

PROPERTY CODE
CHAPTER 93. COMMERCIAL TENANCIES

Sec. 93.001. APPLICABILITY OF CHAPTER. (a) This chapter applies only to the relationship between landlords and tenants of commercial rental property.

(b) For purposes of this chapter, "commercial rental property" means rental property that is not covered by Chapter 92. Added by Acts 1989, 71st Leg., ch. 687, Sec. 2, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 689, Sec. 2, eff. Sept. 1, 1989.

Sec. 93.002. INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND EXCLUSION OF COMMERCIAL TENANT. (a) A landlord or a landlord's agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

(b) A landlord may not remove a door, window, or attic hatchway cover or a lock, latch, hinge, hinge pin, doorknob, or other mechanism connected to a door, window, or attic hatchway cover from premises leased to a tenant or remove furniture, fixtures, or appliances furnished by the landlord from premises leased to a tenant unless the landlord removes the item for a bona fide repair or replacement. If a landlord removes any of the items listed in this subsection for a bona fide repair or replacement, the repair or replacement must be promptly performed.

(c) A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

(1) bona fide repairs, construction, or an emergency;
(2) removing the contents of premises abandoned by a tenant; or

(3) changing the door locks of a tenant who is delinquent in paying at least part of the rent.

(d) A tenant is presumed to have abandoned the premises if goods, equipment, or other property, in an amount substantial enough to indicate a probable intent to abandon the premises, is being or has been removed from the premises and the removal is not within the normal course of the tenant's business.

(e) A landlord may remove and store any property of a tenant that remains on premises that are abandoned. In addition to the landlord's other rights, the landlord may dispose of the stored property if the tenant does not claim the property within 60 days after the date the property is stored. The landlord shall deliver by certified mail to the tenant at the tenant's last known address a notice stating that the landlord may dispose of the tenant's property if the tenant does not claim the property within 60 days after the date the property is stored.

(f) If a landlord or a landlord's agent changes the door lock of a tenant who is delinquent in paying rent, the landlord or agent must place a written notice on the tenant's front door stating the name and the address or telephone number of the individual or company from which the new key may be obtained. The new key is required to be provided only during the tenant's regular business hours and only if the tenant pays the delinquent rent.

(g) If a landlord or a landlord's agent violates this section, the tenant may:

(1) either recover possession of the premises or terminate the lease; and

(2) recover from the landlord an amount equal to the sum of the tenant's actual damages, one month's rent or \$500, whichever is greater, reasonable attorney's fees, and court costs, less any delinquent rents or other sums for which the tenant is liable to the landlord.

(h) A lease supersedes this section to the extent of any conflict.

Added by Acts 1989, 71st Leg., ch. 689, Sec. 2, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 44, Sec. 1, eff. Sept. 1, 1993.

Sec. 93.003. COMMERCIAL TENANT'S RIGHT OF REENTRY AFTER UNLAWFUL LOCKOUT. (a) If a landlord has locked a tenant out of leased premises in violation of Section 93.002, the tenant may recover possession of the premises as provided by this section.

(b) The tenant must file with the justice court in the precinct in which the rental premises are located a sworn complaint for reentry, specifying the facts of the alleged unlawful lockout by the landlord or the landlord's agent. The tenant must also state orally under oath to the justice the facts of the alleged unlawful

lockout.

(c) If the tenant has complied with Subsection (b) and if the justice reasonably believes an unlawful lockout has likely occurred, the justice may issue, ex parte, a writ of reentry that entitles the tenant to immediate and temporary possession of the premises, pending a final hearing on the tenant's sworn complaint for reentry.

(d) The writ of reentry must be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer action. A sheriff or constable may use reasonable force in executing a writ of reentry under this section.

(e) The landlord is entitled to a hearing on the tenant's sworn complaint for reentry. The writ of reentry must notify the landlord of the right to a hearing. The hearing shall be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing.

(f) If the landlord fails to request a hearing on the tenant's sworn complaint for reentry before the eighth day after the date of service of the writ of reentry on the landlord under Subsection (d), a judgment for court costs may be rendered against the landlord.

(g) A party may appeal from the court's judgment at the hearing on the sworn complaint for reentry in the same manner as a party may appeal a judgment in a forcible detainer suit.

(h) If a writ of possession is issued, it supersedes a writ of reentry.

(i) If the landlord or the person on whom a writ of reentry is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served, under Section 21.002, Government Code. If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the reentry action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. On receipt of an affidavit, the justice shall issue a show cause order, directing the person to appear on a designated date and show cause why he should not be adjudged in contempt of court. If the justice finds, after considering the evidence at the hearing, that the person has directly or indirectly disobeyed the writ, the justice may commit the person to jail without bail until the person purges himself of the contempt in a manner and form as the justice may direct. If the person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, the justice may find the person in contempt and assess punishment under Section 21.002(c), Government Code.

(j) This section does not affect a tenant's right to pursue a separate cause of action under Section 93.002.

(k) If a tenant in bad faith files a sworn complaint for reentry resulting in a writ of reentry being served on the landlord or landlord's agent, the landlord may in a separate cause of action recover from the tenant an amount equal to actual damages, one month's rent or \$500, whichever is greater, reasonable attorney's fees, and costs of court, less any sums for which the landlord is liable to the tenant.

(l) The fee for filing a sworn complaint for reentry is the same as that for filing a civil action in justice court. The fee for service of a writ of reentry is the same as that for service of a writ of possession. The fee for service of a show cause order is the same as that for service of a civil citation. The justice may defer payment of the tenant's filing fees and service costs for the sworn complaint for reentry and writ of reentry. Court costs may be waived only if the tenant executes a pauper's affidavit.

(m) This section does not affect the rights of a landlord or tenant in a forcible detainer or forcible entry and detainer action.

Added by Acts 1989, 71st Leg., ch. 687, Sec. 2, eff. Sept. 1, 1989.
Amended by Acts 2001, 77th Leg., ch. 595, Sec. 1, eff. June 11, 2001.

Sec. 93.004. SECURITY DEPOSIT. A security deposit is any advance of money, other than a rental application deposit or an advance payment of rent, that is intended primarily to secure performance under a lease of commercial rental property.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.005. OBLIGATION TO REFUND SECURITY DEPOSIT. (a) The landlord shall refund the security deposit to the tenant not later than the 60th day after the date the tenant surrenders the premises and provides notice to the landlord or the landlord's agent of the tenant's forwarding address under Section 93.009.

(b) The tenant's claim to the security deposit takes priority over the claim of any creditor of the landlord, including a trustee in bankruptcy.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1143, Sec. 1, eff. Sept. 1, 2003.

Sec. 93.006. RETENTION OF SECURITY DEPOSIT; ACCOUNTING. (a) Before returning a security deposit, the landlord may deduct from the deposit damages and charges for which the tenant is legally liable under the lease or damages and charges that result from a breach of the lease.

(b) The landlord may not retain any portion of a security deposit to cover normal wear and tear. In this subsection, "normal wear and tear" means deterioration that results from the intended use of the commercial premises, including breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, equipment, or chattels by the tenant or by a guest or invitee of the tenant.

(c) If the landlord retains all or part of a security deposit under this section, the landlord shall give to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. The landlord is not required to give the tenant a description and itemized list of deductions if:

(1) the tenant owes rent when the tenant surrenders possession of the premises; and

(2) no controversy exists concerning the amount of rent owed.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.007. CESSATION OF OWNER'S INTEREST. (a) If the owner's interest in the premises is terminated by sale, assignment, death, appointment of a receiver, bankruptcy, or otherwise, the new owner is liable for the return of the security deposit according to this chapter from the date title to the premises is acquired, regardless of whether an acknowledgement is given to the tenant under Subsection (b).

(b) The person who no longer owns an interest in the rental premises remains liable for a security deposit received while the person was the owner until the new owner delivers to the tenant a signed statement acknowledging that the new owner has received and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit. The amount of the security deposit is the greater of:

(1) the amount provided in the tenant's lease; or

(2) the amount provided in an estoppel certificate prepared by the owner at the time the lease was executed or prepared by the new owner at the time the commercial property is transferred.

(c) Subsection (a) does not apply to a real estate mortgage lienholder who acquires title by foreclosure.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.008. RECORDS. The landlord shall keep accurate records of all security deposits.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.009. TENANT'S FORWARDING ADDRESS. (a) The landlord is not obligated to return a tenant's security deposit or give the tenant a written description of damages and charges until the tenant gives the landlord a written statement of the tenant's forwarding address for the purpose of refunding the security deposit.

(b) The tenant does not forfeit the right to a refund of the security deposit or the right to receive a description of damages and charges for failing to give a forwarding address to the landlord.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.010. LIABILITY FOR WITHHOLDING LAST MONTH'S RENT. (a) The tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.

(b) A tenant who violates this section is presumed to have acted in bad faith. A tenant who in bad faith violates this section is liable to the landlord for an amount equal to three times the rent wrongfully withheld and the landlord's reasonable attorney's fees in a suit to recover the rent.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001.

Sec. 93.011. LIABILITY OF LANDLORD. (a) A landlord who in bad faith retains a security deposit in violation of this chapter is liable for an amount equal to the sum of \$100, three times the portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees incurred in a suit to recover the deposit after the period prescribed for returning the deposit expires.

(b) A landlord who in bad faith does not provide a written description and itemized list of damages and charges in violation of this chapter:

(1) forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises; and

(2) is liable for the tenant's reasonable attorney's fees in a suit to recover the deposit.

(c) In a suit brought by a tenant under this chapter, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable.

(d) A landlord who fails to return a security deposit or to provide a written description and itemized list of deductions on or before the 60th day after the date the tenant surrenders possession is presumed to have acted in bad faith.

Added by Acts 2001, 77th Leg., ch. 1460, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1143, Sec. 2, eff. Sept. 1, 2003.

Sec. 93.012. ASSESSMENT OF CHARGES. (a) A landlord may not assess a charge, excluding a charge for rent or physical damage to the leased premises, to a tenant unless the amount of the charge or the method by which the charge is to be computed is stated in the lease, an exhibit or attachment that is part of the lease, or an amendment to the lease.

(b) This section does not affect a landlord's right to assess a charge or obtain a remedy allowed under a statute or common law.

Added by Acts 2001, 77th Leg., ch. 1397, Sec. 1, eff. Sept. 1, 2001. Renumbered from V.T.C.A., Property Code Sec. 93.004 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(119), eff. Sept. 1, 2003.