

2018 Regular Session

HOUSE BILL NO. 386

BY REPRESENTATIVE JACKSON

LESSOR/LESSEE: Provides relative to security deposits for residential leases

1 AN ACT

2 To amend and reenact Part IV of Chapter 1 of Title IX of Title 9 of the Revised Statutes of
3 1950, to be comprised of R.S. 9:3251 through 3254, relative to residential leases; to
4 provide for the return of a security deposit; to provide for the right of retention; to
5 provide time periods for the return of a security deposit; to provide for venue; to
6 provide for damages and attorney fees; to provide with respect to the waiver of
7 rights; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part IV of Chapter 1 of Title IX of Title 9 of the Revised Statutes of
10 1950, comprised of R.S. 9:3251 through 3254, is hereby amended and reenacted to read as
11 follows:

12 PART IV. RESIDENTIAL LESSEE'S SECURITY DEPOSIT

13 §3251. ~~Lessee's deposit to secure lease; retention by lessor; conveyance of leased~~
14 ~~premises; itemized statement by lessor~~ Return of deposit; right of retention

15 A. Any ~~advance or~~ deposit of money furnished by a ~~tenant or~~ lessee to a
16 ~~landlord or~~ lessor in a residential lease to secure the ~~performance of any part of a~~
17 ~~written or oral lease or rental agreement~~ obligations of the lessee shall be returned
18 to the ~~tenant or lessee of residential or dwelling premises within one month after the~~
19 ~~lease shall terminate~~ in accordance with R.S. 9:3252, except that the ~~landlord or~~
20 lessor may retain all or any portion of the ~~advance or~~ security deposit ~~which that~~ is

1 reasonably necessary to remedy a ~~default of the tenant or to remedy unreasonable~~
2 ~~wear to the premises~~ the lessee's failure to perform. If any portion of an advance or
3 deposit is retained, by a landlord or lessor, ~~he~~ the lessor shall forward furnish to the
4 ~~tenant or lessee, within one month after the date the tenancy terminates, an a written~~
5 itemized statement accounting for the ~~proceeds which are~~ amount retained and
6 giving the reasons ~~therefor~~ for the retention. ~~The tenant shall furnish the lessor a~~
7 ~~forwarding address at the termination of the lease, to which such statements may be~~
8 ~~sent.~~

9 B. ~~In the event of a transfer of the lessor's interest in the leased premises~~
10 ~~during the term of a lease, the transferor shall also transfer to his successor in interest~~
11 ~~the sum deposited as security for performance of the lease and the transferor shall~~
12 ~~then be relieved of further liability with respect to the security deposit. The~~
13 ~~transferee shall be responsible for the return of the lessee's deposit at the termination~~
14 ~~of the lease, as set forth in Subsection A of this Section. The lessee shall furnish the~~
15 ~~lessor an address to which the security deposit and any statements shall be sent. A~~
16 ~~lessee who fails to furnish an address to the lessor does not forfeit the right to the~~
17 ~~return of the security deposit or to any written itemized statements.~~

18 C. ~~Paragraph A of this Section shall not apply when the tenant abandons the~~
19 ~~premises, either without giving notice as required or prior to the termination of the~~
20 ~~lease. If the lessee fails to bring an action for the return of the security deposit~~
21 ~~within three years after the date of the termination of the lease, the security deposit~~
22 ~~is deemed abandoned and becomes the property of the lessor.~~

23 §3251.1. Security deposit; security interest

24 A. The lessor's interest in the security deposit is a security interest under the
25 Uniform Commercial Code. Nevertheless, R.S. 10:9-207(c)(2) shall not apply to the
26 security deposit. Unless otherwise required by law or by agreement of the parties,
27 the lessor is not required to hold the security deposit in a separate account or to remit
28 to the lessee any interest earned on the deposit.

1 B. The claim of a lessee to a security deposit held in a deposit account
2 maintained by the lessor with a financial institution is preferred to that of the lessor's
3 creditors, except that the lessee's claim is subject to the rights of the following
4 persons:

5 (1) The financial institution with which the deposit account is maintained.

6 (2) A transferee of funds from the deposit account, unless the transferee acts
7 in collusion with the lessor in violating the rights of the lessee to the security deposit.

8 (3) A secured party holding a security interest perfected by control of the
9 deposit account in accordance with R.S. 10:9-104.

10 §3252. ~~Damages; venue~~ Return of security deposit; time periods

11 ~~A. The willful failure to comply with R.S. 9:3251 shall give the tenant or~~
12 ~~lessee the right to recover actual damages or two hundred dollars, whichever is~~
13 ~~greater, from the landlord or lessor, or from the lessor's successor in interest. Failure~~
14 ~~to remit within thirty days after written demand for a refund shall constitute willful~~
15 ~~failure. The lessor shall return the security deposit and furnish a written itemized~~
16 ~~statement accounting for any retention within one month after the date of termination~~
17 ~~of the lease. If the lessee remains in possession of the premises after the termination~~
18 ~~of the lease, the period within which the lessor shall return the security deposit and~~
19 ~~furnish any statement does not begin to run until the lessee has relinquished~~
20 ~~possession to the lessor.~~

21 ~~B. An action for the recovery of such damages may be brought in the parish~~
22 ~~of the lessor's domicile or in the parish where the property is situated. If the lessee~~
23 ~~has not furnished an address to the lessor for the return of the security deposit, the~~
24 ~~period within which the lessor shall return the security deposit and furnish any~~
25 ~~statement does not begin to run until the address is furnished.~~

26 §3253. ~~Costs and attorney's fees~~ Return of security deposit; damages; venue;
27 attorney fees

28 A. If the lessor fails to comply with R.S. 9:3252, the court shall order the
29 return of any portion of the security deposit wrongfully retained and shall award

1 damages in the amount of three hundred dollars or twice the amount of the portion
2 of the security deposit wrongfully retained, whichever is greater. If the court
3 determines that the lessee knew or should have known that the security deposit is not
4 owed or if the lessor's failure to perform was technical in nature, the court may
5 exercise its discretion to refuse an award of damages.

6 B. An action for the recovery of damages may be brought in the parish of the
7 lessor's domicile or in the parish where the premises are situated.

8 C. In an action brought under R.S. 9:3252 for the return of the lessee's
9 security deposit, the court may in its discretion award costs and attorney's attorney
10 fees to the prevailing party.

11 §3254. Waiver of ~~tenant's~~ rights prohibited

12 Any ~~waiver of the right~~ clause that, in advance, excludes or limits the rights
13 of a tenant lessee under this part Part shall be absolutely null and void.

14 Section 2. The provisions of this Act shall become effective January 1, 2019.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 386 Original

2018 Regular Session

Jackson

Abstract: Provides for the delay for the return of security deposits for residential leases, and provides, in part, for interest and damages related to the failure to return security deposits.

Present law (R.S. 9:3251) provides for the return of a security deposit within one month after the termination of a lease and allows for the retention of a portion of the deposit to remedy any default.

Proposed law retains these provisions but clarifies language.

Proposed law provides that if the lessee fails to provide an address for the return of the deposit, he does not forfeit his right to the return.

Present law (R.S. 9:3251) provides for the transfer of the deposit to a successor in interest of the leased premises.

Proposed law deletes these provisions.

Proposed law provides for the abandonment of the security deposit if not claimed within three years.

Proposed law (R.S. 9:3251.1) provides that a security deposit is a security interest, but the lessor is not required to hold the deposit in a separate account or pay interest to the lessee and proposed law sets forth the ranking of a claim to the deposit.

Present law (R.S. 9:3252) provides for venue and damages for the willful failure to comply with statutory requirements to return the deposit.

Proposed law retains the venue provision but moves it to R.S. 9:3253 and provides a new damage provision in R.S. 9:3253.

Proposed law provides the time period for the return of the deposit and requires a written statement accounting for the retention of any funds.

Present law (R.S. 9:3253) provides for costs and attorney fees.

Proposed law retains these provisions but moves it to R.S. 9:3254 and provides for the damages which may be awarded for a lessor's failure to comply with this Part.

Proposed law provides that damages may equal \$300 or twice the amount of the portion of the deposit wrongfully retained, whichever is greater. Proposed law also gives the court discretion in the awarding of damages for technical violations.

Present law (R.S. 9:3254) provides for the nullity of any waiver of a lessee's rights.

Proposed law retains these provisions but modernizes the terminology.

Effective on January 1, 2019.

(Amends R.S. 9:3251-3254)