been bracketed because it would be unnecessary in most states with long-arm statutes?

The Committee Draft differs from the Existing Act in that it expands upon the process the landlord must take in order to designate an agent. The Existing Act required the designation to be in writing and filed with the Secretary of State. The Committee Draft directs the reader to Section 301(b), which requires the landlord “to disclose to the tenant in a record before the commencement of tenancy the name and post office and electronic mail address of . . . any person authorized to act on the landlord’s behalf . . .”

Additionally, the Committee Draft removes the language requiring an affidavit of compliance with the section to be filed with the clerk of court on or before the return day of process.

### **Section 109. Obligation of Good Faith.**

The Committee Draft imposes an obligation of good faith with regard to every duty and every act, as a condition precedent to the exercise of a right or remedy under the Committee Draft. This obligation is the same as § 1.302 of the Existing Act.

### **Section 110. Unconscionability.**

Like § 1.303 of the Existing Act, the Committee Draft allows unconscionability to be considered by a court. If it is put into issue, either by the court's own motion or by a party, the Committee Draft calls for parties to be given the reasonable opportunity to present evidence with respect to the setting, purpose, and effect of the lease or settlement to aid the court in making its determination. The Committee Draft allows the court to refuse to enforce the lease, enforce the remainder of the lease without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result if the court finds, as a matter of law, that a lease or any provision was unconscionable when made, or a settlement where a party waived or agreed to forego a claim or fight was unconscionable.

### **Section 111. Knowledge and Notice.**

The Committee Draft keeps the definitions of "notice" and "knowledge" substantially the same as § 1.304 of the Existing Act. The Committee Draft expands on the ways that notification can be accomplished by allowing delivery to a landlord or tenant by any method reasonably calculated to provide notice.

Additionally, the Committee Draft expands upon the notice definition for "a person other than an individual" (business entities), stating that notification has been received if "the individual conducting the transaction for the person knows, has notice, or receives a notification of fact, or in any event when the fact would have been brought to the individual's attention if the individual had exercised reasonable diligence."

Unlike the Existing Act, the Committee Draft defines what constitutes "reasonable diligence," stating that reasonable is exercised if the person maintains reasonable routines for communicating significant information to an individual conducting the transaction for the person and there is reasonable compliance with the routines.

Subsection (d) provides that whenever a formal notice must be given under the Committee Draft—say notice to terminate a periodic tenancy—the notice must be in a signed record (see definition of "sign" to include ordinary email) and sent to the landlord or tenant at the recipient's last known post office address or email address. No comparable provision exists in the Existing Act.

### **Section 201. Terms and Conditions of Leases.**

The Committee Draft retains most of the language of § 1.401 of the Existing Act. This section allows landlords and tenants to include in a lease terms and conditions not prohibited by the Committee Draft. It calls for rent to be payable without demand or notice on the first of each month or at the beginning of the term if the term is for less than one month. It deletes as necessary subsection (b) of § 1.401 of the Existing Act, which stated that “[i]n the absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.”

### **Section 202. Effect of Unsigned, Undelivered Lease or Oral Lease.**

The majority of this section of the Committee Draft is the same as § 1.402 of the Existing Act. Both the Committee Draft and the Existing Act provided that if a written lease signed by the tenant and delivered to the landlord but is not signed by the landlord and returned to the tenant, acceptance of rent by the landlord without reservation gives the lease the same effect as if the lease had been signed and returned to the tenant. Likewise, if the tenant fails to return and sign a lease that had been signed by the landlord but accepts possession and pays rent, the lease is given the same effect as if it had been signed and returned by the tenant. Additionally, both Acts provide that a lease not signed by both the landlord and the tenant for a tenancy for a fixed term longer than one year is only effective for one year.

Unlike the Existing Act, the Committee Draft adds language governing oral leases and written leases signed by neither the landlord nor the tenant. For these leases, the Committee Draft provides that if the tenant accepts possession and pays rent to the landlord and the landlord accepts rent, then a tenancy is created for a term of week-to-week if rent is payable weekly and in all other cases a month-to-month tenancy is created.

### **Section 203. Prohibited Provisions in a Lease.**

The Committee Draft substantially incorporates the language of § 1.403 of the Existing Act.

### **Section 204. Separation of Rents from the Obligation to Maintain Premises.**

The Committee Draft is substantially the same as § 1.404 of the Existing Act. It is bracketed in the Committee Draft because the co-Reporters are unclear of its purpose or need.

### **Section 301. Required Disclosures.**

The Committee Draft builds upon § 2-102 of the Existing Act, increasing to some extent the information that a landlord must disclose to a tenant before entering into a lease or accepting a security deposit. The Existing Draft requires disclosure of the name and post

office address of (1) the person authorized to manage the premises and (2) the owner of the premises or a person authorized to act for and on behalf of the owner for purpose of service of process and receiving notices and demands. The Committee Draft adds two more category of disclosures, requires the landlord to disclose the name of the landlord and “any person authorized to act on the landlord’s behalf.” The Committee Draft also adds the requirement that the landlord disclose the electronic mail address of such persons.

Additionally, under the Committee Draft, the landlord must disclose all rules, regulations, and conditions that would govern the tenancy; any conditions on the premises that would cause the landlord to be in breach of a duty owed to the tenant; and any conditions in the premises of which the tenant is unlikely to be aware that could cause a substantial hazard to their health or safety. These specific provisions are not found in the Existing Act.

### **Section 302. Delivery of Possession of Dwelling Unit to Tenant.**

The Committee Draft does not change the requirements of this section as found in § 2.103 of the Existing Act. This section requires the landlord to deliver possession of the premise to the tenant at the commencement of the lease term and provided that the landlord may bring a cause of action and recover damages against any person in wrongful possession of the property.

### **Section 303. Landlord’s Duty to Maintain.**

This Committee Draft provides greater guidance than § 2.104 of the Existing Act regarding a landlord’s duty to maintain. The Committee Draft begins with the basic premise that the landlord “shall have the duty to make all repairs and to do or refrain from doing whatever is necessary to assure that the premises are habitable.” The Committee Draft then lists specific conditions that would cause the dwelling unit to be uninhabitable. The Committee Draft includes the basic concepts contained in the Existing Act (e.g., compliance with building and housing codes materially affecting health and safety)but gives greater detail to provide more certainty for landlords and safety for tenants in states without codes addressed to habitability.

The Committee Draft provides that a dwelling unit is uninhabitable if the premises substantially lack the following:

- (a) effective waterproofing and weather protection of the roof and exterior walls, including windows and doors;
- (b) plumbing facilities that conform to applicable law in effect the time of installation and that are maintained in good working order;
- (c) water supply that is connected to a sewage disposal system;
- (d) adequate heating facilities but changes the requirement under the Existing Act that such heat be available between the specific dates of October 1 and May 1;
- (e) prevention or remediation of rodents, bedbugs, and other vermin, mold, radon, asbestos, or other hazardous substances;

- (f) common areas under the landlord controls that are safe for normal and reasonably foreseeable uses and are clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin;
- (g) an adequate number of receptacles for garbage and rubbish in clean condition;
- (h) floors, walls, ceiling, stairways and railings maintained in good repair;
- (i) locks on all exterior doors and locks or security devices on exterior windows that are maintained in good repair; and
- (j) safety equipment required by applicable law, including but not limited to working smoke detectors, carbon monoxide detectors, and fire extinguishers.

The use of the word “substantially” is a change from the Existing Act, which had required the landlord to comply with applicable building and housing codes “materially” affecting health and safety.

The Committee Draft also revises the language in § 2.104 of the Existing Act regarding the landlord and tenant’s ability to agree that the tenant may perform some of the landlord’s repair obligations. The Existing Act contained two different standards, one affecting tenants of single family residences and the other affecting tenants in dwelling units other than single family residences. The Committee Draft combines these provisions into one and streamlines the language. It provides that “[t]he landlord and the tenant may agree in a record signed by them that the tenant will perform specified repairs or maintenance to discharge the landlord’s duties under subsection (a) if the agreement is entered into in good faith and does not diminish or affect the obligation of the landlord to other tenants in the premises.” It further provides that the landlord may not treat performance of such an agreement as a condition to or a discharge of the landlord’s performance of any obligations under the lease or the act.

The Committee Draft also adds that nothing in the section should be construed as abrogating, limiting, or otherwise affecting the obligation of a tenant to pay for any utility service in accordance with the provisions of the lease.

#### **Section 304. Limitations on Landlord’s Liabilities.**

This section of the Committee Draft is substantially the same as § 2.105 of the Existing Act. Liked the Existing Act, the Committee Draft limits a landlords and managers liability under the rental agreement if the landlord conveyed the land to a bona fide purchaser in good faith. However, unless otherwise agreed upon, the landlord remains liable to tenants for all security deposits and prepaid rent.

The Committee Draft deletes the comments found in the Existing Act.

#### **Section 401. Tenant’s Duty to Maintain.**

This section imposed duties on a tenant to maintain the dwelling. Many of the tenant's obligations stay the same in the Committee Draft as in § 3.101 of the Existing Act. These requirements include:

- (1) keeping the dwelling unit safe and sanitary;
- (2) disposing from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;
- (3) keeping all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (4) using in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances;
- (5) not deliberately or negligently destroying, defacing, damaging, impairing, or removing any part of the premise or knowingly permitting any other person from doing the same;
- (6) acting and requiring other persons on the premises with the tenant's consent to act in a manner that will not disturb the neighbors' peaceful enjoyment of the premises.

The Committee Draft adds a duty for the tenant to notify the landlord of any conditions on the premises that require repair or remediation and specifies that the tenant has the duty to return the dwelling unit to the landlord at the termination of the lease in the same condition as it was at the commencement of the tenancy, taking into account normal wear and tear.

The Committee Draft changes the requirement that the tenant comply with all obligations imposed upon tenants by applicable provisions of building, housing and health codes, if those codes "substantially," instead of "materially" as required in the Existing Act, affect health and safety.

#### **Section 402. Landlord's Rules and Regulations.**

Other than a few changes, the Committee Draft is substantially the same as the Existing Act § 3.102. This section allows the landlord, from time to time, to adopt a rule or regulation concerning the tenant's use and occupancy of the premise. The rule or regulation will not be enforceable against the tenant unless the tenant has notice of it at the time he or she enters into the rental agreement, or the tenant consents to it in writing. Additionally, the rules or regulations will only be enforceable against the tenant under certain circumstances, including, but not limited to circumstances that the rules or regulations:

- (1) has the purpose of promoting the safety or welfare of the tenant or protecting the property from abusive use;
- (2) is reasonably related to the purpose of which it is adopted;
- (3) applies to all tenants in a fair and impartial manner;

- (4) is sufficiently explicit in its prohibition, direction or limitation so as to fairly inform the tenant of what they must or must not do;
- (5) is not for the purpose of evading the landlord's obligations under the act; and
- (6) are known to the tenant at the time the tenant enters into the lease or within five days after its adoption.

The Committee Draft differs from the Existing Act in that it adds the five days' notice requirement to the tenant and requires that the rules and regulations apply to tenants not only in a fair manner, but also an impartial manner.

#### **Section 403. Landlord's Access to Dwelling Unit.**

This section of the Committee Draft incorporates the same substantive content of § 3.103 of the Existing Act. This section outlines the tenant's obligation not to unreasonably withhold consent to the landlord to enter the dwelling for specific purposes as outlined in the section. The section gives the landlord the right to enter the dwelling without the tenants consent in case of emergency, and requires the landlord to give the tenant two days' notice of the landlord's intent to enter the dwelling unit. Otherwise, the section does not allow the landlord a right to access unless the tenant otherwise agrees, pursuant to a court order, as permitted by Sections 602 and 603(b), or unless the tenant has abandoned or surrendered the dwelling unit. A separate memorandum has been sent to the committee about this issue.

#### **Section 404. Tenant to Use and Occupy.**

The language in the Committee Draft is the same as § 3.104 of the Existing Act. This section provides that the tenant should only occupy the dwelling until as a dwelling unit and allows a lease to establish a duty on the tenant to notify a landlord of any extended absence (in excess of seven days) from the dwelling unit no later than the first day of the extended absence.

#### **Section 501. Noncompliance by Landlord-In General.**

This section of the Committee Draft defines the tenant's rights if there is a substantial noncompliance with the lease or Section 303(a) by the landlord, and the landlord does not remedy such noncompliance within fourteen days after the tenant notifies the landlord in a record of the specific acts or omissions constituting the noncompliance.

The Committee Draft, as compared to the Existing Act, clarifies the remedies available to the tenant if there is substantial noncompliance by the landlord (as compared to material



noncompliance as required under § 4.101 of the Existing Act). The Existing Act contained a variety of remedies set forth in separate provisions. The Committee Draft begins with a comprehensive list of the remedies in Section 501 and provides cross references to the more specific provisions in the other sections. The Committee Draft allows the tenant to elect to terminate the lease; abate the rent for the period of noncompliance; seek injunction relief or specific performance; make minor repairs and deduct the cost from the rent; or secure essential services or comparable substitute housing during the period of noncompliance.

The Committee Draft differs significantly from the Existing Act in that it allows tenant to recover damages for noncompliance “in an amount equal to the difference between the amount of rent provided in the lease and the value of the tenant’s use and occupation of the dwelling unit in a noncompliant condition, which may be determined without the use of an expert.” Additionally, the Committee Draft allows a tenant to recover consequential damages, costs, and reasonable attorney’s fees if the landlord’s noncompliance was willful. Under § 4.101(b) of the Existing Act, the tenant is only allowed to recover reasonable attorney’s fees.

Similar to the Existing Draft, the Committee Draft provides that a tenant is not entitled to remedies for noncompliance with the lease or Section 303 if the noncompliance was caused by the tenant’s negligence or deliberate act or by the act of an immediate family member or tenant’s invitee or the tenant prevented the landlord from having access to the dwelling unit to make necessary repairs.

The tenant’s remedy election can be made without the 14 days’ notice if the landlord otherwise knows of any condition on the premises that is in substantial noncompliance with the lease and fails to remedy the condition within fourteen days after acquiring such knowledge.

#### **Section 502. Landlord’s Failure to Deliver Possession to Tenant.**

Failure by the landlord to deliver possession of the unit to the tenant as provided in Section 302 will result in abatement of rent until the landlord delivers possession. The tenant may terminate the lease after giving five days’ notice or demand performance of the lease by the landlord. Willful failure to deliver possession may result in the aggrieved party being able to recover from the party acting in bad faith an amount not to exceed three months’ rent or threefold the actual damages incurred, whichever is greater, and costs and reasonable attorney fees.

The Committee Draft does not change any language of the Existing Act except to add “costs” to what an aggrieved person may recover for a person’s willful failure to deliver possession in bad faith. The Existing Act provides for recovery of reasonable attorney fees and an amount not more than three months’ periodic rent or threefold the actual damages sustained, whichever is greater, but does not mention costs.

#### **Section 503. Self-Help for Minor Defects.**

A tenant may respond to the noncompliance of a landlord with the lease or Section 303 by notifying the landlord of the tenant's intention to correct the condition at the landlord's expense, so long as the expense is less than \$500 or half the periodic rent, whichever is greater. If the landlord fails to comply within 14 days of receiving notification from the tenant, or as quickly as conditions require in an emergency, the tenant may correct the condition. Once the tenant submits an itemized statement to the landlord of the purchased items and services, the tenant may deduct the actual or fair and reasonable value of the work from the rent. Unless the landlord agrees that the tenant may make repairs personally, the tenant must use a licensed contractor who acts competently and complies with applicable laws. If the tenant deliberately caused the condition or it resulted from the tenant's negligence, the landlord will not be responsible for the repair expenses. Also, if the tenant has already used this self-help remedy more than once within the previous year or the landlord cannot gain access to the unit, the landlord will not be held responsible.

The Committee Draft requires that expenses be less than \$500 as opposed to \$100 in the Existing Act. The Committee Draft also mandates that the tenant employ a licensed contractor to do the repairs unless the landlord agrees that the tenant may personally make the repairs, a requirement that did not exist in the Existing Act. Additionally, the Committee Draft differs by not holding landlords financially responsible for remedying defects when the tenant already used this remedy more than once within the previous year or if the landlord cannot gain access to the unit.

#### **Section 504. Landlord's Wrongful Failure to Provide Essential Services.**

If the landlord willfully or negligently fails to provide essential services to the tenant contrary to the terms of the lease or Section 303, the tenant may give the landlord notice articulating the specific breach. Provided that the tenant gives notice and did not cause the condition, the tenant may deduct the cost of securing essential services during the landlord's noncompliance from rent. The tenant may also secure reasonable substitute housing or recover damages based on the diminished value of the use and occupation of the dwelling unit. In the case where the tenant procures substitute housing, the tenant does not have to pay rent during the period of the landlord's noncompliance and may also recover the difference between the rent provided in the lease and the cost of the substitute housing. Additionally, the tenant may recover costs and reasonable attorney's fees. If the tenant proceeds under this section, the tenant may not use remedies provided under Section 501 or 503.

The Committee Draft specifies that the tenant does not need expert testimony to determine the amount of recoverable damages based upon the amount of rent provided in the lease and the value of the tenant's use and occupation of the unit in its noncompliant condition.

#### **Section 505. Landlord's Noncompliance as Defense to Action for Possession or Nonpayment of Rent.**

If a landlord brings an action for possession based upon nonpayment of rent, a tenant may use as a defense that no rent was due or counterclaim for any amount the tenant may recover under the lease or the Committee Draft. While an action is pending, the court may order the tenant to pay all or part of the unpaid rent into an escrow account. If the court determines that the landlord failed to comply with the lease or Section 303, the court may order that all or some portion of rents held in escrow be refunded to the tenant for repairs to be made by the tenant in compliance with Section 503, damages owed to the tenant or other actual damages. A ruling by the court that the landlord fully complied with the lease and Section 303 or that the tenant failed to deposit the full amount of rent into escrow as ordered by the court will result in the immediate release of any rent held in escrow to the landlord. The tenant will also be ordered to pay the landlord the remaining rent owed. If the tenant's defense or counterclaim was not raised in good faith, the court may also order the tenant to pay the landlord's costs and attorney's fees.

In an action for rent when the tenant is not in possession, the tenant may counterclaim but is not required to provide rental payments to the court.

In a change from the Existing Act, the Committee Draft specifies that while an action is pending, unpaid rent may be ordered to be paid into an escrow account (the Existing Act simply said "pay into court") with the court or a financial institution or other entity authorized to hold funds in escrow. The Committee Draft also specifies that if the tenant's defense or counterclaim was raised upon the advice of the tenant's counsel, it will be presumed to have been raised in good faith.

#### **Section 506. Fire or Casualty Damage.**

If fire or other casualty damage occurs to a dwelling unit or its premises to the extent that enjoyment of the unit is substantially impaired, the tenant may terminate the lease by vacating the unit and notifying the landlord within 14 days of intent to terminate the lease. In such a case, the landlord must return all security deposits and prepaid rent recoverable under Section 904. If the tenant decides to continue to occupy the unit and such occupancy is lawful, he or she can vacate any portion of the unit considered unusable as a result of the damage. The tenant's liability for rent will be the difference between the amount of rent provided in the lease and the value of the tenant's continued use and occupation of the unit.

The Existing Act specifies that if continued occupancy is lawful, the tenant may vacate any part of the unit rendered unusable due to the damage and the tenant's rent will be reduced in proportion to the diminution in the fair market value of the unit. This differs from the wording of the Committee Draft, which reduces the tenant's liability by the difference between the amount of rent provided in the lease and the value of the tenant's continued use and occupation of the unit. The Committee Draft also specifies that this determination does not require expert testimony.

**Section 507. Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or Diminution of Service.**

If the landlord unlawfully removes or excludes the tenant from the premises or willfully fails to provide essential services, the tenant may regain possession or terminate the lease. Additionally, the tenant may recover up to three months' periodic rent or threefold the actual damages, whichever is greater, along with costs and reasonable attorney's fees. Upon lease termination, the landlord must return all security deposits and prepaid rent recoverable under Section 904.

**Section 508. Early Termination of Lease by Tenant as the Result of Domestic Violence.**

If a tenant or an immediate family member has been the victim of domestic violence, the tenant may be released from the lease at any time within 90 days. The tenant must give the landlord notice of the tenant's intent to be released from the lease at least 14 days prior to the release date specified in the notice. The tenant must also provide either a copy of a valid order of protection in which a state court restrains the perpetrator from contact with the victim, a copy of a police report detailing the act of domestic violence, a copy of the conviction of the perpetrator, or a verification signed by the tenant and an attesting third party that complies with Section 508(h). If the tenant is the sole party to the lease, the lease terminates upon the date specified in the notice, releasing both the tenant as well as any immediate family members from liability for rent thereafter. If there are multiple tenants who are parties to the lease, releasing one tenant does not terminate the lease with respect to the other parties. The landlord does not have to refund security deposits or prepaid rents under Section 904 until the lease terminates for all tenants and they surrender the unit to the landlord.

If the tenant complies with this section, the landlord must return all security deposits and prepaid rent recoverable under Section 904 once the tenant vacates the unit assuming the tenant is the sole tenant under the lease. The landlord may recover actual damages from the domestic violence perpetrator. If the perpetrator is a party to the lease, the perpetrator may be allowed to remain in possession of the dwelling unit and assume responsibility for rent. The landlord may also terminate the perpetrator's interest in the lease by giving the perpetrator at least five days' notice.

A tenant who knowingly submits a false verification to the landlord may be liable for an amount equal to three months' periodic rent or three fold actual damages, whichever is greater.

There is no corresponding provision in the Existing Act.

**Section 509. Change of Locks as a Result of Domestic Violence.**

If a tenant or an immediate family member has been the victim of domestic violence and the tenant does not choose to be released from the lease, the tenant may request that the

landlord change the locks of the unit at the tenant's expense. The landlord must fulfill this request within three days of receiving the notice. If the landlord fails to comply with the three-day notice, the tenant may change the locks and then provide the landlord with a key to the new locks.

If the perpetrator of the domestic violence is a party to the lease, a court order requiring the perpetrator to vacate the unit must first be obtained and a copy provided to the landlord before the locks can be changed. The tenant will not be required to pay additional rent, fees, or security deposit as a result of excluding the perpetrator from the unit. The perpetrator may not receive any damages or other relief from a landlord or tenant who complies with this section.

There is no corresponding provision in the Existing Act.

#### **Section 510. Effect of Court Order to Vacate.**

Upon the issuance of a court order for the perpetrator of domestic violence to vacate the unit, neither the landlord nor the tenant has any duty to give the perpetrator access to the unit unless accompanied by a law enforcement officer. If the perpetrator is a party to the lease, the perpetrator's interest in the tenancy terminates once a court order has been issued. The landlord and tenant are entitled to actual damages resulting from that termination. The landlord must return all security deposits and prepaid rent recoverable under Section 904 once the tenant vacates the unit and terminates the lease. A landlord cannot increase rent or a security deposit in response to the termination of the perpetrator's interest as a tenant in the unit.

There is no corresponding provision in the Existing Act.

#### **Section 601. Noncompliance with Lease by Tenant; Failure to Pay Rent.**

If a tenant fails to comply with a material provision of the lease or noncompliance with Section 401 substantially affects health and safety, the landlord may give notice of the breach and that the lease will terminate not less than 30 days after receipt of the notice. The lease shall terminate if the tenant does not remedy the breach within 14 days. The lease will not terminate if the tenant adequately remedies the breach before the date of termination. If substantially the same noncompliance recurs within six months, the landlord may give notice that the lease will terminate not less than 14 days after receipt of the notice. The landlord may terminate the lease if the tenant fails to pay rent when due as well as within 14 days of notification from the landlord of nonpayment and the landlord's intent to terminate the lease if rent is not paid within that period. In the event of a tenant's material noncompliance with the lease or Section 401, the landlord may recover actual damages and obtain injunctive relief or specific performance. The landlord may also recover costs and reasonable attorney's fees for willful noncompliance.

The Committee Draft differs from the Existing Act by providing that in a situation where substantially the same act or omission of noncompliance recurs within six months of

prior noncompliance and notice, the landlord may give notice of the noncompliance and the lease will terminate upon a specified date not less than 14 days after receipt of the notice. Also, under the Committee Draft, willful noncompliance by the tenant enables the landlord to recover costs in addition to the reasonable attorney's fees.

#### **Section 602. Tenant's Failure to Maintain.**

If the tenant does not comply with Section 401 in the maintenance of his or her dwelling unit and such noncompliance affects the health and safety of the unit that can be remedied by repair, replacement of a damaged item, or cleaning, the landlord may enter it and cause professional work to be done if the tenant fails to remedy the noncompliance either as promptly as conditions require in an emergency or within 14 days of notice of breach by the landlord. In this case, the tenant must either pay the actual and reasonable cost or fair and reasonable value of the work done as rent on the next date periodic rent is due, or pay immediately if the lease has terminated.

There are no differences in the language between the Committee Draft and Existing Act.

#### **Section 603. Absence, Nonuse and Abandonment.**

If the lease requires that the tenant give the landlord notice of an absence in excess of seven days and the tenant willfully fails to do so, the landlord may recover actual damages, costs, and attorney's fees from the tenant. The landlord may enter the unit when reasonably necessary during the tenant's absence. If the tenant abandons the unit prior to the end of the tenancy, the landlord has a duty to make "reasonable efforts" to rent the unit at its fair market value. "Reasonable efforts" means the actions a landlord of standard local rental practices would take to rent a unit if it had been vacated at the end of the term. "Reasonable efforts" include showing the unit to prospective tenants and advertising its availability. The landlord may recover actual damages if it is unable to lease the unit after making reasonable efforts to do so. The landlord does not have to show or lease the unit in preference to other units. Failure by the landlord to make reasonable efforts to rent the abandoned unit effectively terminates the lease as of the date the landlord has notice of abandonment and the landlord shall refund security deposits and prepaid rent.

The Committee Draft differs substantially from the Existing Act in that it provides a "safe harbor" for landlords by defines what constitutes "reasonable efforts" to mitigate while the Existing Act does not. The Committee Draft also provides that in the case where the landlord fails to use reasonable efforts to rent the unit or accepts the abandonment as a surrender, the lease is not only terminated but the landlord shall refund all security deposits and prepaid rent. Finally, if the tenant fails to give the landlord notice of an absence in excess of seven days as required by the lease, the Committee Draft enables the landlord to recover costs and attorney's fees in addition to the actual damages granted in the Existing Act.

#### **Section 604. Waiver of Landlord's Right to Terminate.**

When a landlord either accepts rent knowing of a default by the tenant or accepts performance by the tenant varying from the terms of the lease, the landlord waives the landlord's right to terminate the lease for that breach unless otherwise agreed after the breach occurred.

No differences exist between the old and Committee Drafts.

#### **Section 605. Landlord's Liens; Distress for Rent; Tenant's Abandonment of Household Goods.**

After the effective date of the Committee Draft a lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable. The Committee Draft also abolishes distraint for rent.

No differences exist between the Existing Act and the Committee Draft.

#### **Section 606. Remedy after Termination.**

If the tenant wrongfully terminates the lease, the landlord has claims for both possession and rent as well as actual damages for breach of the lease, costs, and reasonable attorney's fees as provided in Section 601(c).

The Committee Draft specifies that the lease must be wrongfully terminated by the tenant in order for the landlord to have a claim, whereas the Existing Act simply states that the landlord has a claim if the lease is terminated. The Committee Draft also enables the landlord to recover costs in addition to the actual damages for breach of the lease and reasonable attorney's fees.

#### **Section 607. Recovery of Possession Limited; Diminution of Services.**

The landlord may not recover or take possession of the dwelling unit nor interrupt essential services to the tenant except in the case of abandonment, surrender, or as otherwise permitted by this Act.

No differences exist between the Existing Act and the Committee Draft.

#### **Section 701. Termination of Periodic Tenancy; Death of A Tenant.**

A periodic tenancy for week-to-week may be terminated by either the landlord or the tenant by giving at least five days' notice of an intent to terminate on the date specified in the notice. A month-to-month periodic tenancy requires that the landlord or tenant give one month notice at the end of a monthly period. Terminating either a week-to-week or month-to-month periodic tenancy requires no articulation of the reason for the

termination. This is a minor change from the Existing Act, which required 10 days notice to terminate a week-to-week periodic tenancy and 60 days to terminate a month-to-month periodic tenancy. The Committee Draft also specifies that such notices need not provide any reason for termination.

The Committee Draft provides conditions in which the landlord or tenant may terminate a tenancy for a term of years which the Existing Act does not mention.

The Committee Draft provides that a fixed term tenancy may be terminated with the giving of 60 days' notice if, in the case of the landlord, the landlord has accepted an offer to purchase the dwelling unit from a buyer intended to occupy the dwelling unit and the such 60 days was given within 120 days of accepting the offer. In the case of the tenant, a notice to terminate a fixed term tenancy may be given if the tenant has accepted a job offer requiring the tenant to relocate at least 90 miles from the dwelling unit and the notice was given within 120 days of accepting the offer.

In addition, the Committee Draft provides that if a tenant dies prior to the end of a fixed term tenancy and the tenant was the only tenant on the lease as a tenant, the tenant's surviving spouse may assume the lease by giving the landlord at least 20 days' notice after the tenant's death. The landlord or personal representative of the deceased tenant's estate may also choose to terminate the lease by giving at least 60 days' notice of the intent to terminate the tenancy.

## **Section 702. Holdover Tenancies.**

If the tenant remains in possession of the dwelling without the landlord's consent after the expiration of a tenancy for a term of years or the termination of the lease, the landlord may bring an action for possession. A willful holdover which is not in good faith enables the landlord to also recover not more than three months' periodic rent or threefold the actual damages sustained by the landlord, whichever is greater, costs and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, a periodic tenancy for month-to-month is created with the same terms and conditions of the original lease unless otherwise agreed.

The Committee Draft differs from the Existing Act § 4.301 by adding a provision stating that consent by the landlord to the tenant's continued occupancy creates a periodic tenancy for month-to-month under the same terms and conditions as the lease unless otherwise agreed. If the tenant holdover is willful and not in good faith, the Committee Draft grants the landlord recovery of costs in addition to the other forms of recovery listed in the Existing Act.

## **Section 703. Landlord and Tenant Remedies for Abuse of Access.**

If the tenant refuses to give the landlord lawful access to the dwelling unit, the landlord may either gain access through injunctive relief or terminate the lease. The landlord may



recover actual damages, costs and reasonable attorney's fees. If the landlord makes an unlawful entry, a lawful entry in an unreasonable manner, or repeatedly demands for entry in a way which causes unreasonably harassment to the tenant, the tenant may either obtain injunctive relief or terminate the lease. The tenant may recover actual damages not less than one month's rent, costs and reasonable attorney's fees.

If the tenant refuses to allow the landlord lawful access to the unit, the Committee Draft grants the landlord recovery of costs in addition to the other forms of recovery already listed in the Existing Act. The Committee Draft also enables the tenant to recover costs if the landlord makes an unlawful entry or an entry which unreasonably harasses the tenant.

### **Section 901. Nature and Amount of Security Deposit.**

The Committee Draft significantly expands the right and responsibilities of landlord and tenants with respect to security deposits. Like the Existing Act, the Committee Draft does not allow landlords to collect security deposits in an amount which when aggregated with any nonrefundable fees payable when the lease begins exceeds 1.5 months of period rent. This is changed slightly from the Existing Act, which did not refer to non-refundable fees as being included within the calculation.

The Committee Draft allows for an additional security deposit which is commensurate with the additional risk of damage, for situations where the lease is for a furnished dwelling or permits the tenant to keep pets or make alterations to the dwelling.

Additionally, the Committee Draft differs from the Existing Act in its treatment of prepaid rent. Security deposits and prepaid rents are to remain the tenant's property in which the landlord shall have a security interest to secure the tenants obligations under the lease. However, security deposits and prepaid rent are to be exempt from attachment and execution by the landlord's creditors and are exempt from garnishment by the tenant's creditors.

### **Section 902. Tenant Prohibited From Using Security Deposit as Rent.**

The Committee Draft adds this section to address the common misconception of tenants that the security deposit may be used in lieu of paying the last months' rent. The Committee Draft provides that, unless agreed to otherwise in a signed record, the tenant cannot use or apply the security deposit it provided the landlord at any time in lieu of payment of rent. If the tenant violates the section in bad faith, the landlord may recover the unpaid rent and an additional amount equal to two times the periodic rent plus costs and reasonable attorney fees.

### **Section 903. Safekeeping of Security Deposits.**

The Committee Draft adds this section and the requirement that landlords segregate both security deposits and unpaid rents from the landlord's other funds. The section requires

that prepaid rents and security deposit be held by the landlord in a federally insured financial institution. Such funds may be commingled with other security deposits and prepaid rents but may not be commingled with the landlord's personal funds. The funds are not required to be deposited in an interest-bearing account. If the landlord fails to comply, the tenant may recover actual damages or one months' periodic rent, whichever is greater, together with costs and reasonable attorney's fees.

#### **Section 904. Return of Security Deposits or Prepaid Rent; Disputes.**

This section of the Committee Draft provides that a landlord may apply security deposits and paid rent as provided in the lease. Unlike the Existing Act, these rules are triggered automatically by the termination of the lease. The Existing Act required the tenant to make a demand for the payment.

Under the Committee Draft, upon termination of the lease, the landlord must refund to the tenant any unused amounts within thirty days of the termination of the lease. The amount refunded must be the amount of security deposit and prepaid rent that the landlord in good faith reasonably believes is due to the tenant. If less than the entire amount of the security deposit or prepaid rents collected is refunded, the landlord must provide the tenant with a record signed by the landlord that outlines:

- (a) items to which the security deposit or prepaid rent are being applied and
- (b) itemization of the amount being retained by the landlord for each item.
- (c) Additionally, copies of paid receipts for expenses paid by the landlord to others or statements of the landlord's charges including the reasonable costs of the landlord's own labor should be included.

If the landlord is not able to provide an itemization of the amount being retained, the record should provide a good faith estimate of the amount retained and the landlord must furnish the tenant with a supplemental record within sixty days after termination of the lease, together with any portion of the security deposit to which the tenant is still entitled. The landlord must notify the tenant by a conspicuous statement in the record that unless the tenant objects to the withholding of any amount within ten days of the receipt of the record or supplemental record, the tenant waives the right to objection to the landlord's withholding.

In disputes involving the security deposit or prepaid rent, proof of the existence of and the amount of prepaid rent may be established by any credible evidence. The landlord has the burden of proving that the retention of any portion of the security deposit or prepaid rent was reasonable.

The landlord must send the refund and record to an address provided by the tenant, or, in the absence thereof, to the address specified by the tenant in Section 111(d) (3). A landlord who complies with the section is not liable if the refund or record is misdelivered or is undeliverable. Any security deposit, prepaid rent, or outstanding check, unclaimed by the tenant is forfeited by the tenant after 180 days.

Under the section, the landlord is penalized for noncompliance. If the landlord failed to remit the security deposit and prepaid rents as required, the tenant may recover the amount of the security deposits and prepaid rent and an additional amount equal to two times the amount of the security deposits and prepaid rent, or \$250, whichever is greater. The tenant may also recover costs and reasonable attorney fees. The same remedies are available to the tenant if the landlord acted in bad faith in retaining amounts in excess of what the landlord was entitled.

**Section 905. Rights and Obligations of Landlord's Successor.**

In order to relieve the landlord or the landlord's estate from further liability concerning security deposits and prepaid rents held by the landlord, the landlord or personal representative of the landlord's estate must within 30 days either transfer the portion of the security deposit and prepaid rent to the person succeeding the landlord's interest in the premises and appropriately notify the tenant, or refund the security deposits and prepaid rent to the tenant within the terms of Section 904. The landlord's successor will possess all rights and obligations of a landlord upon receipt of any portion of the security deposits and prepaid rent.

There is no corresponding provision in the Existing Act.