

**REVISED UNIFORM RESIDENTIAL LANDLORD
AND TENANT ACT (2015)**

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 30, 2017

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AND TENANT ACT (2015)**

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REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)

TABLE OF CONTENTS

PREFATORY NOTE..... 1

**[ARTICLE] 1
GENERAL PROVISIONS**

SECTION 101. SHORT TITLE. 3
SECTION 102. DEFINITIONS. 3
SECTION 103. SCOPE..... 11
SECTION 104. ENFORCEMENT; DUTY TO MITIGATE. 13
SECTION 105. OBLIGATION OF GOOD FAITH..... 14
SECTION 106. UNCONSCIONABILITY. 14
SECTION 107. KNOWLEDGE AND NOTICE; NOTICE IN A RECORD..... 15
SECTION 108. REQUIRED DISCLOSURES BY LANDLORD. 17
SECTION 109. REQUIRED DISCLOSURES BY TENANT. 19
SECTION 110. PRINCIPLES OF LAW AND EQUITY..... 19

**[ARTICLE] 2
GENERAL PROVISIONS APPLICABLE TO LEASE**

SECTION 201. TERMS AND CONDITIONS OF LEASE; DELIVERY OF LEASE TO
TENANT..... 20
SECTION 202. EFFECT OF UNSIGNED LEASE; IMPLIED LEASE. 21
SECTION 203. PROHIBITED PROVISIONS IN LEASE..... 22
SECTION 204. SEPARATION OF RENT FROM LANDLORD DUTIES PROHIBITED..... 23
SECTION 205. ATTORNEY’S FEES AND COSTS. 23

**[ARTICLE] 3
LANDLORD DUTIES**

SECTION 301. DELIVERY OF POSSESSION OF DWELLING UNIT TO TENANT..... 24
SECTION 302. LANDLORD DUTY TO MAINTAIN PREMISES IN HABITABLE
CONDITION. 25
SECTION 303. LIMITATIONS ON LANDLORD LIABILITY..... 29
SECTION 304. RULES OF LANDLORD GOVERNING USE AND ENJOYMENT OF
PREMISES. 30
SECTION 305. RULES OF THIRD PARTIES GOVERNING USE AND ENJOYMENT OF
THE PREMISES..... 31

**[ARTICLE] 4
TENANT REMEDIES**

SECTION 401. NOTICE AND OPPORTUNITY TO REMEDY..... 32
SECTION 402. NONCOMPLIANCE BY LANDLORD; GENERALLY..... 33

SECTION 403. LIMITATIONS ON REMEDIES.	36
SECTION 404. MATERIAL NONCOMPLIANCE BY LANDLORD; TERMINATION OF LEASE.	38
SECTION 405. LANDLORD FAILURE TO DELIVER POSSESSION TO TENANT	39
SECTION 406. REPAIR BY TENANT.	40
SECTION 407. FAILURE OF ESSENTIAL SERVICE	42
SECTION 408. LANDLORD NONCOMPLIANCE AS DEFENSE TO ACTION FOR POSSESSION OR NONPAYMENT OF RENT; ESCROW ACCOUNT.	43
SECTION 409. UNLAWFUL REMOVAL; EXCLUSION; INTERRUPTION OF ESSENTIAL SERVICE.	45

**[ARTICLE] 5
TENANT DUTIES**

SECTION 501. TENANT DUTIES.	45
----------------------------------	----

**[ARTICLE] 6
LANDLORD REMEDIES**

SECTION 601. TENANT FAILURE TO PAY RENT; OTHER NONCOMPLIANCE WITH LEASE.	48
SECTION 602. WAIVER OF LANDLORD RIGHT TO TERMINATE.	50
SECTION 603. DISTRAINT FOR RENT ABOLISHED; LIEN PROHIBITED.	50
SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.	51
SECTION 605. LIMITATION ON SELF-HELP RECOVERY.	54

**[ARTICLE] 7
ACCESS TO DWELLING UNIT**

SECTION 701. LANDLORD ACCESS TO DWELLING UNIT.	54
SECTION 702. REMEDIES FOR ABUSE OF ACCESS.	56

**[ARTICLE] 8
PERIODIC AND HOLDOVER TENANCY; DEATH OF TENANT**

SECTION 801. TERMINATION OF PERIODIC TENANCY.	57
SECTION 802. HOLDOVER TENANCY.	57
SECTION 803. DEATH OF TENANT.	58

**[ARTICLE] 9
RETALIATION**

SECTION 901. RETALIATION PROHIBITED.	60
SECTION 902. TENANT REMEDIES FOR RETALIATORY CONDUCT.	62
SECTION 903. PRESUMPTION OF RETALIATORY CONDUCT.	62

SECTION 904. LANDLORD REMEDIES FOR BAD FAITH ACTION OF TENANT.....	63
--	----

[ARTICLE] 10
DISPOSITION OF TENANT PERSONAL PROPERTY

SECTION 1001. DISPOSITION OF TENANT PERSONAL PROPERTY ON TERMINATION OR ABANDONMENT.....	63
SECTION 1002. REMOVAL OF PERSONAL PROPERTY OF DECEASED TENANT BY TENANT REPRESENTATIVE.	66
SECTION 1003. DISPOSITION OF PERSONAL PROPERTY OF DECEASED TENANT WITHOUT TENANT REPRESENTATIVE.....	67

[ARTICLE] 11
EFFECT OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT

SECTION 1101. DEFINITIONS.	68
SECTION 1102. EARLY RELEASE OR TERMINATION OF LEASE.	70
SECTION 1103. LANDLORD OBLIGATIONS ON EARLY RELEASE OR TERMINATION.....	72
SECTION 1104. VERIFICATION.	73
SECTION 1105. PERPETRATOR LIABILITY FOR DAMAGES.....	76
SECTION 1106. CHANGE OF LOCK OR OTHER SECURITY DEVICE.....	76
SECTION 1107. EFFECT OF COURT ORDER TO VACATE.....	78
SECTION 1108. TERMINATION OF TENANCY OF PERPETRATOR WITHOUT COURT ORDER.....	79
SECTION 1109. LANDLORD CONDUCT WITH RESPECT TO VICTIM.....	81

[ARTICLE] 12
SECURITY DEPOSITS, FEES, AND UNEARNED RENT

SECTION 1201. PAYMENT REQUIRED AT THE COMMENCEMENT OF TERM OF LEASE.....	83
SECTION 1202. LANDLORD, TENANT, AND THIRD-PARTY INTERESTS IN SECURITY DEPOSIT.....	84
SECTION 1203. SAFEKEEPING OF SECURITY DEPOSIT.....	85
SECTION 1204. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED RENT ON TERMINATION OF LEASE.....	87
SECTION 1205. DISPOSITION OF SECURITY DEPOSIT ON TERMINATION OF LANDLORD INTEREST IN PREMISES.....	88

[ARTICLE] 13
MISCELLANEOUS PROVISIONS

SECTION 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	90
---	----

SECTION 1302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	90
SECTION 1303. APPLICATION.	90
SECTION 1304. REPEALS; CONFORMING AMENDMENTS.	90
SECTION 1305. EFFECTIVE DATE.	91
APPENDIX	92

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)

Prefatory Note

In 1972, the Uniform Law Commission promulgated the Uniform Residential Landlord Tenant Act which became law in whole or in part in twenty-six states.

In 2011, a Drafting Committee was formed to update the act and specifically to address domestic violence and security deposits. The Drafting Committee began its work in 2012 and the final act was approved by the Uniform Law Commission at its annual meeting in 2015.

The 2015 act is the work of the drafting committee with members ably representing the views of all stakeholders. Throughout the drafting process the committee was the beneficiary of the participation of a number of stakeholders who came to observe the drafting process, educate committee members and reporters, and make innumerable helpful suggestions. The committee also benefited from suggestions from other commissioners convened as a committee of the whole at the Conference's annual meetings. The final product reflects what the committee believes is an appropriate balance between the interest of landlords and tenants in the residential marketplace.

The act is divided into thirteen articles.¹

Article 1, Section 102 sets forth thirty-seven definitions that are essential to the interpretation of the substantive provisions of the act. In addition, definitions that are limited to a particular article (e.g. domestic violence) are set forth in those articles. Section 103 sets forth the scope of the act with subsection (c) being the most important in that it sets forth types of residential housing arrangements that are not subject to the act. Section 107 largely mirrors prior law but includes a new concept—"notice in a record." Typically, when notice could lead to a termination of the lease, that notice must be in a record meeting the requirements of Section 107(b). In other instances, the notice can be less formal.

Article 2 sets forth general provisions applicable to a lease. Most of it is based upon the 1972 act. The major exception is Section 205 relating to attorney fees. Under the prior act, attorney fees were specially addressed in numerous provisions of the act. In this act, the rules are consolidated in Section 205, which provides that the prevailing party is entitled to costs and the court may award the prevailing party reasonable attorney fees if the court determines that the other party did not act in good faith, willfully performed an act prohibited by the lease or the act, or willfully refrained from performing an act required by the lease of this act. Section 205(c), which provides that a court may not award costs or fees in an uncontested action to recover possession, is bracketed and individual jurisdictions should consider whether to adopt that provision.

¹ There is also an Appendix at the back of the act to assist those states that want some of the newer provisions of this act, but not the entire act.

Article 3 sets forth the landlord's duties to the tenant and consistent with the 1972 act reflects the all-important duty to deliver possession of the premises at the commencement of the lease. It also includes the warranty of habitability and the accompanying duty to repair. Article 4 sets forth the tenant's remedies for a landlord's breach of the lease and the duties placed on the landlord by the act. Unlike the prior act, Section 403 of this act limits the landlord's liabilities in cases where it is impossible for the landlord to remedy a noncompliance to (1) termination or, (2) if the tenant is allowed to remain on the premises, damages covering diminution in the value of the dwelling unit. Articles 5 and 6 provide complementary provisions relating to the duties placed on tenants by the lease or the act and the landlord's remedies in the event of a breach.

Article 7 deals with the landlord's access to the dwelling unit and the remedies available to both the landlord and tenant for abuses relating to access.

Article 8 is essentially the same as the 1972 act regarding periodic and holdover tenancies but contains in Section 803 an entirely new provision relating to the death of the tenant prior to the end of the tenancy. Under Section 803, the tenant's surviving spouse or partner who resides in the dwelling unit may elect to assume the lease, thus providing the spouse or partner a measure of protection against being forced to move from the dwelling unit. Section 803 otherwise provides a process by which the landlord or tenant representative may terminate the lease of a deceased tenant.

Article 9 relates to retaliatory eviction and sets forth acts that are presumed retaliatory, as well as rules on how the presumption can be rebutted.

Article 10 is entirely new. It deals with the disposition of a tenant's personal property left behind when a tenant abandons the premises, a lease terminates, or following the death of a tenant.

Article 11 also is entirely new. It relates to the right of victims of domestic violence to unilaterally terminate a lease and the rights of landlords with respect to perpetrators of domestic violence who are also tenants in the same dwelling unit or elsewhere on the premises.

Article 12 deals with security deposits. It recommends that a security deposit not exceed twice the periodic rent, including prepaid rent but not fees, but states can change this recommendation. The article then makes clear that the landlord's interest in the deposit is a secured interest, not ownership. It also addresses the rights of both the landlord and the tenant's creditors in the deposit. Lastly, it sets forth rules for the safekeeping of the deposit and accounting for the deposit upon termination of the lease.

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Revised Uniform Residential Landlord and Tenant Act (2015).

SECTION 102. DEFINITIONS. In this [act]:

(1) “Action” means an action for damages, possession, ejectment, quiet title, specific performance, or other judicial proceeding in which rights under a lease or this [act] are determined.

(2) “Actual damages” means compensation for direct, consequential, or incidental injuries or losses. The term includes:

(A) amounts payable to a landlord or tenant under the lease for a violation of the lease; and

(B) diminution in the value of a dwelling unit.

(3) “Bank” means an organization that engages in the business of banking and is federally insured. The term includes a savings bank, savings and loan association, credit union, and trust company.

(4) “Building, housing, fire, or health code” includes any law concerning fitness for habitation or the construction, maintenance, operation, occupancy, use, or appearance of the premises.

(5) “Contact person” means a person designated by a tenant under Section 109(b).

(6) “Criminal act” or “criminal activity” means:

(A) the manufacture, sale, distribution, use, or possession of a controlled substance on or in the vicinity of the premises which is criminal under law other than this [act];

or

(B) activity that is criminal under law other than this [act] and threatens the health or safety of an individual on the premises or the landlord or landlord's agent on or off the premises.

(7) "Diminution in the value of a dwelling unit" means a reduction from rent which reflects the extent to which a noncompliant condition of the premises impairs the tenant's use and enjoyment of the unit, as determined by a court based on evidence that need not include expert testimony.

(8) "Dwelling unit" means property leased to a tenant for use as a home, residence, or sleeping place by an individual or two or more individuals who maintain a common household, regardless of their relationship to each other. The term includes:

(A) a single family residence, together with fixtures and appurtenances, the land on which it is located, and any other structure on the land; and

(B) a structure or part of a structure in which the tenant resides, together with fixtures and appurtenances, and any other area of the land on which the structure is located to which the tenant is given an exclusive right of possession during the term of the lease, including a designated parking space or storage area.

(9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capability.

(10) "Essential service" means heat, hot and cold running water, sewage or septic disposal, and electricity. The term includes gas or air conditioning if required to be supplied to a tenant by the lease or law other than this [act] which, if not supplied to the tenant, would create a serious threat to the health, safety, or property of the tenant or immediate family member.

(11) “Fees” means amounts payable by a tenant to a landlord which the landlord has no obligation to account for or return to the tenant except as otherwise provided in Section 405(b). The term does not include rent or a security deposit.

(12) “Funds” means money, checks, bank-account credits, certificates of deposit, or the like.

(13) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(14) “Guest” means an individual, other than the landlord or landlord’s agent, invited on the premises by a tenant or immediate family member.

(15) “Immediate family member” means any of the following who habitually resides in a dwelling unit with a tenant:

(A) an individual related to the tenant by blood, adoption, [or] marriage[,] [or] [civil union] [,] [or domestic partnership];

(B) an individual having an intimate relationship with the tenant; or

(C) a foster child, stepchild, or [ward] of the tenant or an individual named in subparagraph (A) or (B).

(16) “Landlord” means:

(A) the owner of a dwelling unit rented to a tenant;

(B) a successor in interest to the landlord;

(C) a sublessor, only if the landlord did not consent to the sublease; and

(D) a person that manages the unit or enters a lease on behalf of the owner of the unit and fails to comply with Section 108(c) and (d), except with respect to events occurring after:

(i) the tenant is given notice in a record that complies with Section 108(c) and (d); or

(ii) the date of termination of the person's authority to act on behalf of the owner if that authority is terminated.

(17) "Law" includes federal or state statutes, case law, administrative action, and legislative acts of local governments.

(18) "Lease" means a contract, oral or in a record, between a landlord and tenant in which the landlord rents a dwelling unit to the tenant for a tenancy for a fixed term or a periodic tenancy. The term includes an amendment to the lease, rules adopted by the landlord which were disclosed to the tenant under Section 108(b)(4), and, subject to Section 304, rules adopted by the landlord after commencement of the term of the lease.

(19) "Notice in a record" means notice that complies with Section 107(b).

(20) "Owner" means a person vested with all or part of:

(A) legal title to the premises; or

(B) beneficial ownership and a right to present use and enjoyment of the premises.

(21) "Periodic rent" means the amount payable each month under a tenancy for a fixed term or a periodic tenancy for month to month or payable each week under a periodic tenancy for week to week. If rent is payable annually, periodic rent is the amount of the annual rent divided by 12.

(22) "Periodic tenancy" means a tenancy created under a lease or arising by operation of law for either month to month or week to week.

(23) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal

entity.

(24) “Premises” means a dwelling unit and, to the extent owned by the landlord, any structure of which the unit is a part. The term includes any area and structure owned by the landlord which are associated with the structure in which the dwelling unit is located and held out by the landlord for the use of tenants generally.

(25) “Prepaid rent” means rent paid to a landlord before the first day of the rental period to which it is to be applied.

(26) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) “Rent,” used as a noun, means a payment for the right to possession of a dwelling unit. The term does not include a security deposit or fees.

(28) “Repairs” includes remediations.

(29) “Security deposit” means funds provided to a landlord to secure payment or performance of a tenant’s obligations under a lease or this [act] and the identifiable proceeds of the funds, however denominated. The term does not include rent or fees.

(30) “Security interest” means an interest in personal property which secures payment or performance of a tenant’s obligations under a lease or this [act].

(31) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process. For purposes of this paragraph, “symbol” includes an electronic-mail address or other identifying header.

(32) “State” means a state of the United States, the District of Columbia, Puerto Rico, the

United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(33) “Tenancy for a fixed term” means a tenancy under a lease for a fixed or computable period, regardless of the length of the period.

(34) “Tenant” means:

(A) a person that is a party to a lease of a dwelling unit and is entitled to possession of the unit;

(B) an assignee or sublessee of a person described in paragraph (A) which has possession of the unit with the landlord’s consent; and

(C) an individual authorized to occupy the unit by a person described in subparagraph (A) or (B) that is not an individual.

(35) “Tenant representative” means:

(A) a personal representative of a deceased tenant’s estate; or

(B) before the appointment of a personal representative, a contact person, or in the absence of a contact person, a person the landlord reasonably believes to be an heir of the tenant under the applicable intestate succession law.

(36) “Unearned rent” means rent, including prepaid rent, that a tenant paid to a landlord for the right to possession of the dwelling unit for any period after the date the lease terminates in accordance with its terms or this [act]. The term does not include an amount, including rent, owed to the landlord for a period before or after the date the lease terminates during which the tenant is in physical possession of the premises.

(37) “Willful” means intentional performance of an act the actor knows to be prohibited by this [act] or a lease, intentional failure to perform an act the actor knows to be required by this

[act] or the lease, or deliberate indifference to whether the performance or failure to perform violates this [act] or the lease. “Willfully” has a corresponding meaning.

***Legislative Note:** This act uses the term “lease” rather than “rental agreement,” which was used in the 1972 Act, because in many states the lawyers and courts prefer the word lease. However, the mere use of the term “lease” is not meant as a substantive change. If a state prefers “rental agreement,” the term can be substituted in place of the word “lease.”*

Comment

The definition of “actual damages” (paragraph (2)) includes “diminution in the value of a dwelling unit.” This latter phrase is defined in paragraph (7), which emphasizes that diminution in value is to be “determined by a court based on evidence that need not include expert testimony.” As a result, landlords and tenants are not required to hire real estate appraisers or other experts to give an expert opinion regarding the value of a dwelling unit; they instead may testify as to their own opinions regarding the dwelling unit’s value in light of the landlord’s noncompliance.

The definition of criminal act (paragraph (6)) includes certain defined activities relating to controlled substances that are “criminal under law other than this [act].” Such law could include federal law even if that law conflicts with state law. This is appropriate because of the risk of forfeiture of the landlord’s property if the landlord permits such activities on the premises.

The definition of “fees” (paragraph (11)) includes nonrefundable payments made by the tenant to the landlord. Common examples include application fees, cleaning fees, short-term lease fees, late-payment fees, dishonored check fees, credit card or other payment processing fees, abandonment fees, special amenities fees, pet fees, or fees assessed for violating pet policies or other rules governing the tenancy. There is one exception to the nonrefundable nature of such fees, however; under Section 405(b), an application fee is refundable if the tenant terminates a lease because the landlord failed to deliver physical possession of the dwelling unit to the tenant on the first day of the term of the lease.

The definition of “landlord” (paragraph (16)) includes not only the owner of the dwelling unit, but also any person -- such as a management company -- that enters into a lease on behalf of a landlord without making all of the disclosures required by Section 108. In that situation, the management company qualifies as a “landlord” and has all of the rights and responsibilities of a landlord under the act. Conversely, if a management company has disclosed the identity of the owner and the other information required by Section 108 to the tenant, only the owner is the “landlord” and the management company is merely the landlord’s agent for purposes of this act. Subparagraphs (16)(D)(i) and (ii) explain the circumstances in which a person in that situation is relieved of liability under the act. For example, if after entering into the lease on behalf of the undisclosed owner the identity of the owner is disclosed, the manager would no longer be the landlord as to events occurring after the tenant received a notice in a record disclosing the owner’s identity and the other information required by Sections 108(c) and (d), such as the owner’s addresses.

Local governments often enact laws that affect the landlord-tenant relationship. Paragraph (17) defines law to include these laws.

The definition of “lease” (paragraph (18)) includes all rules of the landlord disclosed under Section 108(b)(4) prior to the landlord’s acceptance of funds from the tenant or before entering into the lease as well as later adopted rules of the landlord under Section 304. Rules of other entities that apply to the dwelling unit, such as rules of a condominium association or a homeowner association, are not part of the lease even though they affect the tenant’s use and enjoyment of the premises. See Section 305 for the rights of a tenant whose use and enjoyment of the dwelling unit is affected by the rules of persons other than the landlord, including homeowner, cooperative, or condominium associations.

The definition of “owner” (paragraph (20)) includes a mortgagee in possession. It would not include a mortgagee in a title theory state unless the mortgagee became entitled to possession.

The definition of “premises” (paragraph (24)) includes a tenant’s dwelling unit and the structure of which it is a part, as well as any areas associated with the structure held out for the use of tenants generally. The definition was broadly written to cover both the exterior and interior of a structure and any fixtures, facilities, and appurtenances to it, such as parking areas.

Portions of a structure not owned by the landlord are not part of the “premises.” For example, if the dwelling unit is a condominium located in a 40-story building, the premises do not include the common areas of the building. If the landlord owned an assigned parking space in the structure that is leased to the tenant, then the space would be included within the term “premises.”

Prepaid rent (paragraph (25)) is rent paid before the first day of the rental period to which it is to be applied. For example, assume on November 1 a landlord and tenant agree to the lease of a dwelling unit with the term to begin the following January 1 at a monthly rent of \$500. Tenant gives the landlord a check for \$1,000 to cover the January rent and the security deposit of \$500. From November 1 until January 1, the \$500 for January’s rent is “prepaid rent.” After January 1 it is not prepaid rent.

The definition of “tenant” (paragraph (34)) recognizes that some leases are entered into by business entities for their employees or by a trust on behalf of a beneficiary. For example, an LLC might rent an apartment for a member or a manager. Both the LLC and the member or manager are tenants; the latter because the member or manager has been authorized to occupy the dwelling unit by the LLC, and the former because it is legally entitled to possession under the lease. In addition, the definition treats as the tenant any assignee or sublessee who enters possession with the landlord’s consent. By doing so, the definition makes clear that duties are owed from the landlord to the assignee and sublessee and vice versa.

The definition of “unearned rent” (paragraph (36)) contemplates two circumstances where a refund will be due a tenant because the lease terminated. The first circumstance is where “rent” (defined in paragraph (27)) was paid to the landlord on its due date but for any

period of time beyond the date the lease actually terminates. For example, assume a one-year lease with rent payable on the first of each month. The tenant pays rent to the landlord on April 1 for the month of April. However, on April 10 the tenant encounters a situation that would permit the tenant to immediately terminate the lease. In this case, “unearned rent” includes the amount of rent attributable to the period April 11 to April 30. Because rent is apportioned on a daily basis (see Section 201(b)(2)(B)), this means that two-thirds of the April 1st payment would be “unearned rent.” The second circumstance is where “prepaid rent” (defined in paragraph (25)) was paid to the landlord for a rental period beyond the date the lease terminates. For example, suppose before the commencement of the lease a tenant pays the landlord an amount for the last month’s rent. Three months into the lease tenant properly terminates the lease. In this case, “unearned rent” includes the prepaid rent for the last month. In both examples, Section 1204 requires unearned rent to be returned by the landlord to the tenant after taking account of any proper charges against the unearned rent as set forth in Section 1204.

The phrase “unearned rent” does not include rent for any period beyond the lease termination during which the tenant is in physical possession of the premises. For example, suppose tenant signs a fixed term lease to end on December 31. The tenant pays the landlord the last month’s rent (December rent) at the beginning of the lease term. Because of the tenant’s failure to pay rent, the landlord properly terminates the lease on October 1 but the tenant remains in possession until November 5. Unearned rent includes the prepaid rent for December but does not include any rent that might be due the landlord for October and the first five days of November. Under Section 1204, the landlord is obligated to return the unearned rent (along with any security deposit) to the tenant. However, under Section 1204(a) and (d), the landlord may reduce the amount returned by amounts of “unfilled obligations” to which the unearned rent was applied and this could include the rent due for October and the five days in November if not already paid.

The lease or this act determines the date on which a lease terminates. For example, for a fixed term tenancy or a periodic tenancy, the lease terminates on the last day of the term or the period unless the lease or this act allows for an earlier termination date. Under this act, a lease can terminate for any number of other reasons. Because termination requires notice in a record that specifies the termination date, the date of termination is easily determined from the notice. For example, under Section 601(a)(2) (allowing a landlord to terminate the tenancy for a material noncompliance by the tenant, other than the nonpayment of rent) the notice must set forth a specified date for termination not earlier than [30] days after the giving of the notice. If there is any unearned rent due the tenant, it would be for the period following the date of termination in the notice assuming the tenant timely vacated the premises.

SECTION 103. SCOPE.

(a) In this section:

(1) “Occupancy as a vacation rental” means occupancy that has the following characteristics:

(A) the tenant rents the dwelling unit for vacation purposes only and has a principal residence other than the unit;

(B) the unit is furnished with personal property necessary to make the unit ready for immediate occupancy by the tenant; and

(C) the occupancy does not exceed [30] consecutive days.

(2) “Transient occupancy” means occupancy in a room or suite of rooms which has the following characteristics:

(A) the cost of occupancy is charged on a daily basis;

(B) the operator of the room or suite provides housekeeping and linen service as part of the regularly charged cost of occupancy; and

(C) the occupancy does not exceed [30] consecutive days.

(b) Except as otherwise provided in subsection (c), this [act] applies to a lease of a dwelling unit in this state.

(c) The following arrangements are not governed by this [act]:

(1) residence at a public or private facility, if incidental to detention or the provision of medical, mental health, geriatric, counseling, educational, religious, disability, personal safety, or similar service;

(2) occupancy under a contract of sale of, or an option to purchase, a dwelling unit or the building of which it is a part, if the occupant is the purchaser or optionee or an individual who has succeeded to the interest of the purchaser or optionee;

(3) occupancy by a member of a fraternal or social organization in a part of a structure operated for the benefit of the organization;

(4) transient occupancy;

(5) occupancy by an employee of a landlord when the employee's right to occupancy is conditioned on employment in or about the premises;

(6) occupancy by a holder of a proprietary lease in a cooperative;

(7) occupancy under a lease covering premises used by the occupant for agricultural purposes;

(8) occupancy as a vacation rental; and

(9) a ground lease of real property which lease does not include a dwelling unit.

Comment

This section is based upon URLTA (1972) § 1.202. Similar to the 1972 act, this act does not apply to "residence at a public or private facility, if incidental to detention or the provision of medical, mental health, geriatric, counseling, educational, religious, disability, personal safety, or similar service." As such, the act would not apply to safe-houses for victims of domestic violence or facilities providing housing for veterans or homeless persons where the victim, veteran, or homeless person was at the facility for counseling or personal safety reasons.

The section expands the exclusions from the act to include vacation rentals and the leasing of real property to another person who owns a manufactured or mobile home situated on the real property. Thus, if O owns a land-lease community (e.g., a mobile home park) and leases space to T who places a manufactured or factory-built home on the space, that ground lease is not subject to this act. However, if T later leases the home to X, the T-X lease is subject to this act. Likewise, if the owner of the land-lease community places a manufactured home on the space and leases the home to another person, that lease would be subject to this act.

This section could apply to an adult child living in a parent's home under a lease. If there is a written lease signed by both the parent and the child, the payment of rent is not required by this act, although presumably for the lease to be valid as a contract some other form of consideration would be required. On the other hand, in light of Section 202, if there is a written lease signed by only one of the parent or child or an oral lease, no lease can arise in the absence of the payment of rent.

SECTION 104. ENFORCEMENT; DUTY TO MITIGATE.

(a) A right or obligation under this [act] is enforceable by an action unless the provision creating the right or obligation provides otherwise.

(b) A party seeking relief under this [act] has a duty to mitigate damages.

Comment

Under the common law, a landlord had no duty to mitigate damages. The no-mitigation rule was abrogated by the 1972 version of this act (URLTA (1972) § 1.105(a)), and this act is consistent with that policy choice and the conceptualization of the lease as a contract. Unlike the 1972 act, however, this act provides a safe harbor in Section 604 for a landlord who makes reasonable efforts to relet the dwelling unit following a tenant's abandonment.

SECTION 105. OBLIGATION OF GOOD FAITH. Every lease or duty under this [act] imposes an obligation of good faith in its performance and enforcement.

Comment

This section incorporates the good faith requirement included in URLTA (1972) § 1.302 although the language has been revised to conform to a similar provision in the Uniform Commercial Code.

The ability to seek a remedy, exercise a right, or claim a defense under this act requires that the individual seeking the right, remedy, or defense have acted in good faith. Good faith as defined by Section 102(13) means "honesty in fact and the observance of reasonable commercial standards of fair dealing." By way of example, a tenant under Section 901 may have the right to complain of a retaliatory termination of a periodic tenancy if the notice to terminate follows on the heels of the tenant's complaint to a governmental agency. However, the tenant would have no such right if the tenant's complaint was not in good faith. Similarly, Section 1001 requires a landlord to store a tenant's personal property under the circumstances set forth in that section. If the landlord complies with that section, the landlord has a defense against another person who claims an interest in that property. But, in light of this section, that defense is available only if the landlord acted in good faith.

SECTION 106. UNCONSCIONABILITY.

(a) If a court, as a matter of law, finds a lease or any provision of the lease was unconscionable at the time it was made, the court may refuse to enforce the lease, enforce the remainder of the lease without the unconscionable provision, or limit application of the unconscionable provision to avoid an unconscionable result.

(b) If a court, as a matter of law, finds a settlement agreement in which a party waived or agreed to forego a claim or right under a lease or this [act] was unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement

without the unconscionable provision, or limit application of the unconscionable provision to avoid an unconscionable result.

(c) If a party or the court puts unconscionability in issue under subsection (a) or (b), the court shall allow the parties to present evidence of the setting, purpose, and effect of the lease or settlement agreement to aid the court in making the determination of unconscionability.

Comment

This section is essentially the same as URLTA (1972) § 1.303.

SECTION 107. KNOWLEDGE AND NOTICE; NOTICE IN A RECORD.

(a) In this [act], a person has notice of a fact if the person:

- (1) has actual knowledge of the fact;
- (2) received notice of the fact under subsection (d); or
- (3) has reason to know the fact exists from all facts known to the person at the

time in question.

(b) Except as otherwise provided in Section 1001(c), if this [act] requires notice in a record, the notice must be signed by the person giving it and:

- (1) delivered personally to the recipient;
- (2) deposited in the mail with proper postage and properly addressed if:
 - (A) sent to the landlord, to the mailing address specified under Section

108;

- (B) sent to the tenant, to the mailing address specified under Section 109;

or

(C) if sent to a person other than a landlord or tenant, or there is no address specified for the landlord or tenant, to an address reasonable under the circumstances; or

(3) unless the landlord or tenant notifies the other at any time that notice may be given only by personal delivery or by mail as provided in paragraph (2), delivered by another means of communication with cost of transmission provided for and properly addressed if:

(A) sent to the landlord, to an address specified under Section 108; and

(B) sent to the tenant, to an address specified under Section 109; or

(C) no address is specified, to an address reasonable under the circumstances.

(c) Except as otherwise provided in subsection (b), a person gives notice of a fact to another person by taking steps reasonably calculated to inform the other person, whether or not the other person learns of the fact.

(d) In this [act], a person receives notice of a fact when:

(1) the fact comes to the person's attention; or

(2) if notice in a record is required, the notice is:

(A) personally delivered under subsection (b)(1); or

(B) sent or delivered under subsection (b)(2) or (3).

Comment

This section is essentially the same as URLTA (1972) § 1.304. It includes, however, a new concept relating to "notice in a record" and is updated to reflect the increasing use of electronic notices.

A number of sections in this act require either a landlord or a tenant to give the other "notice in a record." Subsection (b) provides that such notice shall be given by personal delivery, through the mail, or "by another means of communication." This latter phrase is broadly worded so that it would include electronic transmissions and other forms of communication that may emerge in the future.

Under subsection (d)(1), a person receives notice when the fact comes to the person's attention. A fact might come to the person's attention as the result of face-to-face conversation, the telephone, or by a receipt of a record.

SECTION 108. REQUIRED DISCLOSURES BY LANDLORD.

(a) Before accepting an application fee, the prospective landlord shall disclose to the prospective tenant in a record the criteria the landlord uses to determine the landlord's willingness to enter into a lease with a tenant.

(b) Before accepting funds to be applied to a security deposit, prepaid rent, or fees other than an application fee, or before entering into a lease, a prospective landlord shall disclose to the prospective tenant in a record the following:

(1) any condition of the premises which the landlord knows or on a reasonable inspection of the premises should have known would constitute a noncompliance under Section 302 and would materially interfere with the health or safety of the tenant or immediate family member or would materially interfere with the use and enjoyment of the premises by the tenant or immediate family member;

(2) whether, to the knowledge of the landlord, a foreclosure action or nonjudicial foreclosure proceeding has been commenced against the premises;

(3) if rent is prepaid, the month or other period of the lease to which the rent is to be applied; and

(4) the rules affecting the tenant's use and enjoyment of the premises, whether adopted by the landlord or another person.

(c) At or before commencement of the term of a lease, the landlord shall give the tenant notice in a record specifying:

(1) the name of:

(A) the landlord;

(B) any person authorized to manage the premises;

(C) the owner of the premises;

(D) any person authorized to act for the owner for service of process; and

(E) any person authorized to receive a notice or demand for the owner;

(2) the mailing address and any address to be used for the receipt of electronic communications by the landlord or any person designated by the landlord to which a notice or demand must be sent; and

(3) the address to, or the method by, which the tenant must deliver rent.

(d) A landlord shall keep current the information required by subsection (c).

(e) If the premises were in foreclosure before a landlord and tenant entered into a lease and the disclosure required by subsection (b)(2) was not made, the tenant may recover actual damages resulting from the foreclosure.

Comment

This section and the following section greatly expand on the provisions of URLTA (1972) § 2.102 relating to disclosures by a landlord.

Subsection (b)(1) imposes upon the landlord a duty to inform a prospective tenant of any condition that would make the premises uninhabitable or present an unreasonable risk of harm. For these purposes, a condition would include the standards for uninhabitability enumerated in Section 302 as well as additional hazards.

Subsection (b)(2) applies when a judicial action or non-judicial proceeding has commenced to foreclose a mortgage. The terms “action” and “proceeding” contemplate conduct beyond simply giving a notice of default. If the landlord failed to make the “foreclosure” disclosure required by subsection (b)(2), subsection (e) would not apply unless the tenant’s use and enjoyment of the premises had been interfered with as a result of the foreclosure. For example, such damages might occur if the premises were sold and the tenant was required to vacate the premises.

Subsection (b)(4) requires the landlord to disclose to a prospective tenant any rules affecting the tenant’s use and enjoyment of the premises whether adopted by the landlord or others. For example, the rented unit may be subject to externally imposed rules of a homeowner or condominium association.

The purpose of subsection (c) is to enable the tenant to proceed with the appropriate legal

proceeding, to know to whom complaints must be addressed and, failing satisfaction, against whom the appropriate legal proceedings may be instituted.

No specific remedies are provided for the failure to provide the information required by subsections (c) and (d). If a landlord fails to provide an address to the tenant, however, the landlord might not receive the rent in a timely manner.

SECTION 109. REQUIRED DISCLOSURES BY TENANT.

(a) At or before commencement of the term of a lease, the tenant shall give the landlord notice in a record specifying the tenant's mailing address and any address to be used for the receipt of electronic communications by the tenant.

(b) At the request of a landlord, the tenant shall designate a contact person to act for the tenant on the tenant's death, by giving the landlord a record specifying the name and, if known, the mailing address, any address to be used for the receipt of electronic communications, and the telephone number of the contact person. In the absence of a request by the landlord, the tenant may designate a contact person in the same manner.

(c) A tenant shall keep current the information required by subsections (a) and (b). On termination of the lease, the tenant shall provide the landlord a forwarding address to which the landlord must send the tenant's security deposit and unearned rent, or other communications.

Comment

No specific remedy is provided for the failure to provide the information required by this section. If a tenant fails to provide an address to the landlord, however, the tenant might not receive timely notices or the refund of a security deposit.

The prior act did not have a provision on a tenant's required disclosures to a landlord.

SECTION 110. PRINCIPLES OF LAW AND EQUITY. Unless displaced by the particular provisions of this [act], the principles of law and equity supplement this [act].

Comment

This section is essentially the same as URLTA (1972) § 1.103.

In light of this section, contract principles generally apply to the construction and interpretation of leases, including provisions relating to mutuality or dependency of lease covenants. By construing leases as contracts, for example, performance of promises the landlord and tenant make to each other are dependent upon one another. Thus, the tenant's promise to pay rent is conditioned upon (dependent upon) the landlord's compliance with Section 302.

[ARTICLE] 2

GENERAL PROVISIONS APPLICABLE TO LEASE

SECTION 201. TERMS AND CONDITIONS OF LEASE; DELIVERY OF LEASE TO TENANT.

(a) A lease may include terms and conditions not prohibited by this [act] or law other than this [act].

(b) Unless a lease or law other than this [act] otherwise provides:

(1) the tenant shall pay rent for the dwelling unit for the term of the lease in an amount comparable to the rent paid for other dwelling units of similar size and condition in the same or a comparable location, determined at the commencement of the term;

(2) rent is:

(A) payable without demand or notice:

(i) at the address or place the landlord designates under Section 108(c)(3) or, if no designation is made, at the landlord's place of business at the time the lease was made; and

(ii) on the first day of each month or at the beginning of the term if the term is less than one month; and

(B) uniformly apportioned from day to day; and

(3) a rental period is on a monthly basis beginning with the first day of the month for a tenancy for a fixed term of more than one month or a periodic tenancy of month to month

and, for all other tenancies, the rental period begins on the first day rent is paid.

(c) Except as otherwise provided in Section 202, unless the lease creates a tenancy for a fixed term, the tenancy is a periodic tenancy for week to week if the tenant pays rent weekly and otherwise is a periodic tenancy for month to month.

(d) A landlord shall provide the tenant a copy of any lease that is signed by them or, if the lease is enforceable under Section 202, signed by either of them.

(e) If a landlord willfully fails to comply with subsection (d), the tenant may recover actual damages or [one month's] periodic rent, whichever is greater.

Comment

This section is consistent with URLTA (1972) § 1.401 but adds subsection (d) and (e).

Subsection (b) applies when the lease inadvertently fails to fix the amount of rent, as might be the case for oral leases.

Under subsection (c), tenancies at will are effectively abolished; the only recognized tenancies, other than a tenancy for a fixed term, are a periodic tenancy for month to month or the less common periodic tenancy for week to week.

Subsection (d) requires the landlord to provide the tenant with a copy of an enforceable lease whether signed by both of them or only one of them. Obviously, the subsection does not apply to oral leases that can be given effect under Section 202(c).

SECTION 202. EFFECT OF UNSIGNED LEASE; IMPLIED LEASE.

(a) Subject to subsection (b):

(1) if a lease signed by the tenant is delivered to the landlord and the landlord fails to sign the lease and return it to the tenant, acceptance of rent by the landlord without a reservation of rights gives the lease the same effect as if the lease had been signed by the landlord and returned to the tenant; and

(2) if a lease signed by the landlord is delivered to the tenant and the tenant fails to sign the lease and return it to the landlord, acceptance of possession and payment of rent

without a reservation of rights gives the lease the same effect as if the lease had been signed by the tenant and returned to the landlord.

(b) If a lease given effect under subsection (a) provides for a tenancy for a fixed term longer than one year, the lease is effective for one year.

(c) Absent a lease signed by the landlord or tenant which is delivered to the other, if the tenant accepts possession and pays rent to the landlord without a reservation of rights and the landlord accepts rent from the tenant without a reservation of rights, the tenancy created is a periodic tenancy for week to week if the tenant pays rent weekly and in all other cases a periodic tenancy for month to month.

Comment

This section is the same as URLTA (1972) § 1.402 with the exception of subsection (c). Under subsection (c), a periodic tenancy of week to week or month to month is created in the absence of a signed lease.

SECTION 203. PROHIBITED PROVISIONS IN LEASE.

(a) A lease may not require the tenant to:

(1) unless permitted by this [act], waive or forego a right or remedy under this [act];

(2) authorize a person to confess judgment on a claim arising out of the lease or this [act];

(3) perform a duty imposed on the landlord by Section 302;

(4) agree to pay attorney's fees and costs of the landlord other than those provided by this [act] or law other than this [act]; or

(5) agree to exculpate or limit a liability of the landlord arising under this [act] or law other than this [act] or indemnify the landlord for the liability and the costs connected with

the liability.

(b) A provision in a lease prohibited by subsection (a) or law other than this [act] is unenforceable. If the landlord seeks to enforce the provision or accepts the tenant's voluntary compliance with the provision, the court may award the tenant an amount not to exceed [three times] the periodic rent.

Comment

With the exception of subsection (b), this section follows URLTA (1972) § 1.403.

Under Section 1001, a landlord has the obligation to take possession of a tenant's personal property on the premises when the tenant vacates the dwelling unit. In light of Section 203(a)(1), this obligation cannot be waived in the lease. However, under Section 1001(b), the landlord and tenant could otherwise agree if their agreement was made at the time of the relinquishment of the dwelling unit.

The duty to mitigate is one of the rights and remedies that may not be waived under subsection (a).

A landlord might inadvertently use a standard form lease that includes a prohibited provision that had not been revised after enactment of this act. Under subsection (b), the landlord, in such case, would be liable for damages only if the landlord sought to enforce the unenforceable provision or accepts the tenant's voluntary compliance with it.

SECTION 204. SEPARATION OF RENT FROM LANDLORD DUTIES

PROHIBITED. A lease, assignment, sublease, conveyance, trust deed, or security instrument may not authorize a person to receive rent without assuming the duties imposed on the landlord by the lease and Section 302.

Comment

The obligation of the landlord to maintain premises that comply with the lease or this act cannot be defeated by the assignment of rents.

SECTION 205. ATTORNEY'S FEES AND COSTS.

(a) In this section, "prevailing party" means a party that:

(1) initiated the enforcement of a right or remedy under a lease or this [act] and

substantially prevailed on the right or remedy asserted; or

(2) substantially prevailed in defending against a right or remedy asserted by the other party.

(b) In an action to enforce a right or remedy arising under a lease or this [act], the court shall award the prevailing party costs. The court may award the prevailing party reasonable attorney's fees if the court determines that the other party did not act in good faith, willfully performed an act prohibited by the lease or this [act], or willfully refrained from performing an act required by the lease or this [act].

[(c) A court may not award a landlord attorney's fees or costs in an uncontested action to recover possession of a dwelling unit.]

Comment

Under URLTA (1972), various sections had provisions relating to attorney fees. Under this act, this section is the exclusive provision relating to attorney fees and essentially adopts the prevailing party rule.

[ARTICLE] 3

LANDLORD DUTIES

SECTION 301. DELIVERY OF POSSESSION OF DWELLING UNIT TO

TENANT. A landlord shall deliver physical possession of the dwelling unit to the tenant at the commencement of the term of the lease.

Comment

This provision is consistent with URLTA (1972) § 2.103.

This section, like the 1972 act before it, adopts the position that actual possession, as distinguished from a mere legal right to possession, must be delivered to the tenant at the commencement of the term of the lease. In this act, however, the word "physical" is substituted for the word "actual" because physical is more descriptive.

The term of the lease commences on the date the tenant is first entitled to possession.

Thus, if a lease is signed on July 1 for a term to begin on August 1, the commencement date is August 1. The landlord's obligation to deliver physical possession, therefore, begins on August 1.

SECTION 302. LANDLORD DUTY TO MAINTAIN PREMISES IN HABITABLE CONDITION.

(a) A landlord has a nonwaivable duty to maintain the premises in a habitable condition, including making necessary repairs. The duty requires the landlord to ensure that the premises:

(1) comply with all obligations imposed on the landlord by any applicable building, housing, fire, or health code or law other than this [act];

(2) have effective waterproofing and weather protection of the roof and exterior walls, including windows and doors;

(3) have plumbing facilities that conform to law and are maintained in good working order;

(4) have access to a water supply approved under law which can provide hot and cold running water;

(5) have adequate ventilation and heating facilities that conform to law and are maintained in good working order;

(6) have electrical lighting, with wiring and equipment that conform to law and are maintained in good working order;

(7) have reasonable measures in place to control the presence of rodents, bedbugs, and other vermin and to prevent exposure to unsafe levels of radon, lead paint, asbestos, toxic mold, and other hazardous substances;

(8) to the extent the premises include a common area or other areas under the landlord's control, have reasonable measures in place to make the area:

(A) clean and sanitary;

(B) safe for normal and reasonably foreseeable use consistent with the lease and in good repair: and

(C) reasonably free of debris, filth, rubbish, garbage, and the items listed in paragraph (7);

(9) have an adequate number of appropriate receptacles in reasonably clean condition if the landlord is obligated to provide trash removal or recycling service by law or an agreement in a record signed by the landlord and tenant;

(10) have in good repair floors, doors, windows, walls, ceilings, stairways, and railings;

(11) have in good repair other facilities and appliances supplied or required to be supplied by the landlord;

(12) have in good repair locks or other security devices on all exterior doors and on windows that open and close, including those of the dwelling unit and other parts of the premises; and

(13) have in good working order any safety equipment required by law.

(b) A landlord has the duty to ensure the premises have access to essential services, but the lease may require an account with a utility provider of an essential service to the dwelling unit be in the name of the tenant and the tenant pay the periodic cost for the service. If the service is not provided because the tenant fails to pay for the service, the landlord does not fail to comply with this subsection.

(c) If a sublessor is a landlord for purposes of this [act], the sublessor has the duty to comply with subsection (a) except for duties that would require the sublessor to access parts of

the premises beyond the sublessor's control.

(d) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(1) the agreement is in a record, other than the lease, signed by the parties and supported by adequate consideration;

(2) the work is not necessary to cure the landlord's noncompliance with subsection (a)(1); and

(3) the agreement does not affect the obligation of the landlord to other tenants on the premises.

(e) A landlord may not treat performance of an agreement described in subsection (d) as a condition to the performance of any obligation under the lease or this section.

Comment

This section somewhat expands the provisions of URLTA (1972) § 2.104 and importantly adds subsection (b) relating to the provision and payment of essential services. However, as explained below, Section 2.104(c) and (d) of the prior act have been modified substantially.

This section sets forth a landlord's duties to assure a rented dwelling unit is habitable. Section 402 sets forth a road map of a tenant's remedies if the landlord fails to comply with the duties set forth in this section as well as the lease. The Section 402 remedies are triggered in cases where the landlord fails to provide an essential service or the breach materially interferes with health or safety or use and enjoyment. Section 402 also provides limited remedies for immaterial breaches.

Consistent with the practice of nearly every state, Section 302 recognizes that modern conditions require the proper maintenance and operation of rental housing. Subsection (a) begins with the statement that there is a nonwaivable duty to maintain premises in a habitable condition. Thus, the duty can neither be waived nor shifted to the tenant by an agreement between the landlord and tenant to have the tenant perform any of the landlord's duties relating to habitability. Similar to the 1972 act, this act permits a landlord and tenant to enter into a separate agreement to have the tenant perform specific repairs, but because Section 302(a) provides that the landlord's duties are nonwaivable, this type of agreement cannot shift the landlord's duties under Section 302(a) to the tenant.

Section 302(a) sets out a number of obligations to be met by the landlord to discharge the

duty to maintain premises in a habitable condition. This list is not intended to be exhaustive. The more elastic “habitability” requirement in the first sentence of Section 302(a) allows for expansion of this list over time if the law expands to include other matters in the habitability standard. Section 501 imposes corresponding duties of cleanliness and proper use within the dwelling unit upon the tenant.

Because many jurisdictions do not have building, housing, or health codes applicable to rental housing, it is appropriate that this statute incorporate minimum standards of maintenance. A lease could impose other maintenance obligations on the landlord. It could also impose other maintenance obligations on the tenant so long as those obligations do not absolve the landlord of the landlord’s obligations under this section. *See* Section 203(a)(3).

Under subsection (a)(13), the landlord must maintain safety equipment required by applicable law in good working order. Safety equipment might include smoke alarms, carbon monoxide detectors, and fire extinguishers.

If a tenant subleases a dwelling unit with the landlord’s consent, then the sublessor is not a landlord under this act. *See* Section 102(16). If the tenant subleases the dwelling unit without the landlord’s consent, however, the sublessor is a landlord under this act. As a landlord, the sublessor is obligated to comply with the provisions of this act, including this section. However, under subsection (c), the sublessor is not required to perform duties imposed on a landlord by this section if performance of the duties would require the sublessor to access parts of the dwelling unit or premises which are beyond the sublessor’s control. For example, if a subtenant’s furnace ceased working but repairs would require access to a furnace outside of the dwelling unit, the sublessor would not be required to repair the furnace.

Under subsection (a), the landlord has a duty to provide and maintain *facilities* on the premises necessary to allow the tenant access to essential services: typically heat, water, sewage disposal, and electricity. Under subsection (b), the landlord also has the duty to ensure the tenant has *access* to essential services, but the costs of these services and the acquisition of these services could be shifted to the tenant by the lease. For example, the lease might require the tenant to have an account with the utility company titled in the tenant’s name and to pay for the utility service. In that circumstance, a tenant cannot seek a court order for the landlord to provide the service for which the tenant has failed to pay the utility company. Likewise, the landlord is not liable under this act if the tenant fails to pay the utility bill and an essential service is discontinued.

Subsection (d) is based upon Section 2.104(c) and (d) of the 1972 Act. It allows a landlord and tenant to enter into an agreement for the tenant to perform specified repairs, maintenance tasks, alterations, or remodeling. Their agreement must be supported by adequate consideration and reflected in a record, other than the lease. The tenant’s failure to perform the agreement does not excuse the landlord’s nonperformance of the landlord’s obligations under the lease or this act. If the tenant breaches the agreement, the landlord would have an action against the tenant, which might be for specific performance or damages. The agreement is unenforceable if it is for work necessary to cure the landlord’s noncompliance with subsection (a)(1) relating to compliance with a building, house, fire, health code, or other law. Thus,

landlord could not contract with the tenant to repair a building code violation by the landlord. To illustrate this subsection, suppose the landlord and tenant agree that the tenant will shovel snow from sidewalks on the premises, an obligation placed on the landlord by subsection (a)(8)(B). Assuming a building or housing code does not also place that obligation on the landlord, the contract is valid. The tenant's failure to remove the snow does not excuse the landlord from performing the landlord's obligations to the tenant under the lease or this act (and other tenants on the premises). If the tenant fails to perform, the landlord has a cause of action against the tenant either for specific performance or damages.

In some cases, the ability of the landlord to comply with the Section 302 duties may be thwarted by forces outside of the landlord's control. For example, under subsection (a)(6) the landlord is obligated to provide electric lighting to the premises. But the landlord may not be able to do so because of the power grid providing power to the dwelling unit has gone offline. In such case, the landlord's ability to cure within the time period set forth in Section 401 (between 5 and 14 days) may become impossible. As a result, Section 403(c) limits the tenant's remedies following the cure period to lease termination or, if the lease continues, damages for only the diminution in the value of the dwelling unit. For example, suppose the landlord fails to provide tenant with an essential service due to circumstances completely beyond the landlord's control. If the service is not restored within the five-day cure period, the tenant can terminate the lease. Rent would still be owed for the five days the landlord had to cure.

SECTION 303. LIMITATIONS ON LANDLORD LIABILITY. Except to the extent a landlord and tenant otherwise agree in a signed record, if the landlord, in a good-faith sale to a bona fide purchaser, conveys premises that include a dwelling unit subject to a lease, the following rules apply:

(1) Except as otherwise provided in paragraph (2), the landlord is relieved of liability under the lease and this [act] as to an event that occurs after the later of the conveyance to the purchaser or notice in a record by the landlord to the tenant of the conveyance.

(2) Except as otherwise provided in Section 1205, the landlord remains liable to the tenant for the amount of any security deposit and unearned rent.

Comment

The effect of this section, which first appeared in URLTA (1972) § 2.105, is to sever both privity of contract and privity of estate between the assigning landlord and the tenant.

The landlord's release from liability occurs with respect to events occurring after the later of the notice to the tenant of the conveyance or the conveyance to the purchaser. If an event

occurred prior to that time, the landlord could be liable. For example, suppose a landlord installs a defective smoke alarm and later sells the building to a bona fide purchaser. Thereafter, a fire on the premises injures a tenant. The evidence establishes that the tenant would not have been injured if the smoke alarm had not been defective. This section would not relieve the landlord from potential liability as the smoke alarm was installed prior to the sale of the building to a third party.

Under paragraph (2), the landlord remains liable for the tenant's security deposit and unearned rent unless the landlord complies with Section 1205 to transfer the funds to the successor landlord or return them to the tenant.

SECTION 304. RULES OF LANDLORD GOVERNING USE AND ENJOYMENT OF PREMISES.

(a) Except as otherwise provided in Section 305(a) or as required by law other than this [act], a landlord may enforce a rule of the landlord in existence at the time the lease commenced only if the rule was disclosed to the tenant under Section 108.

(b) Except as otherwise provided in subsections (c) and (d), after commencement of the term of a lease, the landlord may adopt or modify a rule concerning the tenant's use and enjoyment of the premises, but the rule or modification may not take effect earlier than [30] days after the landlord gives the tenant notice in a record of the rule or modification.

(c) In a periodic tenancy for month to month, a rule or modification adopted under subsection (b) may not take effect before the expiration of the period in Section 801(b)(2) during which the tenant or landlord could have exercised the right to terminate the tenancy.

(d) In a tenancy for a fixed term, if a rule or modification adopted under subsection (b) substantially modifies the tenant's benefit of the bargain and is not required by law other than this [act], the rule is not enforceable against the tenant unless the tenant consents in a signed record.

Comment

This section governs rules adopted by the landlord. A companion section, Section 305,

governs rules adopted by a third party, such as a homeowner or condominium association, that may apply to the leased property. This section expands URLTA § 3.102.

Rules, as commonly understood, apply to the manner in which the tenant may use the premises, such as rules relating to noise, the presence of animals, and the disposal of garbage. A rule would not include agreements with respect to the length of a tenancy or the amount of rent payable by a tenant.

SECTION 305. RULES OF THIRD PARTIES GOVERNING USE AND ENJOYMENT OF THE PREMISES.

(a) If, before the commencement of the term of a lease, the landlord fails to disclose a rule adopted by a person other than the landlord which substantially modifies the tenant's benefit of the bargain and is not required by law other than this [act], and the rule is enforced against the tenant, the tenant may:

(1) recover actual damages from the landlord; or

(2) terminate the lease by giving the landlord notice in a record that the lease will terminate on a date specified in the notice which must be at least [30] days after the notice is given.

(b) Except as otherwise provided in subsection (c), if, after the commencement of the term of a lease, a person other than the landlord adopts or modifies a rule that substantially modifies the tenant's benefit of the bargain and is not required by law other than this [act] and the rule is enforced against the tenant, the tenant of a tenancy for a fixed term may terminate the lease by giving the landlord notice in a record that the lease will terminate on a date specified in the notice which must be at least [30] days after the notice is given or, in the case of a periodic tenancy, terminate the tenancy in accordance with Section 801.

(c) A tenant may not terminate a lease under subsection (b) if the lease provides the dwelling unit is subject to rules of a person other than the landlord and the person may modify

the rules after the commencement of the term of the lease.

Comment

This section addresses rules adopted by persons other than the landlord, such as homeowner and condominium associations that may affect how the tenant can use the premises. If the landlord does not disclose such rules in existence when the lease commences, the tenant can seek damages or terminate the lease but only if the rule is enforced against the tenant and enforcement substantially modifies the tenant's benefit of the bargain. If the rule is adopted after the lease commences, it is inappropriate to hold the landlord liable for damages. At the same time, if the rule substantially modifies the tenant's benefit of the bargain and it is enforced against the tenant, it is appropriate to allow the tenant to terminate the lease.

However, subsection (c) provides that the tenant cannot terminate the lease because the rule of another person has changed after the lease commenced if the lease provides that the rules of another person can be modified after the lease commenced. In this case the tenant has been alerted of that possibility and, thus, signed the lease with knowledge of that possibility.

The 1972 act had no provision comparable to Section 305.

[ARTICLE] 4

TENANT REMEDIES

SECTION 401. NOTICE AND OPPORTUNITY TO REMEDY. Except as otherwise provided in Section 403, if a landlord fails to comply with the lease or Section 302, the tenant has the remedies under Section 402 if the tenant gives the landlord:

(1) notice in a record of the noncompliance; and

(2) an opportunity to remedy the noncompliance within the following periods:

(A) subject to subparagraph (B), not later than [14] days after the tenant gave the notice; and

(B) if the noncompliance involves failure to provide an essential service or materially interferes with the health or safety of the tenant or immediate family member, the landlord shall remedy the noncompliance as soon as practicable but not later than [five] days after the tenant gave the notice.

Comment

This section, as well as Sections 402 and 403, are based upon URLTA (1972) § 4.101. Section 401 sets forth the requirement of giving the landlord notice and an opportunity to remedy the noncompliance before a tenant becomes entitled to the remedies set out in Section 402. Section 403 provides an exception for landlords who are unable to comply with the applicable time periods because of circumstances beyond their control.

If the cost of an essential service is payable by the tenant and the service is discontinued because the tenant failed to pay the bill, the landlord is not in noncompliance with the duty to provide an essential service. *See* Section 302(b).

SECTION 402. NONCOMPLIANCE BY LANDLORD; GENERALLY.

(a) Except as otherwise provided in Section 403, if a landlord's noncompliance with the lease or Section 302 results in the tenant not receiving an essential service, materially interferes with the health or safety of the tenant or immediate family member, or materially interferes with the use and enjoyment of the premises by the tenant or immediate family member and the noncompliance is not remedied during the applicable period specified in Section 401, the tenant may:

(1) terminate the lease, as provided in Section 404; or

(2) continue the lease and elect one or more of the following remedies:

(A) subject to Section 408, withhold rent for the period of noncompliance beginning on the date the tenant gave notice under Section 401;

(B) recover actual damages;

(C) obtain injunctive relief, specific performance, or other equitable relief;

(D) make repairs and deduct the cost from the rent, as provided in Section 406; or

(E) secure an essential service the landlord is obligated to provide or comparable substitute housing during the period of noncompliance, as provided in Section 407.

(b) If a landlord's noncompliance with the lease or Section 302 does not materially interfere with the health or safety of the tenant or immediate family member or the use and enjoyment of the premises by the tenant or immediate family member, the tenant may elect one or more of the remedies provided in subsection (a)(2)(B), (C), and (D).

(c) A tenant is not entitled to a remedy under this section to the extent:

(1) the landlord's noncompliance was caused by an act or omission of the tenant, immediate family member, or guest; or

(2) the tenant, immediate family member, or guest prevented the landlord from having access to the dwelling unit to remedy the act or omission described in the notice under Section 401.

Comment

Section 402 sets forth numerous remedies for a tenant if, as the result of a landlord's noncompliance with Section 302 or the lease, the tenant does not receive an essential service or the noncompliance materially interferes with the health or safety of the tenant or immediate family member or materially interferes with the use and enjoyment of the premises by the tenant or an immediate family member when the noncompliance is not remedied within the time period set forth in Section 401. For a noncompliance other than the failure to supply an essential service, there must be a material interference for Section 401 and its applicable cross-referenced sections to apply. Section 401(b) also preserves a tenant's remedies for an immaterial noncompliance.

Section 402 is an umbrella provision that sets forth the basic remedies, which include termination, rent withholding, damages, equitable remedies, repair and deduct, and, in the case of essential services, the possibility of substitute housing. In some cases, certain procedures attach if the tenant elects a particular remedy and those remedies are provided in a separate section. For example, Section 402 is supplemented by Sections 404 (lease termination remedy), 406 (repair and deduct remedy), 407 (essential services remedy), and 408 (rent withholding remedy). In addition to these remedies, Section 405 provides the remedy for the landlord's failure to turn over physical possession of the dwelling unit at the commencement of the term of the lease.

Importantly, Section 402 is subject to Section 403, which, if applicable, limits the ability of the tenant from seeking some of the remedies under this section if the noncompliance is due to circumstances beyond the landlord's control. Section 403 provides that the tenant's remedy under those circumstances is limited to termination of the lease.

Section 402 has been modified from the 1972 act to clarify the remedies available to a tenant for a landlord's noncompliance with Section 302 or under the lease. If the tenant does not receive an essential service that the landlord has a duty to provide under Section 302(b) or there is a material noncompliance by the landlord with the lease or Section 302(a) affecting the health or safety of the tenant or immediate family member or that materially interferes with their use and enjoyment of the premises, the tenant can elect from among the numerous remedies under this section. Under Section 302(b), the landlord has the duty to ensure the dwelling unit has access to essential services, such as water. However, if the lease shifts the cost of providing an essential service to the tenant and the tenant fails to pay the cost of the service, the failure of the tenant to receive the essential service is not the result of the landlord's noncompliance. Conversely, if the landlord fails to assure the dwelling unit has access to an essential service and the cost thereof has not been shifted to the tenant, the landlord would be in breach of a duty under Section 302(b) for which a remedy could be available under this section.

To further illustrate this point, under Section 302(a)(3), the landlord has the duty to provide plumbing services that conform to applicable law and are maintained in good working order. The plumbing facilities are separate from the provision of water which, under Section 302(b), the landlord may have a duty to provide as an essential service. Thus, if the dwelling unit has access to water which under Section 302(b) the landlord was obligated to provide but the toilets within the unit are not functioning, the tenant's remedy under Section 402 relates to whether the noncompliance materially affects health and safety, not whether the landlord discharged the duty to ensure the unit had access to an essential service. Whether a noncompliance "materially interferes with the health and safety" of a tenant or "materially interferes with the use and enjoyment of the premises" is a determination that depends upon the totality of the circumstances. Assume, for example, the plumbing problem affected the operation of only one toilet. If that is the only toilet in the dwelling unit, the inability to use that toilet would materially interfere with the use and enjoyment of the unit and constitute a health and safety issue. Conversely, if there were other toilets in the unit that were operating, the mere inability to use one toilet would not necessarily materially impair the use and enjoyment of the unit or present a health and safety issue.

Under this section the tenant may be entitled to "actual damages." Actual damages could include diminution in the value of the dwelling unit. See Section 102(2) and (7). Under this section, such damages would be for the period beginning on the date the tenant gave the landlord notice under Section 401 and ending on the date the noncompliance was remediated. The concept of diminution in value of the dwelling unit was also in the 1972 act although slightly different. The phrase is defined in section 102(7) as "a reduction from rent which reflects the extent to which a noncompliant condition of the premises impairs the tenant's use and enjoyment of the unit, as determined by a court based upon evidence that need not include expert testimony." The intent is to permit a court to consider, without the need for expert testimony, such factors as the nature and duration of the defect, the proportion of the dwelling unit that is affected, the value of services to which the tenant was deprived, the degree of discomfort imposed by the defect, and the effectiveness of the landlord's remediation efforts.

Remedies available to the tenant pursuant to Section 402 are not exclusive (see Section 110).

If the dwelling unit or premises are substantially damaged or destroyed by fire or other casualty to which Section 403 would apply, then the remedies in Section 403 rather than this section apply.

A duty to mitigate damages exists under Section 104(b).

SECTION 403. LIMITATIONS ON REMEDIES.

(a) If a dwelling unit or other part of the premises is substantially damaged or destroyed by a fire, other casualty, or natural disaster and:

(1) the unit or other part of the premises is uninhabitable or inaccessible or continued occupancy of the unit is unlawful, the tenant may vacate the unit immediately and, not later than [14] days after vacating the unit, give the landlord notice in a record of the tenant's intent to terminate the lease, in which case the lease terminates as of the date the tenant vacates the unit; or

(2) if continued occupancy of the unit is lawful, subject to the landlord's right to terminate the lease under subsection (b), the tenant, after complying with Section 401, may continue the lease and seek the remedies provided in Section 402(a)(2)(A), (B), (C), and (D).

(b) If a dwelling unit or other part of the premises is substantially damaged by a fire, other casualty, or natural disaster and continued occupancy of the unit is unlawful or dangerous or requires repairs that can be made only if the tenant vacates the unit, the landlord may terminate the lease by giving the tenant notice in a record that the lease will terminate on a specified date, which must be at least [five] days after the notice is given.

(c) If a landlord's noncompliance with the lease or Section 302 materially interferes with the health or safety of a tenant or immediate family member or the use and enjoyment of the premises by the tenant or immediate family member and it is impossible for the landlord to remedy the noncompliance within the applicable period specified in Section 401, the tenant may

terminate the lease as provided in Section 404(b) or, subject to subsection (d), continue the lease and recover actual damages limited to diminution in the value of the dwelling unit.

(d) If a landlord's noncompliance with the lease or Section 302 materially interferes with the health or safety of a tenant or immediate family member or the use and enjoyment of the premises by the tenant or immediate family member and it is impossible for the landlord to remedy the noncompliance not later than [30] days after receiving the notice under Section 401, the landlord may terminate the lease by giving the tenant notice in a record that the lease will terminate on a specified date, which must be at least [30] days after the landlord gives the notice. The landlord may not rent the unit for [90] days after termination of the lease.

(e) If a lease is terminated under this section, the landlord shall return any security deposit and unearned rent to which the tenant is entitled under Section 1204.

(f) This section does not preclude:

(1) a landlord from seeking actual damages from the tenant under law other than this [act] for damage to the premises caused by an act or omission of the tenant, immediate family member, or guest; or

(2) a tenant from seeking actual damages from the landlord under law other than this [act] if the fire or other casualty was caused by an act or omission of the landlord or landlord's agent.

Comment

This section expands upon URLTA (1972) § 4.106.

When a dwelling unit has been partially damaged but the tenant's continued occupancy of the undamaged part is lawful, the tenant may elect to remain in possession of the dwelling unit under subsection (a)(2) but seek damages or other relief under Section 402(a)(2)(A), (B), (C), or (D) for the portion of the unit that is uninhabitable. These rights may be limited, however, by the safe harbor provided to landlords under Section 403. Thus, if the landlord is unable to make repairs during the time period required by Section 401 because of extraordinary supervening

circumstances beyond the landlord's control (such as the continuing effects of a natural disaster that make it impossible to get materials or personnel to make timely repairs), Section 403 limits the tenant's remedy to termination of the lease or recovering actual damages limited to the diminution in the value of the dwelling unit.

The references in subsections (c) and (d) to it being "impossible" for a landlord to remedy noncompliance reflect the common-law standard that discharges a party's contractual obligation only under extraordinary supervening circumstances, the non-occurrence of which were a "basic assumption" on which the contract was made. Mere market shifts or the financial inability of a party to perform its contractual undertakings do not ordinarily meet this standard.

SECTION 404. MATERIAL NONCOMPLIANCE BY LANDLORD;

TERMINATION OF LEASE.

(a) If a landlord's noncompliance with the lease or Section 302 materially interferes with the health or safety of the tenant or immediate family member and the noncompliance is not remedied within the period specified in Section 401(2)(B), the tenant may terminate the lease by giving the landlord notice in a record of the tenant's intent to terminate the lease immediately or on a specified date, which is not later than [30] days after the date of the notice.

(b) If a landlord's noncompliance with the lease or Section 302 materially interferes with the use and enjoyment of the premises unrelated to the health or safety of the tenant or immediate family member and the noncompliance is not remedied within the period specified in Section 401(2)(A), the tenant may terminate the lease by giving the landlord notice in a record of the tenant's intent to terminate the lease on a specified date, which must be at least [14] days after the expiration of the period allowed under Section 401 for the remedy of the noncompliance.

(c) In addition to terminating a lease as provided in subsection (a) or (b), the tenant may recover actual damages.

(d) If a tenant terminates a lease under this section, the landlord shall return any security deposit and unearned rent to which the tenant is entitled under Section 1204.

Comment

This section provides the notice procedures for terminating a lease. If the landlord's noncompliance materially interferes with the tenant's use and enjoyment of the premises, the tenant may terminate the lease no earlier than [14] days after the notice period in Section 401 has expired. When the situation is of some urgency – i.e., when the noncompliance involves the failure to receive an essential service or materially interferes with the health and safety of the tenant or immediate family member – the tenant could terminate the lease immediately after the notice period in Section 401(2)(B) has expired. However, if the inability to receive essential services was due to the tenant's failure to pay for the service as provided under Section 302(b), this section would not apply.

Under subsection (c), the tenant could recover actual damages that could include diminution in the value of the dwelling unit. Given that this remedy is in addition to terminating the lease, the damages for the diminution in value should be for the period beginning on the date the tenant gave the landlord the Section 401 notice and ending on the date the lease terminates.

SECTION 405. LANDLORD FAILURE TO DELIVER POSSESSION TO TENANT.

(a) Except as otherwise provided in subsection (d), if a landlord does not deliver physical possession of the dwelling unit to the tenant under Section 301, the tenant is not required to pay rent until possession is delivered and may:

(1) terminate the lease by giving notice in a record to the landlord at any time before the landlord delivers possession of the unit to the tenant; or

(2) demand performance of the lease by the landlord and:

(A) recover actual damages and obtain possession of the unit from the landlord; or

(B) obtain possession of the unit from any person wrongfully in possession by any lawful means the landlord could have used.

(b) If a tenant terminates the lease under subsection (a)(1), the landlord shall return any amounts received from the tenant before the commencement of the term of the lease.

(c) In addition to the rights of a tenant under subsections (a) and (b), if a landlord's

failure to deliver possession to the tenant under Section 301 is willful, the tenant may recover [three times] the periodic rent or [three times] the actual damages, whichever is greater.

(d) If a tenant seeks possession under subsection (a)(2)(B), the tenant is liable to the landlord for rent and may recover from the person wrongfully in possession the damages provided in Section 802.

Comment

This section is essentially the same as URLTA (1972) § 4.102.

Under subsection (a), the tenant can terminate the lease if the landlord fails to deliver physical possession of the dwelling unit to the tenant at the commencement of the term of the lease. Under the prior 1972 act, the phrase “actual possession” was used in lieu of “physical possession.” In this act, the latter phrase was used as it is more descriptive of the landlord’s duty. Legally, however, there should be no distinction between actual and physical possession. See also comments to Section 301.

Under subsection (a)(2), a tenant may elect to file an action for possession directly against a holdover tenant or other person in wrongful possession of the dwelling unit. If the tenant elects to sue the holdover tenant for possession, the tenant effectively elects to continue the lease with the landlord, and thus, under subsection (d), is liable to the landlord for rent for the period beginning with the commencement of the term of the lease. Because subsection (a)(2)(B) provides that the tenant may obtain possession “by any lawful means that could have been used by the landlord,” the tenant can take advantage of all eviction procedures, including summary proceedings as well as ejectment.

SECTION 406. REPAIR BY TENANT.

(a) Subject to subsection (d), if a landlord fails to comply with the lease or Section 302, the tenant may give notice to the landlord under Section 401 specifying the noncompliance. If the landlord fails to remedy the noncompliance within the applicable period specified in Section 401 and the reasonable cost to remedy the noncompliance does not exceed one month’s periodic rent, the tenant may make repairs to remedy the noncompliance at the landlord’s expense.

(b) A tenant that makes repairs under subsection (a) is entitled to recover the actual and reasonable cost incurred or the reasonable value of the work performed to remedy the

noncompliance, not exceeding one month's periodic rent. Unless the tenant has been reimbursed by the landlord, the tenant may deduct the cost or value from rent after submitting to the landlord an itemized statement, accompanied by receipts for purchased items and services.

(c) A repair under subsection (a) must be made in a professional manner and in compliance with applicable law.

(d) A tenant may not repair a noncompliance at the landlord's expense under subsection (a) to the extent:

(1) the noncompliance was caused by an act or omission of the tenant, immediate family member, or guest; or

(2) the landlord was unable to remedy the noncompliance within the applicable period specified in Section 401 because the tenant, immediate family member, or guest denied the landlord access to the dwelling unit.

(e) A tenant's use of the remedy under this section is limited to one month's periodic rent during any 12-month period.

Comment

This section is similar to URLTA (1972) § 4.103.

Under subsection (b), if a tenant hires another person to perform a repair the landlord should have made, the tenant recovers the actual and reasonable cost incurred by the tenant to have the repair made. If the tenant is able to personally do the repair, the tenant may recover the fair and reasonable value of the work performed to repair.

Under subsection (d), the tenant may not repair at the landlord's expense to the extent the damage that was repaired was caused by the tenant, immediate family member, or a guest. For example, if the tenant breaks the door lock, the tenant cannot deduct the cost of the repair the tenant makes from the rent. Subsection (d) would not preclude the tenant from making the repair, but would preclude the deduction of the costs from the rent.

Subsection (e) is intended to assure the landlord that over any given 12-month period the landlord's costs arising as the result of the tenant's election of this self-help remedy do not exceed one month's rent. The 12-month look back period begins to run 12 months immediately

before the completion of the current repair for which the tenant has exercised the tenant's rights under this section. For example, suppose the tenant paying monthly rent of \$500 properly contracts for a plumber to make a repair that costs \$300. The repair is completed on November 10. The tenant is entitled to be reimbursed the entire \$300 if over the last 12 months, beginning with November 10 of the preceding year, the tenant never used this remedy. If over that period the tenant has previously used the remedy to the extent of \$400, the tenant would be able to recoup only \$100 of the cost of the current \$300 repair.

SECTION 407. FAILURE OF ESSENTIAL SERVICE.

(a) Except as otherwise provided in Section 403, if a tenant fails to receive an essential service the landlord has a duty to provide under Section 302(b), the tenant may give notice to the landlord under Section 401 specifying the failure. If the landlord fails to provide the essential service within the applicable period specified in Section 401, the tenant may:

(1) take appropriate measures to secure the essential service during the period of the landlord's noncompliance and deduct the actual and reasonable cost from the rent; or

(2) procure comparable substitute housing at the landlord's expense during the period of the noncompliance and recover actual damages.

(b) This section does not apply if the tenant's failure to receive the essential service was caused by an act or omission of the tenant, immediate family member, or guest.

Comment

This section is based upon URLTA (1972) § 4.104.

This section applies when the tenant fails to receive an essential service but decides to continue the lease rather than to terminate it. See Section 402(a)(2)(E). It would not apply if the tenant terminates the lease.

Under subsection (b), a tenant's actual damages could include the difference between the rent provided in the lease and the actual and reasonable cost of substitute housing as well as moving expenses. It also could include diminution in the value of the dwelling unit. See Section 102(2) and (7).

This section is inapplicable if the reason the tenant failed to receive an essential service was the tenant's failure to pay the utility bill the tenant was obligated to pay. See Section 302(b)(2).

**SECTION 408. LANDLORD NONCOMPLIANCE AS DEFENSE TO ACTION
FOR POSSESSION OR NONPAYMENT OF RENT; ESCROW ACCOUNT.**

(a) If a landlord fails to comply with the lease or Section 302 and the tenant has complied with Section 401, the tenant may defend an action by the landlord based on nonpayment of rent on the ground that no rent was due because of the noncompliance [and counterclaim for any amount the tenant may recover under the lease or this [act]].

(b) If a tenant is in possession of the dwelling unit when the landlord files an action based on nonpayment of rent, either party may seek a court order directing the tenant to pay all or part of the unpaid rent and all additional rent as it accrues into an escrow account with the court or a bank or other entity authorized by the court to hold funds in escrow.

(c) If rent has been paid into escrow under this section and the court determines the landlord fully complied with the lease and Section 302, the court shall order the immediate release to the landlord of rent held in escrow and enter judgment for any remaining rent owed.

(d) If rent has been paid into escrow under this section and the court determines that the landlord's noncompliance with the lease or Section 302 materially interferes with the health or safety of a tenant or an immediate family member or the use and enjoyment of the premises by the tenant or an immediate family member, the court may order one or more of the following:

(1) release to the landlord of all or part of the rent held in escrow to be used only to bring the premises into compliance with the lease or Section 302;

(2) return to the tenant of all or part of the rent held in escrow in compensation for:

- (A) a repair made by the tenant in compliance with Section 406; or
- (B) actual damages;

(3) the tenant's continued payment of rent into escrow as rent becomes due or abatement of future rent until the landlord brings the premises into compliance with the lease or Section 302; and

(4) payment to the landlord of any rent held in escrow not otherwise payable to the tenant.

(e) If rent has not been paid into escrow under this section and the court determines that the landlord complied with the lease and Section 302, the court shall render judgment for unpaid rent.

(f) If rent has not been paid into escrow under this section and the court determines that the landlord's noncompliance with the lease or Section 302 materially interferes with the health or safety of a tenant or immediate family member or the use and enjoyment of the premises by the tenant or an immediate family member, the court shall render judgment for unpaid rent less any amount expended by the tenant in compliance with Section 406 to repair the premises and actual damages.

(g) In addition to the other remedies provided in this section, the court may award possession or other appropriate relief if the court determines the tenant:

(1) acted in bad faith in withholding rent; or

(2) failed to comply with an order to pay rent into escrow under subsection (b) or to pay rent or other amounts owed to the landlord under this section.

(h) The court may not award possession if the court determines that the tenant withheld rent in good faith and the tenant complies with an order to pay unpaid rent into escrow or to the landlord under this section.

Legislative Note: State laws may differ on whether a landlord can bring a claim for both possession and rent in an expedited summary-eviction proceeding. If a state limits a summary-

eviction proceeding to a claim for possession, the state will need to revise this section accordingly to conform to that state's practice.

Comment

This section expands upon URLTA (1972) § 4.105.

SECTION 409. UNLAWFUL REMOVAL; EXCLUSION; INTERRUPTION OF ESSENTIAL SERVICE.

(a) If a landlord unlawfully removes or excludes the tenant from the premises or willfully interrupts or causes the interruption of an essential service the landlord has the duty to provide to the tenant, the tenant may recover [three times] the periodic rent or [three times] damages, whichever is greater, and:

(1) recover possession; or

(2) terminate the lease by giving the landlord notice in a record of the tenant's intent to terminate the lease immediately or on a later specified date.

(b) If a tenant terminates the lease under subsection (a)(2), the landlord shall return any security deposit and unearned rent to which the tenant is entitled under Section 1204.

Comment

This section is based upon URLTA § 4.107.

A landlord who interrupts an essential service to make a repair or alteration to correct a problem is not in violation of this section. Thus, for such an interruption the tenant could not elect the remedies under this section.

[ARTICLE] 5

TENANT DUTIES

SECTION 501. TENANT DUTIES.

(a) In this section, "normal wear and tear" means deterioration that results from the intended use of a dwelling unit, including breakage or malfunction due to age or deteriorated

condition. The term does not include deterioration that results from negligence, carelessness, accident, or abuse of the unit, fixtures, equipment, or other tangible personal property by the tenant, immediate family member, or guest.

(b) A tenant:

(1) shall comply with the obligations imposed on the tenant by the lease and this [act];

(2) shall comply with the obligations imposed on a tenant by any building, housing, fire, or health code or other law;

(3) except with respect to duties imposed on the landlord by the lease, this [act], or law other than this [act], shall keep the dwelling unit reasonably safe and sanitary;

(4) shall remove all garbage, rubbish, and other debris from the unit in a clean and safe manner;

(5) shall keep all plumbing fixtures in the unit reasonably clean;

(6) shall use in a reasonable manner all electrical, plumbing, heating, ventilating, and air-conditioning systems and other facilities and appliances on the premises;

(7) without the landlord's consent, may not intentionally or negligently:

(A) destroy, deface, damage, impair, remove, or render inoperative any part of the premises;

(B) destroy, deface, damage, impair, remove, or render inoperative any safety equipment on the premises; or

(C) permit an immediate family member or guest to do any of the acts specified in this paragraph;

(8) may not disturb the use and enjoyment of the premises by another tenant or

permit an immediate family member or guest to do the same;

(9) may not engage in or permit an immediate family member or guest to engage in criminal activity;

(10) shall notify the landlord within a reasonable time of any condition of the premises which requires repair by the landlord under the lease or Section 302;

(11) shall 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 term of the lease, with the premises free of any damage caused by the tenant, immediate family member, or guest, except for:

(A) normal wear and tear;

(B) damage resulting from a cause beyond the control of the tenant, immediate family member, or guest; and

(C) any addition and improvement installed on the premises with the landlord's consent; and

(12) unless the landlord and tenant otherwise agree, shall use the dwelling unit only for residential purposes.

Comment

This section expands upon URLTA (1972) §§ 3.101 and 3.104.

Under subsection (b)(3), the tenant is obligated to keep the dwelling unit in a safe or sanitary condition unless the duty to do so is imposed on another, such as the landlord. For example, because Section 302(a)(3) imposes a duty on the landlord to conform plumbing fixtures to applicable law, this section does not shift that duty to the tenant.

Subsection (b)(12) provides that in the absence of a contrary agreement, a tenant shall use the dwelling unit only for residential purposes. To the extent that tenants use their homes for incidental business uses, subsection (b)(12) leaves to judicial determination whether that incidental use would constitute a use for other than residential purposes. See 1 A.L.R. 6th 135 (2005)(collecting and analyzing cases). The provision contemplates, however, that a landlord and tenant may agree that the tenant can use the dwelling unit for both residential and business purposes. If the parties so agree, the tenant's actual damages for a landlord's noncompliance with

the lease or this act may include foreseeable damages attributable to the business use.

Section 601(a)(2) allows the landlord to terminate a lease for the tenant's material noncompliance with Section 501. If the tenant's noncompliance is not material, the landlord cannot terminate the lease under Section 601 but could resort to other remedies under this act. For example, if the tenant's minor child draws on the rented apartment's walls, the landlord could apply the security deposit to the cost of repainting the wall.

[ARTICLE] 6

LANDLORD REMEDIES

SECTION 601. TENANT FAILURE TO PAY RENT; OTHER

NONCOMPLIANCE WITH LEASE.

(a) Except as otherwise provided by law other than this [act] and subject to subsection (b):

(1) a landlord may terminate a lease for nonpayment of rent when the rent is unpaid when due by giving the tenant notice in a record stating that if the rent remains unpaid [14] days after the notice is given, the lease will terminate on expiration of the [14]-day period or a later specified date; or

(2) if there is a material noncompliance with a lease or this [act] by the tenant, other than nonpayment of rent, the landlord may give the tenant notice in a record specifying the act or omission constituting the noncompliance and stating that if the noncompliance is not remedied not later than [14] days after the landlord gives the notice, the lease will terminate on a specified date which must be at least [30] days after the landlord gives the notice.

(b) A landlord may terminate the lease without giving the tenant an opportunity to remedy a noncompliance by giving the tenant the notice described in subsection (c) if:

(1) the tenant failed to pay rent in a timely manner on at least [two] occasions within the [four]-month period preceding the notice to terminate the lease;

(2) the tenant committed substantially the same act or omission for which notice under subsection (a)(2) was given within six months preceding the latest noncompliance;

(3) the noncompliance by the tenant, immediate family member, or guest poses an actual and imminent threat to the health or safety of any individual on the premises or the landlord or landlord's agent; or

(4) subject to subsection (e), the tenant, immediate family member, or guest has committed a criminal act.

(c) Notice in a record terminating a lease under subsection (b) must specify the reason for the termination and state that:

(1) for a termination under subsection (b)(1) or (2), the lease will terminate on a specified date, which must be at least [14] days after the landlord gave the notice; or

(2) for a termination under subsection (b)(3) or (4), the lease will terminate immediately or on a later specified date.

(d) Except as otherwise provided in this [act], if a tenant fails to comply with Section 501, the landlord may:

(1) obtain injunctive relief or specific performance; or

(2) regardless of whether the lease terminates as a result of the tenant's noncompliance, recover actual damages [or liquidated damages as provided by the lease].

(e) A landlord may not terminate a lease under subsection (b)(4) if the criminal act was the act of an immediate family member or guest, and the tenant:

(1) neither knew nor should have known the act was going to be committed; and

(2) took reasonable steps to ensure that there will not be a repeated criminal act on the premises by the immediate family member or guest.

Legislative Note: If a state allows for liquidated damages in a lease, the bracketed language in subsection (d)(2) should be included.

Comment

This section is based upon URLTA §§ 4.201 and 4.202.

Section 601 gives the landlord the right to terminate a lease for the tenant's nonpayment of rent and other material noncompliances with the lease or this act.

Under subsection (d), for any noncompliance (material or not), the landlord would have the other contractual remedies against the tenant, including specific performance and damages. The section should be read in conjunction with Section 801, which gives a landlord the unconditional right to terminate a periodic tenancy upon compliance with the notice provisions in that section.

SECTION 602. WAIVER OF LANDLORD RIGHT TO TERMINATE.

(a) Subject to subsection (b), acceptance by a landlord of rent for two or more successive rental periods with knowledge of noncompliance by the tenant with the lease or this [act] or acceptance by the landlord of the tenant's performance that varies from the terms of the lease or this [act] is a waiver of the landlord's right to terminate the lease for the noncompliance, unless the landlord and tenant otherwise agree after the noncompliance occurs.

(b) This section does not prevent a landlord or tenant from exercising a right under Section 801 to terminate a periodic tenancy.

Comment

This section is based upon URLTA § 4.204.

SECTION 603. DISTRAINT FOR RENT ABOLISHED; LIEN PROHIBITED.

(a) Distraint for rent is abolished.

(b) A landlord may not create, perfect, or enforce a lien or security interest on a tenant's tangible personal property to secure the tenant's performance under the lease or this [act]. This subsection does not apply to a lien or security interest created or perfected before [the effective

date of this [act]].

Comment

This section is based upon URLTA § 4.205.

This section prohibits the landlord from seizing the tenant's tangible personal property to satisfy the landlord's claims against the tenant or filing a lien against the tenant's tangible personal property to secure the tenant's obligations under the lease. It also prohibits a landlord from taking a security interest in any of the tenant's tangible personal property to secure the tenant's performance. On the other hand, it would not preclude a landlord taking a lien or security interest to secure performance of a tenant's contractual promises unrelated to the lease. For example, if the landlord also owned an appliance store from which tenant purchased an appliance under a monthly payment plan, a landlord's lien on the appliance to secure tenant's payment of the debt incurred in purchasing the appliance is not prohibited by this act.

SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.

(a) In this section, "reasonable efforts" means steps a landlord would take to rent a dwelling unit if the unit is vacated at the end of a term, including showing the unit to a prospective tenant or advertising the availability of the unit.

(b) A tenant abandons a dwelling unit if:

(1) the tenant delivers possession of the unit to the landlord before the end of the term by returning the keys or other means of access or otherwise notifies the landlord the unit has been vacated; or

(2) rent that is due was not paid for at least [five] days and the tenant has:

(A) vacated the unit by removing substantially all of the tenant's personal property from the unit and the premises; and

(B) caused the termination of an essential service or otherwise indicated by words or conduct that the tenant has no intention to return to the unit.

(c) If a tenant abandons the dwelling unit before the end of the term of the lease, the landlord may recover possession of the unit without a court order and may:

(1) accept the tenant's abandonment of the unit by notice in a record given to the tenant, in which case:

(A) the lease terminates on the date of abandonment;

(B) the landlord and tenant are liable to each other under the lease only for a noncompliance with the lease or this [act] which occurred before the lease terminates; and

(C) the landlord shall return any security deposit and unearned rent to which the tenant is entitled under Section 1204; or

(2) treat the abandonment as wrongful.

(d) If a landlord treats abandonment of a dwelling unit as wrongful under subsection (c)(2), the tenant remains liable under the lease and the landlord has a duty to mitigate by making a reasonable effort to rent the unit, subject to the following rules:

(1) The landlord's duty to mitigate does not take priority over the landlord's right to lease first any other dwelling unit the landlord has available to lease.

(2) If the landlord leases the abandoned unit to another person for a term beginning before the expiration of the term of the lease of the abandoning tenant, the lease terminates as of the date of the new tenancy and the landlord may recover actual damages from the abandoning tenant.

(3) If the landlord makes a reasonable effort to lease the abandoning tenant's unit but is unable to lease it or is able to lease it only for an amount less than the rent payable by the abandoning tenant, the landlord may recover actual damages from the abandoning tenant.

(4) If the landlord fails to make a reasonable effort to lease the abandoning tenant's unit, the lease terminates as of the date of abandonment, and the landlord and tenant are liable to each other under the lease or this [act] only for a noncompliance with the lease or this

[act] which occurred before the date of abandonment.

(5) After deducting the landlord's actual damages, the landlord shall return any security deposit and unearned rent to which the tenant is entitled under Section 1204.

Comment

This section is based upon URLTA (1972) § 4.203.

Under subsection (a), the reasonable steps include advertising the unit and showing the unit to any prospective tenants. Advertising can be by a variety of means including sending emails to prospective tenants, hiring a real estate agent to locate prospective tenants, posting for rent signs on the premises, and advertising the unit for rent in newspapers or other media.

Under subsection (b)(2)(B), a tenant might cause termination of utility services by cancelling the services or merely not paying the bill.

In light of subsection (c), a landlord who wishes to hold an abandoning tenant liable for breaches of the lease after a tenant abandons the premises should not accept the abandonment but should treat the abandonment as wrongful. Thus, if the tenant abandons the premises on the date rent would otherwise be due, rather than accepting the abandonment, which would result in the tenant owing no rent, the landlord should treat the abandonment as wrongful under subsection (c)(2).

In light of subsection (d)(1), when at the time the landlord is fulfilling the duty to mitigate the landlord has other vacant units to rent, the landlord can show and lease the other units to prospective tenants before showing the abandoned unit to prospective tenants.

If a tenant abandons the dwelling unit, the landlord may choose to accept the abandonment, thus agreeing to a termination of the lease. If, at the time of the abandonment, the tenant is in arrears on rent, the landlord would still have a cause of action to recover the past due rent. However, by accepting the abandonment, the landlord would not have a cause of action for actual damages resulting from the abandonment.

Conversely, if the landlord does not accept the abandonment, the landlord can seek to recover damages from the tenant for anticipatory breach or actual damages as provided in subsection (d)(3).

Subsection (d)(4) follows the position taken in the 1972 act providing that if the landlord fails to use reasonable efforts to lease the abandoned dwelling unit, the lease is terminated as of the date of the abandonment. This effectively results in an acceptance of the abandonment. See also subsection (c)(1).

Under federal law, individuals in the armed services are often protected from state statutes of limitation and other state laws that could adversely affect the interests of such

individuals while in the service. *See e.g.* Servicemembers Civil Relief Act (2003), 50 U.S. C. App. § 501 et seq. Obviously, any such federal law would supersede contrary provisions in this act under the supremacy clause of the United States Constitution.

SECTION 605. LIMITATION ON SELF-HELP RECOVERY. Except as otherwise provided in Section 604, a landlord:

(1) may not recover or take possession of a dwelling unit by an act of self-help, including willful interruption or causing the willful interruption of an essential service to the unit; and

(2) may recover possession of a dwelling unit following termination of a lease only through an action permitted by law other than this [act].

Comment

This section is based upon URLTA (1972) § 4.207.

Typically, upon termination of the lease, the tenant voluntarily vacates the premises and the landlord retakes possession without the intervention of courts. But if a lease terminates and the tenant does not vacate the premises, the landlord will need to bring an action for possession. Paragraph (1) bars the landlord from removing the tenant from the premises by self-help and paragraph (2) sets up the general principle that an action is required to recover possession from a tenant who has not relinquished possession. This action might be under the state's ejectment law or pursuant to a more expedited summary procedure. Under Section 604, however, a landlord could obtain possession without a court order where the tenant has abandoned the premises, in which case the landlord would not need a court order.

[ARTICLE] 7

ACCESS TO DWELLING UNIT

SECTION 701. LANDLORD ACCESS TO DWELLING UNIT.

(a) Except as otherwise provided in this section, a landlord may not enter a dwelling unit unless:

(1) entry is permitted by the lease or the tenant otherwise agrees;

(2) entry is under a court order;

(3) the tenant has abandoned the unit under Section 604; or

(4) permitted by law other than this [act].

(b) A tenant may not unreasonably withhold consent for the landlord to enter the dwelling unit to:

(1) inspect the unit;

(2) make a necessary or agreed-to repair, alteration, or improvement;

(3) supply a necessary or agreed-to service; or

(4) exhibit the unit to a prospective or actual purchaser, mortgagee, tenant, worker, or contractor or a public official responsible for enforcing a building, housing, fire, or health code or other law.

(c) Except as otherwise provided in subsection (d) or (e), a landlord may enter a dwelling unit only at a reasonable time and with the tenant's consent and shall give the tenant at least [24] hours' notice of the intent to enter the unit.

(d) For routine maintenance or pest control, a landlord may enter the dwelling unit without the tenant's consent if the landlord gives the tenant:

(1) at least [72] hours' notice of the intent to enter the unit; or

(2) a fixed schedule for maintenance or pest control at least [72] hours before the first scheduled entry into the unit.

(e) In an emergency or when maintenance or repairs are being made at a tenant's request, the landlord may enter the dwelling unit without the tenant's consent if the landlord gives notice that is reasonable under the circumstances. If the landlord enters the unit when the tenant is not present and notice was not given, the landlord shall leave notice of the entry in a conspicuous place in the unit stating the fact of entry, the date and time of entry, and the reason for the entry.

(f) When notice is given under this section before the landlord enters the unit, the notice

must state the intended purpose for the entry and the date and a reasonable period during which the landlord anticipates making the entry.

(g) A landlord may not abuse the right under this section to enter a tenant's dwelling unit or use the right to harass the tenant.

Comment

This section significantly expands on the access rules of URLTA (1972) § 3.103.

SECTION 702. REMEDIES FOR ABUSE OF ACCESS.

(a) If a tenant unreasonably refuses to allow the landlord access to the dwelling unit, the landlord may recover actual damages or [one] month's periodic rent, whichever is greater, and:

(1) the court may compel the tenant to grant the landlord access to the unit; or

(2) the landlord may terminate the lease by giving the tenant notice in a record stating that if the tenant fails to grant the landlord access to the unit not later than [14] days after the notice, the lease will terminate on expiration of the [14]-day period or on a later specified date.

(b) If a landlord unlawfully enters a tenant's dwelling unit, lawfully enters but in an unreasonable manner, or makes repeated demands to enter that are otherwise lawful but have the effect of harassing the tenant, the tenant may recover actual damages or [one] month's periodic rent, whichever is greater, and:

(1) seek injunctive relief to prevent the recurrence of the conduct; or

(2) terminate the lease by giving the landlord notice in a record that the lease will terminate immediately or on a later specified date which is not later than [30] days after notice is given.

[ARTICLE] 8

**PERIODIC AND HOLDOVER TENANCY; DEATH
OF TENANT**

SECTION 801. TERMINATION OF PERIODIC TENANCY.

(a) A periodic tenancy continues until the landlord or tenant gives the other the notice under subsection (b).

(b) Except as otherwise provided in this [act], a landlord or tenant may terminate a periodic tenancy:

(1) for week to week, by giving the other at least [five] days' notice in a record of the party's intent to terminate the tenancy on a specified date; and

(2) for month to month, by giving the other at least [one] month's notice in a record of the party's intent to terminate the tenancy at the end of the monthly period.

Comment

This section and Section 802 are based upon URTLA (1972) § 4.301.

Under subsection (b)(2), a month-to-month tenancy can be terminated by giving one month's notice. The termination date in the notice must coincide with the normal end of the monthly period. Thus, if the tenancy begins on the first of the month, the termination date in the notice must be on the last day of at least the next month or it could be on the last date of any month at least one month after the notice is given. If the month-to-month tenancy begins on the 15th of the month, the one-month notice must have a termination date no earlier than the 14th of the next month but could have a termination date on the 14th for subsequent months. Consistent with common law, this act would not require the notice to include a reason for the termination.

SECTION 802. HOLDOVER TENANCY.

(a) Except as otherwise provided in subsection (b) and Section 405(a)(2)(B), if a tenant remains in possession without the landlord's consent after expiration of a tenancy for a fixed term or termination of a periodic tenancy, the landlord may bring an action for possession. If the tenant's holdover is willful, the landlord may recover [three times] the periodic rent or [three

times] the actual damages, whichever is greater.

(b) Unless a landlord and tenant otherwise agree in a record, if the tenant remains in possession with the landlord's consent after expiration of a tenancy for a fixed term, a periodic tenancy for month to month arises under the same terms as the expired lease.

Comment

Under the common law, largely reflected in this section, if a tenant holds over beyond the end of the term, the landlord may elect to treat the holdover tenant as a trespasser (subsection (a)) or treat the tenant as a periodic tenant (subsection (b)). Under the common law, the periodic tenancy arising from a holdover was year to year. Under this act, it is limited to month to month. Additionally, the terms of the periodic tenancy are the same as the lease that terminated. However, this is not true if the landlord and tenant otherwise agreed. Such agreement may be in the terms of the original lease or determined from subsequent agreements. For example, the parties may have agreed in a record that if the tenant held over, rent would increase by 10%. To be effective, however, that agreement must be in a record. Thus, oral agreements would not change the terms of the holdover tenancy.

The landlord's rights under this section are subject to Section 405(a)(2)(B). That subsection gives a succeeding tenant the right to bring the action for possession against the holdover tenant.

SECTION 803. DEATH OF TENANT.

(a) If a sole tenant under a lease dies before the end of a tenancy for a fixed term or a periodic tenancy, the tenant's surviving spouse[,] [or] [partner in a civil union] [,] [or] [domestic partner] who resides in the dwelling unit may assume the lease by giving the landlord notice in a record not later than [20] days after the tenant's death stating the intent of the spouse [or partner] to assume the lease. On assuming the lease, the spouse [or partner] becomes the tenant under the lease.

(b) Except as otherwise provided in this section or law other than this [act], a landlord or tenant representative may terminate the lease of a deceased tenant by giving to the other and to a surviving spouse[,] [or] [partner in a civil union] [,] [or] [domestic partner] of the tenant who resides in the dwelling unit notice in a record. The notice must state the lease will terminate on a

specified date, which must be at least [30] days after the notice in the case of a tenancy for a fixed term or a specified date consistent with Section 801(b) in the case of a periodic tenancy. Notice sent to a surviving spouse [or partner] must also state that the surviving spouse [or partner] has [20] days after receipt of the notice to assume the lease. If the spouse [or partner] assumes the lease, the spouse [or partner] becomes the tenant under the lease.

(c) If a deceased tenant is survived by a spouse [or partner in a civil union][or domestic partner] who resides in the dwelling unit, notice to terminate a lease under subsection (b) may not be given before the time specified in subsection (a) expires.

(d) If a landlord is unable to contact a deceased tenant's surviving spouse[,] [or] [partner in a civil union] [,] [or] [domestic partner] who resides in the dwelling unit or tenant representative for the purpose of terminating the lease under subsection (b), the landlord may terminate the lease without notice if rent that was due was not paid for at least [25] days.

Comment

The 1972 Act had no provision comparable to this section.

Any notice in a record given under this section must comply with Section 107(b).

Under subsection (a), the surviving spouse, partner in a civil union, or domestic partner who resides in the dwelling unit may assume the lease. Upon such assumption, the spouse or partner becomes the tenant under the lease. An assumption does not require the landlord's consent.

If a tenant dies during the term of a lease, either the landlord or tenant representative (as defined in Section 102(35)) can terminate the lease under subsection (b) unless otherwise prohibited by this section or other law. Subsection (c), for example, provides that a notice to terminate may not be given until the surviving spouse, partner in a civil union or domestic partner has the opportunity to exercise the right granted under subsection (a).

If a tenant who lived alone was the only party to the lease, the landlord may unilaterally terminate the lease if subsection (d) applies. To illustrate the operation of subsection (d), suppose the tenant of a fixed term tenancy to end on December 31 and who is the sole occupant of the dwelling unit dies on March 5 having paid rent on March 1. The landlord learns of the tenant's death on March 10. Because rent was paid for March, the landlord will not be able to

terminate this lease in March. If no rent was paid on April 1, however, and the landlord is unable to contact a tenant representative, the landlord would be free to unilaterally terminate the lease on or after April 25. If the landlord has contact with a tenant representative, the landlord could not terminate under subsection (d), but may terminate the lease under subsection (b).

[ARTICLE] 9

RETALIATION

SECTION 901. RETALIATION PROHIBITED.

(a) A landlord may not engage in conduct described in subsection (b) if the landlord's purpose is to retaliate against a tenant that:

(1) complained to a governmental agency responsible for enforcement of a building, housing, fire, or health code or other law, alleging a violation applicable to the premises materially affecting the health or safety of the tenant or immediate family member;

(2) complained to a governmental agency responsible for enforcement of laws prohibiting discrimination in rental housing;

(3) complained to the landlord of noncompliance with the lease or Section 302;

(4) organized or became a member of a tenant's union or similar organization;

(5) exercised or attempted to exercise a right or remedy under the lease, this [act], or law other than this [act]; or

(6) pursued an action or administrative remedy against the landlord or testified against the landlord in court or an administrative proceeding.

(b) Conduct that may be retaliatory under subsection (a) includes doing or threatening to do any of the following:

(1) increasing the rent or fees;

(2) decreasing services, increasing the tenant's obligations, imposing different rules on, or selectively enforcing the landlord's rules against, the tenant or immediate family

member, or otherwise materially altering the terms of the lease;

(3) bringing an action for possession on a ground other than nonpayment of rent;

(4) refusing to renew a tenancy for a fixed term under a lease containing a renewal option that is exercisable by the tenant without negotiation with the landlord, for any period after the lease would otherwise terminate;

(5) terminating a periodic tenancy; or

(6) committing a criminal act against the tenant, immediate family member, or guest.

(c) A landlord is not liable for retaliation under subsection (a) if:

(1) the violation of which the tenant complained under subsection (a)(1) or (2) was caused primarily by the tenant, immediate family member, or guest;

(2) the tenant's conduct described in subsection (a) was in an unreasonable manner or at an unreasonable time or was repeated in a manner harassing the landlord;

(3) the tenant was in default in the payment of rent at the time notice of the action described in subsection (b)(3) was sent;

(4) the tenant, immediate family member, or guest engaged in conduct that threatened the health or safety of another tenant on the premises;

(5) the tenant, immediate family member, or guest engaged in a criminal act;

(6) the landlord is seeking to recover possession based on a notice to terminate the lease and the notice was given to the tenant before the tenant engaged in conduct described in subsection (a); or

(7) the landlord is complying or complied with a building, housing, fire, or health code or other law by making a required repair, alteration, remodeling, or demolition that

effectively deprives the tenant of the use and enjoyment of the premises.

Comment

This act substantially expands on the issue of retaliatory conduct to provide clarification of the rights and obligations of both landlords and tenants. The matter was addressed in URLTA (1972) § 5.101.

Section 901(a) prohibits a landlord from engaging in certain conduct if the “landlord’s purpose” is to retaliate against the tenant who engaged in conduct described in subsection (b). The word “purpose” is not preceded by an adjective that would establish a quantum standard for the landlord’s purpose. Whether Section 901(a) applies only when the retaliation is the “only purpose,” “a substantial or dominant purpose,” or merely “a purpose” is a decision for the courts to decide.

Subsection (a)(6) would protect a tenant who “pursued an action or administrative remedy against the landlord or testified against the landlord in court or an administrative proceeding.” This provision includes not only situations in which a tenant initiates an action against the landlord, but also situations in which the landlord has initiated the action but the tenant has refused to settle the matter. In either case, the tenant is pursuing the action.

SECTION 902. TENANT REMEDIES FOR RETALIATORY CONDUCT.

(a) If a landlord’s purpose for engaging in conduct described in Section 901(b) is to retaliate against the tenant for conduct described in Section 901(a):

(1) the tenant has a defense against an action for possession, may recover possession, or may terminate the lease; and

(2) the tenant may recover [three times] the periodic rent or [three times] the actual damages, whichever is greater.

(b) If a tenant terminates a lease under subsection (a), the landlord shall return any security deposit and unearned rent to which the tenant is entitled under Section 1204.

(c) A tenant’s exercise of a right under this section does not release the landlord from liability under Section 402.

SECTION 903. PRESUMPTION OF RETALIATORY CONDUCT.

(a) Except as otherwise provided in subsection (b), evidence that a tenant engaged in

conduct described in Section 901(a) within [six] months before the landlord's alleged retaliatory conduct creates a rebuttable presumption that the purpose of the landlord's conduct was retaliation.

(b) A presumption does not arise under subsection (a) if the tenant engaged in conduct described in Section 901(a) after the landlord gave the tenant notice of the landlord's intent to engage in conduct described in Section 901(b)(1) through (5).

(c) A landlord may rebut a presumption under subsection (a) by a preponderance of evidence showing that the landlord had sufficient justification for engaging in the conduct that created the presumption and would have engaged in the conduct in the same manner and at the same time whether or not the tenant engaged in conduct described in Section 901(a).

SECTION 904. LANDLORD REMEDIES FOR BAD FAITH ACTION OF TENANT. If a tenant engages in conduct described in Section 901(a)(1) or (5) knowing there is no factual or legal basis for the conduct, the landlord may recover actual damages and the court may award the landlord up to [three times] the periodic rent.

[ARTICLE] 10

DISPOSITION OF TENANT PERSONAL PROPERTY

SECTION 1001. DISPOSITION OF TENANT PERSONAL PROPERTY ON TERMINATION OR ABANDONMENT.

(a) For purposes of this [article], possession of a dwelling unit is relinquished to the landlord when:

- (1) the tenant vacates the unit at the termination of the tenancy; or
- (2) the tenant abandons the unit under Section 604.

(b) If personal property remains on the premises after possession of a dwelling unit is

relinquished to the landlord and the landlord and tenant do not agree otherwise at the time of relinquishment, the landlord shall:

(1) subject to subsection (c), give the tenant notice in a record of the tenant's right to retrieve the property; and

(2) leave the property in the unit or store the property on the premises or in another place of safekeeping and exercise reasonable care in moving or storing the property.

(c) The notice required by subsection (b)(1) must be posted at the dwelling unit and:

(1) sent to any forwarding address the tenant provided to the landlord or an address provided under Section 109 or, if no address is provided, to the address of the unit;

(2) inform the tenant of the right to contact the landlord to claim the property within the period specified in subsection (d), subject to payment of the landlord's inventorying, moving, and storage costs; and

(3) provide a telephone number, electronic-mail address, or mailing address at which the landlord may be contacted.

(d) If a tenant contacts the landlord to claim personal property not later than [eight] days after the landlord gives notice under subsection (b)(1), the landlord shall permit the tenant to retrieve personal property not later than [five] days after the date of contact or within a longer period to which the parties agree.

(e) A landlord may require the tenant to pay reasonable inventorying, moving, and storage costs before retrieving personal property under subsection (d).

(f) This section does not prohibit a landlord from immediately disposing of perishable food, hazardous material, garbage, and trash or transferring an animal to an animal-control officer, humane society, or other person willing to care for the animal.

(g) Unless a landlord and tenant otherwise agree, if the tenant fails to contact the landlord or retrieve personal property as provided in subsection (d), the property is deemed abandoned and:

(1) if a sale is economically feasible, the landlord shall sell the property and, after deducting the reasonable cost of inventorying, moving, storing, and disposing of the property, shall treat the proceeds as part of the tenant's security deposit; or

(2) if a sale is not economically feasible, the landlord may dispose of the property in any manner the landlord considers appropriate.

(h) A landlord that complies with this section is not liable to the tenant or another person for a claim arising from removal of personal property from the premises.

(i) A landlord that recovers possession of a dwelling unit under a court order is not required to comply with this section. If a landlord that recovers possession under a court order complies with this section, that landlord is not liable to the tenant or another person for a claim arising from removal of personal property from the premises.

Comment

This section applies, for example, if a lease terminates early as the result of an act of domestic violence. However, if there are cotenants to the lease such that the lease does not terminate, then this section does not apply. In the latter case, control of the dwelling unit remains with the other tenants; it does not belong to the landlord. Thus, if the tenant whose interest in the lease is released leaves personal property at the dwelling unit, that tenant would need to contact the remaining tenants to retrieve that property.

Subsection (i) emphasizes that a landlord is not required to follow the procedures in this section when recovering possession under a court order. The subsection provides a safe harbor, however, if a landlord voluntarily elects to follow the procedures in this section.

The 1972 act had no provisions relating to the disposition of a tenant's personal property.

**SECTION 1002. REMOVAL OF PERSONAL PROPERTY OF DECEASED
TENANT BY TENANT REPRESENTATIVE.**

(a) If a landlord knows that a tenant who was the sole occupant of the dwelling unit has died, the landlord:

(1) shall notify a tenant representative of the death;

(2) shall give the representative access to the premises at a reasonable time to remove any personal property from the unit and other personal property of the tenant elsewhere on the premises;

(3) may require the representative to prepare and sign an inventory of the property being removed; and

(4) shall pay the representative the deceased tenant's security deposit and unearned rent to which the tenant otherwise would have been entitled under Section 1204.

(b) A contact person or heir accepts appointment as a tenant representative by exercising authority under this [act] or other assertion or conduct indicating acceptance.

(c) The authority of a contact person or heir to act under this [act] terminates when the person, heir, or landlord knows that a personal representative has been appointed for the deceased tenant's estate.

(d) A landlord that complies with this section is not liable to the tenant's estate or another person for unearned rent, a security deposit, or a claim arising from removal of personal property from the premises.

(e) A landlord that willfully violates subsection (a) is liable to the estate of the deceased tenant for actual damages.

(f) In addition to the rights provided in this section, a tenant representative has the

deceased tenant's rights and responsibilities under Section 1001.

Comment

The purpose of this section is to authorize a tenant representative to remove a deceased tenant's personal property and receive the return of the security deposit and unearned rent. The tenant representative typically will be the personal representative of the deceased tenant's estate, but if no personal representative has been appointed, the tenant representative will be the contact person under Section 109 or, in the absence of a contact person, an heir of the deceased tenant under the state's intestate succession laws. See Section 102(35). In the latter case, the landlord has no obligation to identify all of the deceased tenant's heirs and may give possession to *any* individual the landlord reasonably believes to be an heir of the deceased tenant.

Subsection (f) applies if the landlord or the tenant representative terminates the lease under Section 803(b). In that case, the tenant representative would have the rights and obligations of a tenant under Section 1001 if any personal property remained in the dwelling unit after possession of the dwelling unit had been relinquished to the landlord.

This section works in tandem with Section 1003, which provides procedures for a landlord to follow in disposing of personal property when the landlord has been unable to identify or contact a tenant representative who can act under this section.

SECTION 1003. DISPOSITION OF PERSONAL PROPERTY OF DECEASED TENANT WITHOUT TENANT REPRESENTATIVE.

(a) If a landlord knows of the death of a tenant who, at the time of death, was the sole occupant of the dwelling unit, and the landlord terminates the lease under Section 803(d) because the landlord is unable to contact a tenant representative, the landlord:

(1) shall mail notice to the tenant at the tenant's last-known address or other address of the tenant known to the landlord and to any person the tenant has told the landlord to contact in the case of an emergency stating:

(A) the name of the tenant and address of the dwelling unit;

(B) the approximate date of the tenant's death;

(C) that, if the personal property on the premises is not claimed within

[60] days after the notice was sent, the property is subject to disposal by the landlord; and

(D) the landlord’s name, telephone number, and mail or electronic-mail address at which the landlord may be contacted to claim the property; and

(2) with the exercise of reasonable care, may leave the property in the dwelling unit or inventory the property and store it on the premises or in another place of safekeeping.

(b) If a tenant representative is subsequently identified, the representative may retrieve the deceased tenant’s personal property from the landlord not later than [60] days after the notice under subsection (a). The landlord may require the representative to pay the reasonable inventorying, moving, and storage costs before retrieving the property.

(c) If a deceased tenant’s personal property is not retrieved within the time specified in subsection (b), the landlord may dispose of the property in compliance with Section 1001(g).

(d) A landlord that complies with this section is not liable to the tenant’s estate or another person for a claim arising from removal of personal property from the premises.

Comment

This section provides a process through which a landlord may dispose of a deceased tenant’s personal property if the landlord is unable to identify or contact a tenant representative. Although the procedures generally parallel the provisions regarding disposition of a tenant’s personal property in Section 1001, some variation is required in the type of notice that must be given and the time period for a tenant representative to retrieve the property.

Sections 1002 and 1003 do not govern the ultimate disposition of the personal property removed from the property by a tenant representative. Those rights are determined under the state’s law governing decedents’ estates. Thus, the tenant representative takes possession of the personal property subject to those other laws.

[ARTICLE] 11

EFFECT OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT

SECTION 1101. DEFINITIONS. In this [article]:

(1) “Attesting third party” means a law enforcement official, licensed health-care

professional, victim advocate, or victim-services provider.

(2) “Dating violence” means dating violence as defined in [insert reference to definition in other state law].

(3) “Domestic violence” means domestic violence as defined in [insert reference to definition in other state law].

(4) “Perpetrator” means an individual who commits an act of domestic violence, dating violence, stalking, or sexual assault on a tenant or immediate family member.

(5) “Sexual assault” means [sexual assault] as defined in [insert reference to definition in other state law].

(6) “Stalking” means [stalking] as defined in [insert reference to definition in other state law].

(7) “Victim advocate” means an individual, whether paid or serving as a volunteer, who provides services to victims of domestic violence, dating violence, stalking, or sexual assault under the auspices or supervision of a victim-services provider, court, or law-enforcement or prosecution agency.

(8) “Victim-services provider” means a person that assists victims of domestic violence, dating violence, stalking, or sexual assault. The term includes a rape crisis center, domestic violence shelter, or faith-based organization or other organization with a history of work concerning domestic violence, dating violence, stalking, or sexual assault.

Legislative Note: *If an enacting state has no legislation on dating violence, it may either retain dating violence in this act and draft its own definition of dating violence or delete dating violence as one of the types of domestic violence under this act and delete other references to dating violence in this section. A state that does not use the phrase “domestic violence”, “dating violence”, “stalking”, or “sexual assault” should replace the phrases used in this act with the appropriate phrases used in the state.*

SECTION 1102. EARLY RELEASE OR TERMINATION OF LEASE.

(a) Subject to subsection (e), if a victim of an act of domestic violence, dating violence, stalking, or sexual assault is a tenant or immediate family member and has a reasonable fear of suffering psychological harm or a further act of domestic violence, dating violence, stalking, or sexual assault if the victim continues to reside in the dwelling unit, the tenant, without the necessity of the landlord's consent, is released from the lease if the tenant gives the landlord a notice that complies with subsection (b) and:

(1) a copy of a court order that restrains a perpetrator from contact with the tenant or immediate family member;

(2) evidence of the conviction or adjudication of a perpetrator for an act of domestic violence, dating violence, stalking, or sexual assault against the tenant or immediate family member; or

(3) a verification that complies with Section 1104.

(b) To be released from a lease under subsection (a), the tenant must give the landlord notice in a record which:

(1) states the tenant's intent to be released from the lease on a date which must be at least [30] days from the date of the notice or, if the perpetrator is a cotenant of the dwelling unit, an earlier date;

(2) states facts giving rise to the fear of psychological harm or suffering a further act of domestic violence, dating violence, stalking, or sexual assault if the victim continues to reside in the unit; and

(3) is given to the landlord:

(A) not later than [90] days after an act of domestic violence, dating

violence, stalking, or sexual assault against the tenant or immediate family member;

(B) when a court order exists that restrains a perpetrator from contact with the tenant or immediate family member because of an act of domestic violence, dating violence, stalking, or sexual assault; or

(C) if the perpetrator was incarcerated, not later than [90] days after the tenant acquired knowledge that the perpetrator is no longer incarcerated.

(c) If there is only one individual tenant of the dwelling unit:

(1) a release under subsection (a) terminates the lease on the date specified in the notice under subsection (b) if the tenant vacates the dwelling unit on or before that date; and

(2) the tenant is not liable for rent accruing after the lease terminates or other actual damages resulting from termination of the lease, but the tenant remains liable to the landlord for rent and other amounts owed to the landlord before termination of the lease.

(d) If there are multiple individual tenants of the dwelling unit:

(1) the tenant who gave notice under subsection (b) is released from the lease as of the date specified in the notice if the tenant vacates the dwelling unit on or before the specified date, but the release of one tenant under this section does not terminate the lease with respect to other tenants;

(2) the tenant released from the lease is not liable to the landlord or any other person for rent accruing after the tenant's release or actual damages resulting from the tenant's release;

(3) any other tenant under the lease may recover from the perpetrator actual damages resulting from the termination; and

(4) the landlord is not required to return to the tenant released from the lease or a

remaining tenant any security deposit or unearned rent to which the tenant is otherwise entitled under Section 1204 until the lease terminates with respect to all tenants.

(e) This section does not apply if a tenant seeking the release from the lease is a perpetrator.

Comment

The 1972 act had no provisions allowing for lease terminations because of acts of domestic violence, dating violence, stalking, or sexual assault.

Section 1102 is self-executing. Upon filing the appropriate documentation, the tenant is released from the lease; no additional action is required or expected on the part of the landlord as would be the case when a tenant abandons the dwelling unit and an issue arises regarding the landlord's acceptance of the tenant's surrender. Of course, if the tenant vacates and subsequently the landlord sues for rent claiming the tenant had no reasonable fear of suffering psychological harm or a further act of domestic violence, dating violence, stalking, or sexual assault, the court would have to decide that question.

If a dwelling unit is rented by a revocable trust for the benefit of the settlor or a limited liability company for the benefit of its president, under Section 102(34)(C), the settlor or president is a tenant. If the settlor or president became the victim of domestic violence, dating violence, stalking, or sexual assault, and there were no other individual tenants of the dwelling unit, the lease would terminate under subsection (c).

Under subsection (d)(2), a tenant who is released from the lease is not liable to the landlord or another person for rent or actual damages. Thus, if T and T-1 are cotenants but T is released from the lease as a result of an act of domestic violence committed by P, T would not be liable for rent to the landlord for the period after the release. Furthermore, T would not be liable to T-1 if, following T's release from the lease, T-1 is liable to the landlord for all of the rent accruing after T's release. Under subsection (d)(3), however, T-1 could make a claim against P for the additional rent T-1 owes.

In light of subsection (e), if a tenant commits an act of domestic violence on an immediate family member, the tenant cannot terminate the lease because the tenant is the perpetrator.

SECTION 1103. LANDLORD OBLIGATIONS ON EARLY RELEASE OR TERMINATION. If a tenant is released from a lease under Section 1102, the landlord:

(1) except as otherwise provided in Section 1102(d)(4), shall return any security deposit and unearned rent to which the tenant is entitled under Section 1204 after the tenant vacates the dwelling unit;

(2) may not assess a fee or penalty against the tenant for exercising a right granted under Section 1102; and

(3) may not disclose information required to be reported to the landlord under Section 1102 unless:

(A) the tenant provides specific, time-limited, and contemporaneous consent to the disclosure in a record signed by the tenant; or

(B) the information is required to be disclosed by a court order or law other than this [act].

SECTION 1104. VERIFICATION.

(a) A verification given by a tenant under Section 1102(a)(3) must be under oath and include the following:

(1) from the tenant:

(A) the tenant's name and the address of the dwelling unit;

(B) the approximate dates on which an act of domestic violence, dating violence, stalking, or sexual assault occurred;

(C) the approximate date of the most recent act of domestic violence, dating violence, stalking, or sexual assault;

(D) a statement that because of an act of domestic violence, dating violence, stalking, or sexual assault, the tenant or immediate family member has a reasonable fear that the tenant or family member will suffer psychological harm or a further act of domestic violence, dating violence, stalking, or sexual assault if the tenant or family member continues to reside in the unit; and

(E) a statement that the representations in the verification are true and

accurate to the best of the tenant's knowledge and the tenant understands that the verification could be used as evidence in court; and

(2) from an attesting third party:

(A) the name, business address, and business telephone number of the party;

(B) the capacity in which the party received the information regarding the act of domestic violence, dating violence, stalking, or sexual assault;

(C) a statement that the party has read the tenant's verification and been advised by the tenant that the tenant or immediate family member is the victim of an act of domestic violence, dating violence, stalking, or sexual assault and has a reasonable fear that the tenant or family member will suffer psychological harm or a further act of domestic violence, dating violence, stalking, or sexual assault if the tenant or family member continues to reside in the dwelling unit; and

(D) a statement that the party, based on the tenant's verification, believes the tenant and understands that the verification may be used as the ground for releasing the tenant from a lease or terminating the tenant's interest under the lease.

(b) If a verification given to a landlord by a tenant under Section 1102(a)(3) contains a representation of a material fact known by the tenant to be false, the landlord may recover an amount not to exceed [three times] the periodic rent or [three times] actual damages, whichever is greater.

Legislative Note: States should consider including the form in the comment in the act enacted in the state.

Comment

The following is an example of a verification that would comply with this section.

Verification

I, _____ [insert name of tenant], state that:

(a) I am a tenant of a dwelling unit located at _____ [insert address of dwelling unit];

(b) I or an immediate family member was a victim of an act or acts of domestic violence, dating violence, stalking, or sexual assault occurring to the best of my knowledge on or over a period of _____ [insert time period over which one or more acts of domestic violence, dating violence, stalking, or sexual assault occurred].

(c) The act or acts of domestic violence, dating violence, stalking, or sexual assault have created a reasonable fear that I or an immediate family member will suffer psychological harm or a further act of domestic violence, dating violence, stalking, or sexual assault by continued residence in the dwelling unit;

(d) The most recent act or acts of domestic violence, dating violence, stalking, or sexual assault occurred on or about _____ [insert date]; and

(e) This verification and the accompanying notice are being given [check one]:

not later than 90 days after the date of the most recent act of domestic violence, dating violence, stalking, or sexual assault,

during a time when there is an outstanding court order preventing the perpetrator’s contact with the undersigned, or

not later than [90] days after the undersigned learned that the perpetrator has been released from incarceration.

I declare under penalty of perjury that the above representations are true and accurate to the best of my knowledge and belief and that I understand this verification could be used as evidence in court.

[Tenant’s signature]

I, _____ [insert name of attesting third party] state that:

(a) I am a _____ [insert whichever is applicable: law enforcement official, a licensed health care professional, a victim advocate, or a victim-services provider];

(b) My business address and phone number is: _____;

(c) The individual who signed the preceding statement has informed me that the individual or an immediate family member is a victim of an act or acts of domestic violence, dating violence, stalking, or sexual assault based upon the act or acts listed in the preceding statement.

(d) The act or acts of domestic violence, dating violence, stalking, or sexual assault have created a reasonable fear that the tenant or an immediate family member will suffer psychological harm or a further act of domestic violence, dating violence, stalking, or sexual assault by continued residence in the dwelling unit described in the preceding statement; and

(e) I have read and believe the preceding statement recounting an act or acts of domestic violence, dating violence, stalking, or sexual assault and understand that the tenant who made the statement may use this document as a ground for terminating the tenant's lease for the dwelling unit described in the preceding statement.

[Attesting third party's signature]

Sworn to before me this ____ day of _____, 20__.

[Notary Public's signature and seal where required]

SECTION 1105. PERPETRATOR LIABILITY FOR DAMAGES.

(a) A landlord may recover from a perpetrator actual damages resulting from a tenant's exercise of a right under Section 1102 and, if the perpetrator is a party to the lease who remains in possession of the dwelling unit, hold the perpetrator liable on the lease for all obligations under the lease or this [act].

(b) A perpetrator may not recover actual damages or other relief resulting from the exercise of a right by a tenant under Section 1102 or a landlord under this section.

SECTION 1106. CHANGE OF LOCK OR OTHER SECURITY DEVICE.

(a) Subject to subsections (b) and (c), if a tenant or immediate family member is a victim of an act of domestic violence, dating violence, stalking, or sexual assault and the tenant has a reasonable fear that the perpetrator or other person acting on the perpetrator's behalf may attempt

to gain access to the dwelling unit, the tenant, without the landlord's consent, may cause the locks or other security devices for the unit to be changed or rekeyed in a professional manner and shall give a key or other means of access for the new locks or security devices to the landlord and any other tenant, other than the perpetrator, that is a party to the lease.

(b) If locks or other security devices are changed or rekeyed under subsection (a), the landlord may change or rekey them, at the tenant's expense, to ensure compatibility with the landlord's master key or other means of access or otherwise accommodate the landlord's reasonable commercial needs.

(c) If a perpetrator is a party to the lease, locks or other security devices may not be changed or rekeyed under subsection (a) unless a court order, other than an ex parte order, expressly requires that the perpetrator vacate the dwelling unit or restrains the perpetrator from contact with the tenant or immediate family member and a copy of the order has been given to the landlord.

(d) A perpetrator may not recover actual damages or other relief against a landlord or tenant resulting from the exercise of a right by the landlord or tenant under this section.

Comment

This section is designed to allow a tenant who is the victim of domestic violence, dating violence, stalking, or sexual assault to change the locks or other security devices without first giving the landlord an opportunity to change them, thus allowing the victim to make the change as quickly as possible. Nothing in this section would prohibit the landlord on the landlord's own initiative to change the locks or other security devices on behalf of the tenant at the tenant's expense or for the tenant to contact the landlord for the change.

The tenant is not required to comply with Section 1102 to cause a change of the locks to the dwelling unit.

When a perpetrator is a tenant under the lease, subsection (c) would permit a change of locks only if a court has expressly ordered the perpetrator to vacate the dwelling unit or have no contact with the tenant.

SECTION 1107. EFFECT OF COURT ORDER TO VACATE.

(a) On issuance of a court order requiring a perpetrator to vacate a dwelling unit because of an act of domestic violence, dating violence, stalking, or sexual assault, other than an ex parte order, neither the landlord nor tenant has a duty to:

(1) allow the perpetrator access to the unit unless accompanied by a law enforcement officer; or

(2) provide the perpetrator with any means of access to the unit.

(b) If a perpetrator is a party to the lease, on issuance of a court order requiring the perpetrator to vacate the dwelling unit, other than an ex parte order, the perpetrator's interest under the lease terminates, and the landlord and any remaining tenant may recover from the perpetrator actual damages resulting from the termination.

(c) Termination of a perpetrator's interest under a lease under this section does not terminate the interest of any other tenant under the lease or alter the obligations of any other tenant under the lease.

(d) A landlord is not required to return to a perpetrator whose interest under the lease terminates under this section or to any remaining tenant any security deposit or unearned rent until the lease terminates with respect to all tenants.

Comment

Because of subsection (c), the landlord cannot increase the tenant-victim's rent or other obligation because the perpetrator who might also have been a tenant on the lease has been ordered to vacate the dwelling unit. For example, suppose V and P are cotenants on a lease providing monthly rent in the amount of \$500. V is the victim of domestic violence committed by P; P has been ordered to vacate the apartment. V continues to be liable for the monthly rent of \$500, and the landlord cannot increase that rent to take account of the fact that P is no longer a tenant. The landlord also may not increase the tenant's security deposit or require additional prepaid rent even if the landlord believes that the remaining tenant might lack the financial ability to comply with the lease because the perpetrator is no longer a party to the lease.

SECTION 1108. TERMINATION OF TENANCY OF PERPETRATOR

WITHOUT COURT ORDER.

(a) If a landlord has a reasonable belief that a tenant or immediate family member is the victim of an act of domestic violence, dating violence, stalking, or sexual assault and another tenant of the same landlord who resides in the same building as the tenant is the perpetrator, the landlord may terminate the perpetrator's interest in the lease by giving the perpetrator notice in a record that the perpetrator's interest will terminate immediately or on a later specified date, which is not later than [30] days after notice is given. The notice must state that the landlord has a reasonable belief that the perpetrator has committed an act of domestic violence, dating violence, stalking, or sexual assault and the approximate date of the act.

(b) Before giving notice to a perpetrator under subsection (a), the landlord shall give notice of the landlord's intent to terminate the perpetrator's interest to the tenant who was the victim of the act of domestic violence, dating violence, stalking, or sexual assault or whose immediate family member was the victim. This notice may be given by any means reasonably calculated to reach the tenant, including oral communication, notice in a record, or notice sent to the tenant at any other address at which the landlord reasonably believes the tenant is located.

(c) Failure of a tenant to receive the notice of the landlord's intent to terminate the perpetrator's interest under subsection (b) does not affect the landlord's right to terminate under this section or expose the landlord to any liability.

(d) If a landlord terminates a perpetrator's interest under a lease under this section, any other tenant under the lease may recover from the perpetrator actual damages resulting from the termination.

(e) Termination of a perpetrator's interest under a lease under this section does not

terminate the interest of any other tenant under the lease or alter the obligations of any other tenant under the lease.

(f) A landlord is not required to return to a perpetrator whose interest under a lease is terminated under this section or to any other tenant under the lease any security deposit or unearned rent until the lease terminates with respect to all tenants.

(g) In an action between a landlord and tenant involving the right of the landlord to terminate the tenant's interest under this section, the landlord must prove by a preponderance of the evidence that the landlord had a reasonable belief that the tenant was a perpetrator.

Comment

Under this section, the landlord, upon being advised that a tenant is the perpetrator of an act of domestic violence, could terminate the perpetrator's interest under the lease but not terminate the victim's interest under the same lease. The section would also apply if the perpetrator and victim reside in two different dwelling units with the same landlord. The termination of the perpetrator's interest by the landlord under this section does not preclude the tenant from exercising the right under Section 1102 to be released from or terminate the lease.

The landlord's decision to terminate is wholly discretionary. If the landlord chooses to terminate the perpetrator's interest under a lease, the landlord may not alter the obligations of another tenant under the lease. For example, the landlord could not increase the rent of the remaining tenant. If the lease, however, had treated the perpetrator and the remaining tenant as jointly liable for the rent, the remaining tenant would be liable for all of the remaining rent. In this case, the remaining tenant would have a cause of action for damages against the perpetrator.

This section permits a landlord to terminate the perpetrator's interest as a tenant even though there is no judicial determination that the perpetrator committed an act of domestic violence so long as the landlord reasonably believes the tenant is a perpetrator. This is entirely consistent with the right of a landlord to terminate the interest of any tenant who engages in other types of criminal activity on the premises in violation of Section 501, even though the tenant has not been found guilty of a crime. See Section 601. In either case, of course, if the tenant refuses to surrender possession of the premises to the landlord upon termination of the lease and the landlord sues for possession, the defendant (tenant) could defend on the ground that the tenant did not commit the acts alleged by the landlord. In this case, the landlord would have the burden to prove by a preponderance of the evidence that the landlord had the right to terminate the tenancy. This means the landlord has the burden to prove that the landlord had a reasonable belief that the defendant was a perpetrator entitling the landlord to terminate the lease.

Subsection (b) requires a landlord to notify the tenant who was the victim of domestic

violence, dating violence, stalking, or sexual assault, or whose immediate family member was a victim of the landlord's intent to terminate the perpetrator's interest pursuant to subsection (a). The purpose of this section is to forewarn the tenant that the perpetrator's interest will terminate, thus allowing the tenant to take whatever precautions the tenant deems necessary. While subsection (b) requires the notice be given in a manner reasonably calculated to reach the tenant, it provides no specific time frame in which to give the notice because the timing of the notice will likely vary depending upon a number of facts and circumstances. Nonetheless, because of the landlord's statutory obligation in Section 105 to act in good faith, the landlord must time the notice in a way that accomplishes the purpose of this section. Of course, if the tenant concludes that it would be best to terminate the tenant's interest under the lease, the tenant can do so under Section 1102.

SECTION 1109. LANDLORD CONDUCT WITH RESPECT TO VICTIM.

(a) In this section, "tenant" includes an applicant seeking to enter into a lease with a landlord.

(b) Except as otherwise provided in subsections (d) and (e), a landlord may not do or threaten to do any act in Section 901(b) if the landlord's purpose for engaging in the conduct is that:

(1) an act of domestic violence, dating violence, stalking, or sexual assault committed against the tenant or immediate family member resulted in a violation of the lease or this [act] by the tenant; or

(2) a complaint of an act of domestic violence, dating violence, stalking, or sexual assault committed against the tenant or immediate family member resulted in a law enforcement or emergency response.

(c) Except as otherwise provided in subsection (d), a landlord may not refuse or threaten to refuse to rent a dwelling unit if the landlord's purpose for the refusal or threat is that a tenant or an immediate family member is or has been the victim of an act of domestic violence, dating violence, stalking, or sexual assault.

(d) Evidence that any of the events described in subsection (b) or (c) occurred within

[six] months before the landlord's conduct creates a presumption that the purpose of the landlord's conduct was retaliation. The landlord may rebut the presumption by a preponderance of evidence showing that the landlord had sufficient justification for engaging in the conduct described in subsection (b) or (c) and would have engaged in the conduct in the same manner and at the same time regardless whether the events described in subsection (b) or (c) occurred.

(e) A landlord may terminate the lease of a tenant by giving the tenant notice in a record that the lease will terminate on a date specified in the notice, which must be at least [30] days after notice is given if:

(1) without the landlord's permission, the tenant invited a perpetrator onto the premises or allowed a perpetrator to occupy the dwelling unit:

(A) after the landlord gave the tenant notice in a record to refrain from inviting the perpetrator onto the premises; or

(B) during a time the tenant knows the perpetrator is subject to a no-contact court order or a court order barring the perpetrator from the premises; and

(2) the landlord demonstrates that:

(A) there is an actual and imminent threat to the health or safety of any individual on the premises, the landlord, or the landlord's agent if the lease is not terminated; or

(B) the perpetrator has damaged the premises.

(f) If a landlord willfully violates subsection (b) or (c), the tenant or prospective tenant may recover [three times] the periodic rent or [three times] actual damages, whichever is greater, and:

(1) terminate the lease;

(2) defend an action for possession on the ground that the landlord violated

subsection (b); or

(3) obtain appropriate injunctive relief.

Comment

See the comments to Section 901 regarding the standard that applies to the landlord's purpose.

[ARTICLE] 12

SECURITY DEPOSITS, FEES, AND UNEARNED RENT

SECTION 1201. PAYMENT REQUIRED AT THE COMMENCEMENT OF TERM OF LEASE.

(a) In this [article], "bank account" means a checking, demand, time, savings, passbook, or similar account maintained at a bank.

(b) Except as otherwise provided in subsections (c) and (d), a landlord may not require the tenant to pay or agree to pay a security deposit, prepaid rent, or any combination thereof, in an amount that exceeds [two times] the periodic rent.

(c) The limit established in subsection (b) does not include the first month's rent or fees.

(d) Except as otherwise provided by law other than this [act], if a tenant keeps a pet on the premises or is permitted by the lease to make alterations to the premises, the landlord may require the tenant to pay an additional security deposit in an amount commensurate with the additional risk of damage to the premises.

Comment

The intent of subsection (b) is to limit the payments that a landlord may require a tenant to pay at the beginning of the lease or thereafter to the equivalent of the first and last month's rent plus a one-month security deposit. The number of months is bracketed, however, to give legislatures the option to choose a number appropriate for market conditions within their own states.

Nothing in this section prohibits a tenant from voluntarily making other payments. Thus a

tenant may prepay rent for several more months in advance – or even the full term – if the tenant is in the financial position to do so.

This section does not preclude a landlord from charging fees. Common fees include application fees, surety bond fees, cleaning fees, and pet fees. See Section 102(11).

The landlord's ability to require a higher security deposit or a fee for pets may be limited by other state or federal law governing a disabled tenant's right to keep a service animal.

The 1972 act only briefly treated the subject of security deposits. See URLTA (1972) § 2.101.

SECTION 1202. LANDLORD, TENANT, AND THIRD-PARTY INTERESTS IN SECURITY DEPOSIT.

(a) The following rules apply to a landlord's interest in a security deposit:

(1) The landlord's interest is limited to a security interest.

(2) Notwithstanding law other than this [act], the landlord's security interest is effective against and has priority over each creditor of and transferee from the tenant.

(3) Subject to subsection (c), a creditor of and transferee from the landlord can acquire no greater interest in a security deposit than the interest of the landlord.

(b) The following rules apply to a tenant's interest in a security deposit:

(1) Notwithstanding law other than this [act], the tenant's interest has priority over any right of setoff the bank in which the account is maintained may have for obligations owed to the bank other than charges normally associated with the bank's maintenance of the account.

(2) The tenant's interest is not adversely affected if the deposit is commingled with the deposits of other tenants.

(3) The effect of commingling other than that allowed in paragraph (2) is determined by law other than this [act].

(c) Subsection (a)(3) does not abrogate generally applicable rules of law enabling a transferee of funds to take the funds free of competing claims.

Comment

Subsection (a) protects the tenant, e.g., if the landlord enters bankruptcy. It limits the landlord's interest in the funds constituting a security deposit to a security interest and provides that a creditor of or transferee from the landlord (including the landlord's trustee in bankruptcy) generally cannot obtain any greater interest in those funds. Likewise, it protects the landlord if the tenant enters bankruptcy. Under subsection (a)(2), the landlord's security interest in a security deposit is superior to any competing claim of a creditor of or transferee from the tenant, including the tenant's trustee in bankruptcy. If the tenant is in financial stress, subsection (a) is a useful clarification that can benefit the tenant's creditors whether or not the tenant files a bankruptcy petition because it makes clear that the security deposit is an asset of the tenant.

Subsection (b)(1) prohibits a bank from setting off any claim it has against the landlord other than for charges normally associated with the maintenance of the account. Neither the landlord, the tenant, nor the bank can contract otherwise. If the bank deducts a fee from the account, the landlord would then have a duty to replenish the account for those charges.

Under subsection (b)(3), the effect of commingling not permitted by this act--e.g., when the landlord commingles the landlord's personal funds with the security deposit-- is governed by law other than this act.

Under subsection (c), whether a transferee of funds from a bank account maintained for the purpose of holding security deposits takes the funds free from the tenant's interest is governed by other law. *See, e.g.*, Restatement (Third) of Restitution and Unjust Enrichment § 67, *cmt. d.*

SECTION 1203. SAFEKEEPING OF SECURITY DEPOSIT.

(a) With respect to funds constituting a security deposit, a landlord:

(1) shall maintain the ability to identify the funds:

(A) by holding the funds in a bank account that is used exclusively for security deposits, that is maintained with a bank doing business in this state, and the title of which indicates that it contains security deposits; and

(B) by maintaining records that indicate at all times the amount of the funds attributable to each tenant whose funds are being held in the account; and

(2) may commingle the funds received from other tenants as security deposits in the same bank account but may not commingle other funds, including the landlord's personal or business funds, in the account.

(b) If a landlord fails to comply with subsection (a), the tenant may recover actual damages or [one times] the periodic rent, whichever is greater.

(c) A bank in which a landlord deposits funds constituting a security deposit has no duty to ensure that the landlord properly applies the funds.

(d) Unless a lease provides otherwise, the landlord is not required to deposit a security deposit into an interest-bearing account or to pay the tenant interest on the deposit.

Legislative Note: *A state that wishes to require interest on a security deposit should delete subsection (d) and replace it with a provision governing the parties' rights regarding the interest.*

Comment

Section 1203 introduces a new requirement that a landlord segregate security deposits from the landlord's other funds. Imposing the safekeeping requirement ensures that an amount equivalent to the deposited funds is available for return as required under various provisions in the act.

It is not necessary for a landlord to deposit the specific funds received from a tenant into the account. A landlord who places the landlord's own funds into a security deposit account to cover the amounts received from tenants pursuant to this article is not engaged in an act of commingling as these funds are no longer the landlord's personal funds.

The segregation requirement does not apply to prepaid rent. By definition, rent payments made by or on behalf of the tenant for future dates, even if required by the terms of the lease or as a condition of entering into the lease, are not security deposits. Rather, they are payment for those future dates, discharging, to the extent of the payment, the obligation to pay rent for those dates. Accordingly, unlike security deposits, the tenant no longer owns the funds paid as rent. Several provisions of this act require a landlord to return to the tenant the amount of unearned rent. If a landlord fails to comply with such a requirement, the aggrieved tenant would have a right to a money judgment but would have no in rem claim to the unearned rent.

Subsection (b) does not preclude the landlord or tenant from recovering other damages to which the landlord or tenant may be entitled under this act.

SECTION 1204. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED RENT ON TERMINATION OF LEASE.

(a) After termination of a lease, the tenant is entitled to the amount by which the security deposit and any unearned rent exceeds the amount the landlord is owed under the lease or this [act].

(b) Not later than [30] days after a lease terminates and the tenant vacates the premises, the landlord shall determine the amount the landlord believes the tenant is entitled to under subsection (a) and:

(1) tender that amount to the tenant or, if the tenant has died, the tenant representative;

(2) send that amount by first-class mail, postage prepaid, to an address provided by the tenant or, if the tenant has died, the tenant representative or, in the absence of that address, to the relevant address specified in Section 109; or

(3) cause a funds transfer in that amount to be made, with the cost of transfer paid, to a bank account designated by the tenant or, if the tenant has died, the tenant representative.

(c) If the amount under subsection (b) is less than the sum of the tenant's security deposit and any unearned rent, the landlord shall provide the tenant or tenant representative, within the period specified under subsection (b), a record specifying each item of property damage or other unfulfilled obligation of the tenant to which the security deposit or unearned rent was applied and the amount applied to each item.

(d) If the amount to which the tenant is entitled under subsection (a) is greater than the amount paid to the tenant or tenant representative, the tenant or tenant representative may recover the difference.

(e) If a landlord fails to comply with subsection (b) or (c), the court may award the tenant or tenant representative, in addition to any amount recoverable under subsection (d), \$[250] or [two times] the amount recoverable under subsection (d), whichever is greater, unless the landlord's only noncompliance was the failure to comply with subsection (b)(2) as a result of the inadvertent failure to pay the cost of postage or transmission or to use the proper address.

(f) If a security deposit and unearned rent held by a landlord are insufficient to satisfy the tenant's obligations under the lease and this [act], the landlord may recover from the tenant the amount necessary to satisfy those obligations.

Comment

The amount paid to a tenant need not be in cash but could be by check, money order, electronic transfer, or the like.

Subsection (e) provides a penalty when the landlord fails to comply with any of the requirements of subsections (b) or (c), including the failure to act within the applicable time period, the failure to provide a record to explain why the security deposit was not returned in full, and the failure to return an amount equal to the landlord's good faith calculation of the sum to which the tenant is entitled.

A landlord complies with subsection (b) if, within the time specified, it pays to the tenant the amount that the landlord in good faith determines that it owes, even if that amount is less than the amount to which the tenant is entitled under subsection (a). In cases in which the landlord complies with subsection (b), subsection (d) permits the tenant to recover the unpaid portion of the amount to which the tenant is entitled, but the landlord is not subject to the penalty in subsection (e).

SECTION 1205. DISPOSITION OF SECURITY DEPOSIT ON TERMINATION OF LANDLORD INTEREST IN PREMISES.

(a) When a landlord's interest in the premises terminates, the landlord:

(1) if the lease continues, not later than [30] days after the termination of the landlord's interest, shall transfer to the person succeeding the landlord's interest in the premises any security deposit being held by the landlord and notify the tenant in a record of the

successor's name and address, the amount transferred, and any claim previously made against the security deposit; or

(2) if the lease terminates as a result of the termination of the landlord's interest, shall comply with Section 1204.

(b) If a landlord dies before the termination of the lease, the personal representative of the landlord's estate becomes the landlord until the premises are distributed to the successor. If the premises are distributed to the successor before the termination of the lease, the security deposit held by the representative must be transferred to the successor and the representative shall notify the tenant in a record of the successor's name and address, the amount transferred to the successor, and any claim previously made against the security deposit. If the premises are not distributed to the successor before the termination of the lease, the representative shall comply with Section 1204.

(c) If a landlord or personal representative of the landlord's estate complies with subsection (a) or (b), the landlord or the estate has no further liability with respect to the security deposit.

(d) Except as otherwise provided in subsection (e), a successor to a landlord's interest in the premises has all rights and obligations of the landlord under this [act] with respect to any security deposit held by the predecessor landlord which has not been returned to the tenant, whether or not the security deposit was transferred or distributed to the successor.

(e) If a landlord's interest is terminated by foreclosure, the successor's liability under subsection (d) is limited to the security deposit received by the successor.

Comment

Section 1205 is a new section that provides for disposition of security deposits and unearned rent after a transfer of the landlord's interest in the premises.

[ARTICLE] 13

MISCELLANEOUS PROVISIONS

SECTION 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1303. APPLICATION. This [act] applies only to a lease made on or after [the effective date of this [act]].

SECTION 1304. REPEALS; CONFORMING AMENDMENTS. The following are repealed:

- (a)
- (b)
- (c)

Legislative Note: *If a state desires to adopt in whole or in part only one or more of Article 6, 7, 8, 10, 11, or 12 of the Revised Uniform Residential Landlord and Tenant Act (2015), the cross-references set forth in the Appendix may serve as an adoption guide.*

In addition to the specific sections designated below, the Revised Uniform Residential Landlord and Tenant Act (2015) contains a number of “General Provisions” that provide overarching principles applicable throughout the act. Accordingly, jurisdictions that have not enacted the 1972 version of the act may wish to include some or all of those provisions, which include: Section 103 (Scope), Section 104 (Enforcement; Duty to Mitigate); Section 105 (Obligation of Good Faith), Section 106 (Unconscionability), Section 107 (Knowledge and

Notice), Section 110 (Principles of Law and Equity) and Section 205 (Attorney's Fees). Jurisdictions that enacted the 1972 version of the act may wish to consider the minor modifications made in the 2015 act to Sections 103 and 107, as well as the substantially different approach taken to attorney's fees in Section 205.

SECTION 1305. EFFECTIVE DATE. This [act] takes effect on

APPENDIX

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT: ACCESS TO DWELLING UNIT

SECTION 1. DEFINITIONS.

[Article] 1, Section 102(2), (4), (8), (9), (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (26), (27), (28), (29), (33), and (34).

Related Definition: [Article] 1, Section 102(10).

Related Sections: [Article] 1, Section 107(b); [Article] 3, Section 302; and [Article] 10, Section 1001.

SECTION 2. LANDLORD ACCESS TO DWELLING UNIT.

[Article] 7, Section 701.

Related Section: [Article] 6, Section 604.

SECTION 3. REMEDIES FOR ABUSE OF ACCESS.

[Article] 7, Section 702.

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT: TENANT ABANDONMENT OF DWELLING UNIT

SECTION 1. DEFINITIONS.

[Article] 1, Section 102(2), (7), (8), (9), (10), (11), (12), (16), (17), (18), (19), (20), (22), (23), (24), (25), (26), (27), (29), (33), (34), and (36).

Related Sections: [Article] 1, Section 107(b) and Section 108; and [Article] 3, Section 302(b) and 304.

SECTION 2. TENANT ABANDONMENT OF DWELLING UNIT.

[Article] 6, Section 604.

Related Section: [Article] 12, Section 1204.

**REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT:
DEATH OF TENANT**

SECTION 1. DEFINITIONS.

[Article] 1, Section 102(2), (5), (8), (9), (11), (12), (16), (17), (18), (19), (20), (22), (23), (24), (26), (27), (29), (32), (33), (34), (35), and (37).

Related Sections: [Article] 1, Section 107(b); and [Article] 8, Section 801.

SECTION 2. DEATH OF TENANT.

[Article] 8, Section 803.

**SECTION 3. REMOVAL OF PERSONAL PROPERTY OF DECEASED TENANT
BY TENANT REPRESENTATIVE.**

[Article] 10, Section 1002.

Related Section: [Article] 10, Section 1001.

**SECTION 4. DISPOSITION OF PERSONAL PROPERTY OF DECEASED
TENANT WITHOUT TENANT REPRESENTATIVE.**

[Article] 10, Section 1003.

Related Sections: [Article] 1, Section 109; and [Article] 10, Section 1001.

**REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT:
DISPOSITION OF TENANT PERSONAL PROPERTY**

SECTION 1. DEFINITIONS.

[Article] 1, Section 102(2), (5), (7), (8), (9), (11), (12), (16), (17), (18), (19), (20), (22), (23), (24), (25), (26), (27), (29), (31), (33), (34), (35), (36), and (37).

Related Sections: [Article] 1, Sections 107(b) and 109; [Article] 6, Section 604; [Article] 8, Section 803(d); and [Article] 12, Section 1204.

**SECTION 2. DISPOSITION OF TENANT PERSONAL PROPERTY ON
TERMINATION OR ABANDONMENT.**

[Article] 10, Section 1001.

SECTION 3. REMOVAL OF DECEASED TENANT PERSONAL PROPERTY BY TENANT REPRESENTATIVE.

[Article] 10, Section 1002.

SECTION 4. DISPOSITION OF DECEASED TENANT PERSONAL PROPERTY WITHOUT TENANT REPRESENTATIVE.

[Article] 10, Section 1003.

**REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT:
EFFECT OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING,
OR SEXUAL ASSAULT**

SECTION 1. DEFINITIONS.

[Article] 1, Section 102(1), (2), (7), (8), (9), (11), (12), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (29), (31), (32), (33), (34), (36), and (37); and

[Article] 11, Section 1101.

Related Sections: [Article] 1, Section 107(b); [Article] 3, Section 304; [Article] 9, Section 901(b); [Article] 10, Section 1001; and [Article] 12, Section 1204.

SECTION 2. EARLY RELEASE OR TERMINATION OF LEASE.

[Article] 11, Section 1102.

SECTION 3. LANDLORD OBLIGATIONS ON EARLY RELEASE OR TERMINATION.

[Article] 11, Section 1103.

SECTION 4. VERIFICATION.

[Article] 11, Section 1104.

SECTION 5. PERPETRATOR'S LIABILITY FOR DAMAGES.

[Article] 11, Section 1105.

SECTION 6. CHANGE OF LOCK OR OTHER SECURITY DEVICE.

[Article] 11, Section 1106.

SECTION 7. EFFECT OF COURT ORDER TO VACATE.

[Article] 11, Section 1107.

SECTION 8. TERMINATION OF TENANCY OF PERPETRATOR WITHOUT COURT ORDER.

[Article] 11, Section 1108.

SECTION 9. LANDLORD CONDUCT WITH RESPECT TO VICTIM.

[Article] 11, Section 1109.

Related Section: [Article] 9, Section 901.

**REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT:
SECURITY DEPOSITS, FEES, AND UNEARNED RENT**

SECTION 1. DEFINITIONS.

[Article] 1, Section 102(2), (3), (5), (7), (8), (9), (11), (12), (13), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (29), (30), (32), (33), (34), (35), and (36).

Related Sections: [Article] 1, Sections 108 and 109.

SECTION 2. PAYMENT REQUIRED AT THE COMMENCEMENT OF TERM OF LEASE.

[Article] 12, Section 1201.

SECTION 3. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN SECURITY DEPOSIT.

[Article] 12, Section 1202.

SECTION 4. SAFEKEEPING OF SECURITY DEPOSIT.

[Article] 12, Section 1203.

SECTION 5. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED RENT ON TERMINATION OF LEASE.

[Article] 12, Section 1204.

**SECTION 6. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED RENT
ON TERMINATION OF LANDLORD INTEREST IN PREMISES.**

[Article] 12, Section 1205.